# PENSION REFORM: IS CALIFORNIA LAW ENFORCEMENT READY?

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The Command College Futures Study Project is a FUTURES study of a particular emerging issue of relevance to law enforcement. Its purpose is NOT to predict the future; rather, to project a variety of possible scenarios useful for strategic planning in anticipation of the emerging landscape facing policing organizations.

This journal article was created using the futures forecasting process of Command College and its outcomes. Defining the future differs from analyzing the past, because it has not yet happened. In this article, methodologies have been used to discern useful alternatives to enhance the success of planners and leaders in their response to a range of possible future environments.

Managing the future means influencing it—creating, constraining and adapting to emerging trends and events in a way that optimizes the opportunities and minimizes the threats of relevance to the profession.

The views and conclusions expressed in the Command College Futures Project and journal article are those of the author, and are not necessarily those of the CA Commission on Peace Officer Standards and Training (POST).

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## IMAGINE IF YOU WILL

Cameras were rolling as Police Officers conducted their final formal inspection in front of their Police Headquarters. A platoon of Security Contractors also took part in the changing of the guard ceremony. Their presence was not very welcome by the ousted Police Officers; however, the ceremony continued as planned. Although the Security Contractors were assigned as a public safety presence; their uniforms, equipment, and transportation vehicles made them resemble an occupying army, not a professional law enforcement organization.

The well dressed and eloquent President of the Security Contract Company addressed the public during the ceremony, assuring members of the community that the transition from the Police Department to the contract security force would be smooth and uneventful. The move to a contract security force will be the first of its kind in the State; however, security contractors gained a great deal of infamy for their role in war in Iraq and Afghanistan during the 2000's. Neighboring communities who are also considering similar options will likely be closely monitoring the situation.

The Mayor credits the move with saving the City from bankruptcy. When asked if he thought that the change was a good move for the community as a whole, the Mayor simply stated, "The numbers made sense." The Mayor and fellow Council members openly admitted that, although there would be an initial cost savings, they did not know what the long term implications would be since their focus was primarily limited to saving the City's finances from the bankruptcy court.

Even a few years ago, this scenario would be rejected and viewed as almost unconceivable. A city declaring bankruptcy? Police services being contracted out? That will never happen, would be the response. In the future, though, will municipalities in the State of California take these extreme measures? What will their long term implications be to police departments? Moreover, can the issue simply be resolved through leaner and more efficient methods to conduct day to day business and not adversely impact the necessary quality of service?

## BACKGROUND

During the course of our country's history, we have faced challenging economic times that have tested our resolve. As a whole, the nation has been able to reinvent itself through adaptability and a determination to overcome obstacles. We are now in the midst of an economic crisis not witnessed since the great depression of the 1930's. The housing market has largely collapsed, and a number of large corporations, automakers and banks were "bailed out" to protect jobs and industries. Looking at the fiscal health of government, in 2012 alone, California witnessed three cities, Mammoth Lakes, San Bernardino and Stockton, file for Chapter 9 bankruptcy protection (Church, 2012). In addition, Standard and Poor's has "…downgraded California's credit rating to A-minus as the state faces another multi-billion-dollar budget gap for the current fiscal year…" (Levine, 2012, para. 1). One of the primary factors cities attribute for their budgetary woes is the ever-growing liability for employee pensions and benefits, which in many cases is underfunded for current obligations, and also not collecting enough to meet future liabilities. This has become the focal point of government fiscal reform.

Nationally, pension reform has gained momentum, fueled by various events such as the outrageous salaries of former City Manager Bruce Malkenhorst of Vernon, California, who was making $912,000 a year (Becerra, 2011). Also, former City Manager Robert Rizzo of Bell, California, was making $1.5 million a year in salary with benefits (Becerra, 2011). According to the Little Hoover Report (2011) Mr. Rizzo's retirement account has been frozen pending the results of his criminal case and other open investigations. Pension reform has become a reality for California; however, what appears to be a solution to our economic woes may have significant unexpected consequences for law enforcement if not properly managed. Through a detailed analysis, this report will explore the potential implications, the need for pension reform, and the preparation needed if and when pension reform comes to fruition.

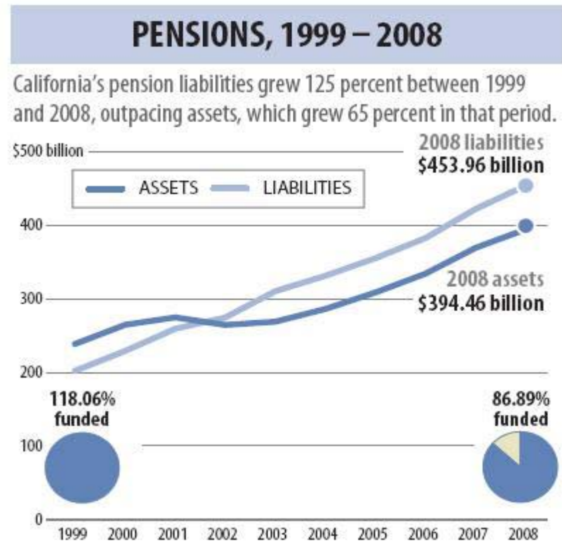
## PRESENT STATE OF AFFAIRS

Pension reform has gained a great deal of attention, most notably from the State of California's Little Hoover Commission on California State Government Organization and Economy. The Commission co-authored the 2011 Public Pensions for Retirement Security Report (2011). The report, as it has become known, makes a number of specific recommendations for pension reform, all of which may dramatically impact public employee retirement plans. Interestingly, there is no mention in the report regarding the long-term implications of these changes.

According to the Little Hoover Report, current (and inactive) workers comprise approximately 77 percent of the total membership of the public retirement systems in California, with the remaining percentage consisting of retirees, the disabled, and surviving beneficiaries (2011). In addition, the Little Hoover Report found that "From 2003-04 to 2007-08, the number of current and inactive workers has increased by 10.6 percent, while beneficiary membership has increased by nearly 18 percent" (Little Hoover Commission, 2011, p. 4). Further compounding the financial crisis was that pension liabilities outpaced the State's assets by 125 percent from 1999 to 2008 (Pew Center, 2010).

The chart found below further illustrates the underfunding crisis (Pew Center, 2010). It is important to note the underfunding resulted from legislative actions by the State, and also by local communities, as they voted to adopt enhancements to employee benefits plans. These same elected bodies are now wrestling with ways to modify those plans to avoid fiscal disaster.

On October 27, 2011, California Governor Brown announced his 12-point proposal for pension reform (2011). This proposal incorporates many of the suggestions noted by the Little Hoover report, and include:




| | |
|---|---|
| Total Bill Coming Due: | $453,956,264 |
| Portion Unfunded: | $59,492,498 |
| Annual Required Contribution (ARC): | $12,376,481 |
| Percentage ARC Funded: | 84.59% |

Note: In thousands

PENSIONS: NEEDS IMPROVEMENT

- <u>Equal Sharing of Pension Costs for all Employees and Employers.</u>

  The plan calls for equal sharing of normal pension costs by both the employee and the employer. This plan also takes into consideration current contribution levels, contracts and the collective bargaining process.

- <u>"Hybrid" Risk-Sharing Pension Plan: New Employees</u>

  This point entails the combination of a 401(k) type plan, coupled with a defined benefit component.

- <u>Increase Retirement Ages: New Employees</u>

  Currently non-safety employees may retire at age 55 and safety employees can retire at 50. The plan calls for new employees to retire at age 67, which is in line with social security retirement age. Although not specific, the plan calls for a sworn retirement age of less than 67.

- <u>Require Three-Year Final Compensation to Stop Spiking: New Employees</u>

  Currently pension benefits for a number of public employees are based on a single final year of service. This change will eliminate the ability of the employee to artificially increase the final year salary, to a system uses a three year average.

- <u>Calculate Benefits Based on Regular, Recurring Pay to Stop Spiking: New Employees</u>

  This rule would prohibit the use of special pay, or bank hours from being used towards calculating retirement pay.

- <u>Limit Post-Retirement Employment: All Employees</u>

  This rule would limit employees to 960 hours or 120 days per year while working for a public employer.

- <u>Felons Forfeit Pension Benefits: All Employees</u>

  This requires that public officials and employees forfeit pension and related benefits if convicted of a felony while performing official duties, while seeking office, or in connection with obtaining salary or pension benefits.

- <u>Prohibit Retroactive Pension Increases: All Employees</u>

  This would prohibit the application of pension enhancements to prior years of service.

- <u>Prohibit Pension Holidays: All Employees and Employers</u>

This would prohibit all employers from suspending employer and/or employee contributions necessary to fund annual pension costs.

- <u>Prohibit Purchases of Service Credit: All Employees</u>

  This would prohibit employees from buying additional retirement service credit.

- <u>Increase Pension Board Independence and Expertise</u>

  This will add two independent, public members with financial expertise to the CalPERS board.

- <u>Reduce Retiree Health Care Costs: State Employees</u>

  This will require new state employees to work 15 years to become eligible for the state to pay a portion of their retiree health care premiums. A total of 25 years of service will be needed in order to receive the maximum contribution.

In February 2012, Governor Brown presented his plan to the Legislature's Conference Committee on Public Employee Pensions. Six months on, the proposal is still in the exploratory stages according to a Capitol insider who spoke anonymously. For the plan to move forward, it will require "two-thirds of the Legislature voting to put the constitutional changes on the Nov 6 ballot, which would then need voter approval from a majority" (Ortiz, 2012, para 1.). Interestingly, Brown, a Democrat, received significant support on this initiative from Republican lawmakers (Christie, 2012, para. 1). An objective assessment of the current and future funding for State and local pensions leaves little doubt; change is needed.

**<u>THERE IS A NEED FOR PENSION REFORM</u>**

The Little Hoover Commission Report described the existing pension system as being grossly underfunded. Moreover, the Report attributes the demise of existing plans, to plan management that relied on “banking on high fund returns and an aggressive investment strategy…” (2011, p. 10). Consequently, if nothing is done, one can easily foresee an immediate future that includes more cities declaring bankruptcy, a continued decrease in services, and an overall negative impact to the quality of life for the community as police, fire, public works and other government positions are left unfilled.

One contributing factor to pension liabilities is that retirees are living much longer, thus further impacting a city’s contribution to the retiree’s pension. Lowenstein (2008) provides an excellent example of a retiree who lived to be a 111 years old, and where he “…had been collecting pension and retiree health benefits for forty-eight years” (p. 3). When this person was first employed by General Motors, it would have been rather difficult for the company to forecast how long they would be paying for his pension plan (Lowenstein, 2008). Although the general trend is for retires to live longer, those who spent their career as peace officers may not be amongst those creating this issue.

According to Violanti (1996), who conducted a forty-year study on long term health risks of Police Officers, found that “Police Officers are at increased risk for mortality as a result of their occupation” (para. 1). The average age of death for members of law enforcement during the study was found to be 66 years of age (Violanti, 1996). According to the U.S. Department of Health and Human Services (2011) the average life expectancy for a male in 2009 was 80.9, which is significantly longer. In addition Violanti (1996) found “The police profession is portrayed as a job replete with psychological stress, danger, rotating shifts, family disruption, and exposure to noxious materials” (para. 2). Statistically the members of municipal police departments would have less of a long term impact to pension plan than other state and local employees.

Among the pension reform solutions, which have gained in popularity in the last few years is the use of a two tiered retirement system. As an example, Riverside County, California offers a “3% at 50” retirement formula for current sworn employees; however, under the new system which was approved in June, 2012 new sworn employees will receive “2% at 50” (Horseman, 2012). The estimated first year savings for Riverside County is “$2.8 million” which has already been equated into their budget (Horseman, 2012).

With regards to the two tiered system, the Little Hoover Commission Report found that “Government agencies cannot generate the needed large-scale savings by reducing benefits only for new hires. It will take years if not decades to turn over the work force…” (2011, p. 42).

The long term solutions are of tremendous values; however, in order to impact the current deficit, remedies must be immediate and swift. The Little Hoover Report also found that “To provide immediate savings of the scope needed, state and local governments must have the flexibility to alter future, unaccrued retirement benefits for current workers” (2011, p. 42). The Report recognizes that this would be an unpopular option (2011). These are all factors that must be considered when revising the existing pension plans and assessing what the financial impact could be to the municipality.

**<u>RECRUITMENT AND RENTION CONCERNS</u>**

When the economy was booming in the late 1990’s and early 2000’s, the real estate market was flourishing and corporations were growing. At the time, numerous police agencies were offering hiring and recruiting bonuses. This shift in recruiting strategies was the result of organizations often not being able to recruit or even retain top qualified candidates. Some inducements included service longevity stipulations; e.g., officers hired were required to remain employed for certain periods of time in lieu of paying back benefits granted at hire. Despite these efforts, in 2006, the City of Los Angeles sued “53 former LAPD officers for $1.6 million, alleging they broke their employment contracts by leaving within five years of graduating the Police Academy” (McGreevy, 2006, para. 1). In spite of this, cities across the State quickly approved “3% at 50” pension plans for police and fire, with similarly generous improvements in pensions and benefits for all city employees. Now that those benefits are being rescinded, one can wonder what the impact might be for future recruits and the agencies that are seeking them. One can theorize that a reduction in benefits will have an adverse effect on an already challenging task of recruiting and retaining qualified employees.

In addition, the implementation of a two tiered or hybrid system in municipal police departments will further impact the organizations ability to recruit and hire lateral applicants. As an example, a potential lateral applicant may be vested in a system which guarantees “3% at 50” retirement; however, the recruiting organization, which has a two tiered or hybrid system, cannot match the existing benefit. In this scenario the applicant may reconsider ending superior and established benefits for a promotional or pay incentive with no long-term return on the investment. Riverside County, California recently implemented a two tiered system, which applied to newly hired employees, including lateral transfers. Riverside Sheriff Stan Sniff, was concerned that the new system would put him at a “strategic disadvantage” with other competitive law enforcement agencies (Horseman, 2012, para. 11). Sheriff Sniff felt “The new pensions will discourage lateral transfers of experienced police to the county” (Horseman, 2012, para. 11).

Inevitably, qualified and talented individuals whose calling is public service, will continue to seek out careers in law enforcement. There is a concern, however, amongst members of law enforcement that a decrease in pay and benefits might tempt some to lower their standards and hire lesser qualified applicants. Paul Francois, who is a Lieutenant with the San Jose Police Department, posted an article titled "Leadership 101" on the "Protect San Jose" web page commenting on the recent passing of "Measure B" in that city. This measure gained national attention for its aggressive language which among other changes mandates that "Current employees keep pension credits already earned but must pay up to 16% more their salary to continue that benefit…" (Woolfolk, 2012, para. 13). Francois (2012) wrote (referring to Mayor Reed) "He will likely attract a lot of lesser qualified, more desperate, and less honorable people" (para. 4).

A foreshadowing of what can occur through mass hiring and challenging recruitment times can also be found in the Los Angeles Police Department (LAPD). During the late 1980's and into the 1990's the LAPD conducted mass hiring and selected candidates with less than favorable backgrounds. In fact, the LAPD attributed "poor recruitment and hiring" as contributing factors to the Rampart Scandal of 1998 (Parks, 2000). As a result, the LAPD experienced the worst corruption scandal of the Rampart Division and their agency's history.

Collectively these scenarios are of paramount concern to the recruitment and retention of current and future employees. Rather than lamenting the past, though, our focus should be on where we should go from here.

## **WHAT NOW?**

In addition to and beyond pension reform, State and local municipalities must not only reexamine pension plans, but fiscal responsibility as a whole. Among the progressive and forward thinking municipalities that have successfully implemented change is the City of Rocklin, California. While other cities are reacting to the State's financial crisis by eliminating and reducing staff and filing for bankruptcy, Rocklin has been able to thrive. According to Oney

(2012) Rocklin has utilized special fund reserves for “one-time fixes” while taking other precautions to ensure these reserves are not further depleted. Moreover, the City is “…not only protecting their general fund reserve at about 25 percent of their annual operating budget, they are rebuilding the accounts they used in previous years” (Oney, 2012, para. 16). According to the City of Rocklin (2009) Standard and Poor’s upgraded their credit rating to “AA”. The City also announced the creation the office of Long-Term Planning and Sustainability in 2011, which focuses on economic and social development. This single moderately sized City is an example of what can be accomplished.

Not all is gloom and doom. Individual organizations must develop a strategic plan to address the inevitable implementation of pension reform policies and practices. As demonstrated by the City of Rocklin, the implementation of change requires a multi-pronged approach that must take into consideration the organizational culture, the community being served (stakeholders), and a well thought out plan of execution. It is worth mentioning that the term “unfunded liability” can be viewed as being misleading in that pension benefits are paid out over the course of several years, much like a mortgage (Schaitberger, 2012). The entire pension balance is not due on demand. Although it would be fiscally responsible to work on deficit reduction Cal STRS has “sufficient assets and projected contributions to pay benefits until 2044” (Protect Retirement Security for Californians, 2012, para. 15).

## **CONCLUSION**

The future of pension reform is uncertain; however, there is clear evidence that change is inevitable for the law enforcement community and public service employees as a whole. Through the identification and the assessment of this potential threat, clear and precise strategies can be developed to respond to the change. For law enforcement to survive the implementation of pension reform, local and state agencies must continue to recruit and retain talented individuals who have a passion for public service. These future applicants will be driven not by the financial possibilities, but by the stability and the opportunity to serve their nation in a domestic capacity. The desirable future will find municipalities will no longer utilize reserve funds for one-time solutions; however, they will become proactive responding to crises, through long term strategies. There will be a balance between employer and employee needs, while maintaining high levels of service with no compromise, while continuously pursuing excellence.

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