FRESNO COUNTY CORONER
Final Report

INTRODUCTION

Pursuant to previous Grand Jury recommendations and the Board of Supervisor's (BOS) acknowledgement of the necessity of a new coroner facility, the 2005/2006 Fresno County Grand Jury investigated the facilities of the existing County Public Administrator-Coroner-Public Guardian (County PA-Coroner-PG). In the course of the investigation, the Grand Jury visited the offices and interviewed several County officials.

FINDINGS

F1 In March 2003, the Board of Supervisors approved the establishment of a capital project for a new PA-Coroner-PG facility.

- $1.3 million had been appropriated to partially fund the project.
- $500,000 was taken back by the BOS and placed in the general fund to be used for other purposes.
- The BOS at one time suggested the University Medical Center basement as a possible location.
- There have been discussions regarding co-location of the crime lab and public health services at a new County PA-Coroner-PG facility.

F2 In March 2006, Fresno County officials approved selling revenue bonds that can only be used for new buildings.

F3 The current facility was built in 1948 and has been occupied by the PA- Coroner-PG since 1980.

- The building has 2 levels with approximately 13,100 sq. ft.
- The current staff numbers 40.
- Minor renovations have been done to upgrade the existing facilities, however, expansion at this location is not feasible.
- The electrical and telephone systems are at their maximum capacity.

- The existing building does not meet Federal/State American's with Disabilities Act (ADA) requirements. No alterations have been made to comply with these mandated regulations.

    - County management took steps to accommodate an employee with ADA limitations by converting a downstairs area to an office space. Portable cooling and heating devices were brought in for temperature control.

    - The building is not wheel chair accessible.

    - There is no ADA parking.

- The mobile morgue unit scheduled for delivery in August 2006, is too large and heavy to navigate over the existing canal bridge entrance.

F4 There are concerns regarding working conditions and safety issues.

- The first level ground floor offices are occupied by the PA-PG.

- The second level office area is occupied by the Coroner and accessible only by stairs.

- Ceiling sprinklers are installed in the work area. However, if a fire were to occur in the stairwell leading to the second level, there is no alternative exit for employees and the visiting public.

- There is no heating or cooling in the ground floor work area.

- The building is not properly ventilated and odors from the morgue on the ground floor permeate all work areas.

F5 The Needs Assessment and Architectural Design are complete.

- The new facility will be 62,000 sq. ft. and accommodate up to 72 staff.

- Land acquisition has not been done. Several sites have been identified. Costs have increased on some sites of interest and some have been sold.

- A morgue of this size could be used as a regional facility in case of a national disaster or other types of catastrophic events.

- The refrigerator storage space for bodies will increase from 50 to 200.

- The disposal of waste has at times been an issue of discussion. Organs, body parts, and the like are properly disposed of per existing state regulations and do not enter the sewer system. Other types of disposable wastes from the morgue are similar to normal household waste that runs through the sewer lines.

CONCLUSIONS

C1 The PA-Coroner-PG function has outgrown the current facility.

C2 Expansion at the present location is not an option.

C3 ADA compliant facilities must be addressed.

C4 The continuing growth of Fresno County requires a larger and more technically advanced state of the art facility.

C5 A new facility is urgently needed.

RECOMMENDATIONS

The 2005-2006 Fresno County Grand Jury recommends that:

R1 Construction of a new state of the art Coroner's office, morgue, and autopsy suite be given top priority by the Fresno County Board of Supervisors.

R2 Construction should not be contingent upon the co-location with other public health offices.

R3 This project requires immediate resolution and action.

REQUEST FOR RESPONSES

Pursuant to Penal Code § 933.05, the Grand Jury requests responses as follows:

Fresno County Board of Supervisors: R1, R2, and R3

Please be reminded that the responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

FRESNO COUNTY'S PENSION PLAN
FRESNO COUNTY GRAND JURY 2005-2006

INTRODUCTION

The Fresno County Retirement Plan (the Plan) is an employee's dream and an employer's nightmare. The Plan's $2.338 billion trust fund is invested on behalf of the members of the Plan. If investment returns exceed projections made by the Actuary with the concurrence of the Retirement Board, the Retirement Board decides how to distribute the "excess earnings" to the retirees. The Board of Supervisors (BOS) is then pressured by the retirement association, employees, retirees and the 23 bargaining units to make those temporary distributions permanent. If investment returns fall short of the actuarial projection, the County is required to fund the "unfunded actuarial liability" that is, add more money to the retirement fund.

A simplified example:

If the Plan's fund were to generate 1% above the projected returns for a period of 5 years, it would generate in excess of $116,000,000 for the benefit of the members of the Retirement Plan over and above their guaranteed pensions. Conversely, if the Retirement Fund underperforms by 1% for 5 years, it would cause a shortfall in excess of $100,000,000. Most of this liability is the County's (as opposed to the employees).

As the Fund becomes larger even modest shortfalls in investment returns produce a larger and larger liability in terms of absolute dollars. That is, 1% of $100 is $1 whereas 1% of $1,000,000 is $10,000.

REASON FOR INVESTIGATION

Recently there have been several very large corporations that have been forced to lay off workers and/or restructure their benefit plans because they could no longer afford their Defined Benefit Pension Plans and rising healthcare costs. Grand Juries from other counties have recommended that all California Grand Juries investigate the costs of their respective Defined Benefit Pension Plans. Fresno County officials, themselves, listed the indebtedness caused by the Plan as one of the County's challenges. For these reasons, we decided that it would be prudent to investigate the Plan and its impact on the taxpayers of Fresno County.

It should be noted that employees are required to contribute to the Plan. Our investigation, however, focused on the cost to Fresno County and its taxpayers.

BACKGROUND

Fresno County offers its employees a defined benefit retirement plan. In a defined benefit plan the retiree will receive a *guaranteed* pension amount which is based on final compensation, length of service and age at retirement.

The basics of the Fresno County Retirement Plan were established under a state law, “The County Employees’ Retirement Law of 1937” the Act), the stated purpose of which was “...to recognize a public obligation …to employees who become incapacitated by age or long service and its accompanying physical disabilities…”.[1] The Act requires the establishment of a retirement board which has the fiduciary duty as trustee to administer the retirement plan.

The Board of Supervisors has the authority to change benefits within certain parameters of the law. The benefits as currently offered are a result of the basics required by the Act including Cost of Living increases, negotiated enhancements such as lowering the retirement age or counting various types of overtime and the “Ventura Settlement”. Unvested, i.e., not permanent, benefits are granted by the Fresno County Employees Association Retirement Board (Retirement Board) as a result of “excess earnings”. Fresno County retirement benefits are the most generous in the State.[2]

Since 1998, the County has had to borrow 3 times to cover its pension obligations. In 1998, the County borrowed $184,910,000. In March of 2002, the County partially refinanced its Pension Obligation Bonds (POBs) and increased the debt to $328,405,000. In March of 2004, once again the County borrowed and refinanced. This time it borrowed $402,000,000. As of June 30, 2004, the County’s obligation was 98% funded[3] and the County’s outstanding Pension Obligation Bonds totaled $546,064,000[4]. As of December 15, 2005, the total amount of principle and interest of the County’s Pension Obligation Bonds is $1.18 billion ($1,180,215,000).[5]

RESOURCES

The Grand Jury extensively investigated the Plan. The resources examined included County elected officers, County employees, Retirement Board Members, Annual reports of the Plan and the County, actuarial reports and analysis, Marin County Grand Jury Report and extensive use of the internet.

1 County Employees Retirement Law of 1937, Title3 , Article 1
2. Corroborated testimony
3. FCERA Actuarial Valuation as of June 30, 2004, page 1
4. Fresno County Annual Report as of June 2004, page 11
5. Spreadsheet provided by a County official

FINDINGS

F1 In March 2004, the Board of Supervisors issued $402,000,000 in POBs[6] to "fund" or cover the promised benefits to those who participated in the County's retirement plan *at that time* and to partially retire previously issued Pension Obligation Bonds.

- The POBs are general obligations of Fresno County.[7]
- The POBs account for 70% of the County's debt as of June 30, 2004[8].
- The POBs are scheduled to be paid off over a 30 year period.[9]
- The last payment which is due 2034 is a balloon payment of approximately $62,500,000.[10]
- The total liability of the POBS is $545,852,000 in principle and $634,363,000 in interest as of December 15, 2005.[11]
- This amounts to roughly $1,361 per person living in Fresno County. (1,180,000,000 /867,000).[12]

F2 Fresno County has budgeted $77,587,680[13] for employer retirement contributions for 2005-06.

- $52,607,936 is for the current year's obligation.
- $24,979,744 to be placed in a "sinking fund" (savings account) for debt service on the POBs.
- Thus the County's 2005-06 contribution of $77.6 million is about 55% of property taxes ($142,791,000)[14] collected for Fiscal Year 2004-05.

F3 In 1997, there was a lawsuit in Ventura County the outcome of which would have affected all California counties' retirement plans. In 2000, the Fresno County Board of Supervisors signed an agreement [15] with our local bargaining units.

- This agreement is known as "the Ventura Settlement".
- At that time the Fresno County Retirement Fund was reported to have excess earnings of $288,000,000.[16]

---

6. County of Fresno, Taxable Pension Obligations Bonds, Series 2004, Prospectus dated March 10, 2004, front cover
7. Prospectus, front cover.
8 Fresno County Annual Report as of June 30, 2004, page 11
9 Prospectus, page 14
10 Prospectus, page 14
11 Spreadsheet provided by the Auditor/Controller
12 U.S. Census Bureau, @quickfacts.census.gov
13 Per Memorandum from a County official
14 Fresno County Annual Report FY 2005, page 7
15 Settlement signed Oct 20, 2000 and Nov. 7, 2000
16 Testimony of County official

- At the time of the settlement the estimated cost of the benefits granted was $288,133,000.[17]
- Using an actuarial report as of June 1998 and no projections of the impact of increased benefits, the Board of Supervisors granted increased benefits for life for those who were covered by the agreement.
- Included in the agreement are "retirees, deferred retirees, beneficiaries, and employees who are members of the FCERA…"[18]
- The liability produced by the Ventura Settlement as of June 30, 2004 was $534,837,413.[19]

F4 A 1995 Amendment to the 1937 Act requires that the Board of Supervisors "*make public* (our italics) at a regularly scheduled meeting of the board, all salary and benefit increases that affect either or both represented employees and nonrepresented employees." [20]

F5 On May 7, 2003, the Board of Supervisors sued the Retirement Association over the calculation of final pay.[21]

- This calculation was known as "The Fresno Method".
- The Board of Supervisors has prevailed and final pay is now calculated as "…average annual compensation earnable by a member during any year elected by a member…or…requires that any year elected by a member be a period of 365 consecutive days."[22]
- This ruling is being appealed by the Fresno Deputy Sheriffs Association.[23]

F6 Safety members have greater pension benefits than general members.

- Included in the Safety Member Category are all "sworn officers" and firefighters. For a complete list refer to: www.fcera.org and search on Active Members, Member Handbook, Membership.
- Fresno County currently allows its safety members to retire at age 50 with 5 years of service or any age after 20 years of service.[24] Fresno County includes in "final pay" such items as selected types of overtime, pay in lieu of vacation, uniform allowances and standby pay. For additional examples of items included in final pay for purposes of pension benefit computation refer to: www.fcera.org and search on Board of Retirement, Agendas, April 19, 2006, Item 13, Exhibit 1.

---

[17] Settlement signed Oct 20, 2000 and Nov. 7, 2000
[18] Settlement signed Oct 20, 2000 and Nov 7, 2000, Section 5.
[19] Memo from County official dated Feb 20, 2006
[20] Law, Article 2.7, Paragraph 31515.5
[21] Court case 03 CE CG 01569
[22] Court case 03 CE CG 01569, Judgment, page 3, Section 1
[23] Testimony
[24] Retirement Handbook Insert, Table 2

F7 The composition of the Board of Retirement appears to be in violation of the 1937 Act because we read the intent of the Act to utilize the expertise of persons who are not affected by the outcome of the decisions other than as a taxpayer. Retirees are affected by the decisions of the FCERA board. The Act requires that the retirement board shall consist of:

- County treasurer
- Four "shall be qualified electors of the county who are not connected with the county government in any capacity, except one may be a supervisor, and shall be appointed by the board of supervisors"[25]
- Two general members elected by the general members
- One safety member (and one alternate safety) elected by the safety members
- One retired member elected by the retired members

F8 Assemblyman Keith Richman, MD of the 38th State Assembly District representing parts of Los Angeles and Ventura counties has introduced Assembly Constitutional Amendment No. 23.[26] This amendment offers a new retirement plan for public employees.

Some of the features are:

- New plan affects only employees hired after July 1, 2007
- A Defined Benefit feature which defines such factors as final salary, normal retirement age and safety officers
- A Defined Contribution feature which would function much like a 401 (k) which offers such features as portability, self investment and ability to pass on in an estate

F9 We repeatedly heard excuses for past decisions that one would not expect of individuals vested with this level of public trust.

F10 Fresno County currently offers a two tiered retirement plan.

The Tier I formula is:

A. General Members
   - At age 55 the formula is earnable compensation x 2.5% x years of service.

B. Safety Members
   - At age 55 the formula is earnable compensation x 3.275% x years of service.

The Tier II formula is:

[25] Law, Article 3, Paragraph 31520.1
[26] Assembly Constitutional Amendment No. 23, Introduced September 8, 2005.

A. General Members
- At age 55 the formula is earnable compensation x 2.0% x years of service.

B. Safety Members
- At age 55 the formula is earnable compensation x 3.0% x years of service.

CONCLUSIONS

C1 The retirement benefits as currently defined are forcing Fresno County further and further into debt. In the past 8 years Fresno County has gone from *zero* pension debt to $545,852,000 (principle only). Based on this rate of acceleration, the County will be facing insurmountable debt in the near future.

C2 The decision making, negotiating and administering of the Plan has been done largely by people who stand to benefit. The current Retirement Board make up is 6 members who do benefit and 3 who do not benefit. The members of the Board of Supervisors all benefit unless they choose to opt out.

C3 Benefits are being extended or accrued to individuals who are not members of the class defined in the Ventura Settlement.

C4 We find no documentation that shows that the Board of Supervisors is complying with the law as described in Finding F4 (publication of impact of salary and benefits increases).

C5 The Board of Supervisors is being asked to make decisions that require knowledge of a complicated law, understanding and evaluating actuarial reports and financial statements.
- Some of its long term and major impact decisions have been made with outdated actuarial reports.
- It has made increases in retirement benefits permanent assuming the stock market would continue to make positive advances.
- These decisions have very large and long term financial consequences for the citizens of Fresno County.

C6 The Defined Benefit Plan and the way it is currently administered is a problem for the state and the counties and is recognized as such.

RECOMMENDATIONS

R1 The Board of Supervisors must engage an outside, independent firm to conduct a Fiduciary Audit of the Plan. This audit is not a financial audit but rather one that investigates the internal administration of the Plan including, but not limited to, compliance with the law and the Ventura Settlement. The audit will also review Plan documents and ensure that proper disclosures have been made to employees and retirees.

R2 The Board of Supervisors must hire the services of outside, independent pension administrators, financial professionals and attorneys who are not associated with *city, county or state* government to advise it on all decisions regarding pensions.

R3 The Board of Supervisors must require current actuarial information for its decision making.

R4 After June 30, 2007, Fresno County must offer new hires the Tier 2 retirement plan <u>only</u>.

R5 The Board of Supervisors must notify the bargaining units that the County will not increase any retirement benefits.

R6 The Board of Supervisors must seek outside legal counsel to explore the feasibility of renegotiating the Ventura Settlement.

R7 The Board of Supervisors must comply with the law as to the number of appointees to the Retirement Board who are not connected with the County Government.

R8 FCERA must require continuing pension management training for its Board members and chief administrator.

R9 The FCERA Board must not grant any benefits from "excess earnings" unless they are fully funded, i.e., enough money is set aside to pay that benefit through the life expectancy of the youngest person granted that benefit *or grant only one-time lump sum distributions.*

R10 The Board of Supervisors must actively support legislation to amend the California State constitution to modify retirement benefits from a Defined Benefit Plan to a Defined Contribution Plan or a mixture of the two. An example of such legislation is a proposed constitutional amendment ACA 23 which was introduced by Keith Richman. For a complete text of the amendment go to www.leginfo.ca.gov and search on aca 23.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section §933.05, the Grand Jury requests responses as follows:

From the Board of Supervisors: R1 through R7 and R10.

From the FCERA Board of Retirement: R8 and R9

Please be reminded that the responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

THE EDUCATION COMMITTEE