

LEGISLATIVE DIGEST

(First Draft, 5/24/2022)

[Charter Amendment - Retiree Supplemental Cost of Living Adjustment; Retirement Board Contract with Executive Director]

Describing and setting forth a proposal to the voters at an election to be held on November 8, 2022, to amend the Charter of the City and County of San Francisco to eliminate the full funding requirement for supplemental cost of living benefit payments to members of the San Francisco Employees' Retirement System who retired before November 6, 1996, subject to a monthly monetary cap for retirees and their qualified survivors and beneficiaries in years that the Retirement System is not fully funded; adjust the base retirement allowance for these retirees, or their qualified survivors and beneficiaries, to account for supplemental cost of living adjustments not received in the years 2013, 2014, 2017, 2018 and 2019; and authorize the Retirement Board to enter into an individual contract with any Retirement System executive director hired on or after January 1, 2023.

Existing Law

1. Supplemental Cost of Living Benefits for Members who Retired Before November 6, 1996. Charter Section A8.526-3 sets forth how supplemental cost of living benefits are determined. As a condition for payment of the supplemental cost benefit to members who retired before November 6, 1996 (and their qualified survivors and beneficiaries), SFERS must be fully funded based on the market value of the assets for the previous year.

2. SFERS Executive Director Contract. The Retirement Board does not have authority to enter into an individual contract with the executive director of the San Francisco Employees' Retirement System (SFERS) but rather must follow employment terms set out in Civil Service Commission Rules, the San Francisco Charter and Administrative Code, and the Memorandum of Understanding with the Municipal Executives Association.

Amendments to Current Law

1. Supplemental Cost of Living Benefits for Members who Retired Before November 6, 1996.

The amendment:

- eliminates the full-funding requirement for members who retired before November 6, 1996 (and their qualified survivors and beneficiaries);
- provides that SFERS will adjust the base retirement allowance to account for the supplemental cost of living adjustment payments not received by this group in 2013, 2014, 2017, 2018, and 2019 due to the full funding requirement; and

- caps the monthly supplemental cost of living adjustment payments at \$200 for members who retired before November 6, 1996 whose gross monthly retirement allowance exceeds \$4,167 per month.

The amendment does not provide for retroactive supplemental cost of living adjustment payments.

2. SFERS Executive Director Contract. The amendment allows the Retirement Board to enter into an individual contract with executive directors hired on or after January 1, 2023. The amendment does not apply to the current executive director.

Background Information

1. Supplemental Cost of Living Benefits for Members who Retired Before November 6, 1996. For many years, retirees have been entitled to a “basic” cost of living adjustment. At the November 6, 1996 election, the voters adopted a “supplemental” cost of living benefit for retirees. At the November 8, 2011 election, the voters added a “full funding” requirement to the supplemental benefit, meaning that, to pay supplemental cost of living benefits, SFERS had to be fully funded based on the market value of the previous year’s assets. That requirement was challenged as an unconstitutional impairment of a vested contractual right. In *Protect Our Benefits v. City and County of San Francisco* (2015) 235 Cal.App.4th 619, the Court of Appeal held that the full funding requirement could not be applied to current employees or to those who retired on or after November 6, 1996, but could be applied to those who retired before November 6, 1996.

This amendment in essence overrides the *Protect Our Benefits* decision as to members who retired before November 6, 1996, allowing them to receive supplemental cost of living benefits even if the full funding requirement is not satisfied – except that in years when that requirement is not satisfied, the supplemental cost of living benefit is capped at \$200 per month for this group of retirees (and their qualified survivors and beneficiaries) if their gross monthly pension allowance exceeds \$4,167 (the equivalent of \$50,000 yearly). And SFERS will adjust the base allowance for this group to account for supplemental cost of living adjustment payments not received in 2013, 2014, 2017, 2018 and 2019, as a result of the full funding requirement (subject to a \$200 monthly cap for those receiving a gross monthly pension allowance over \$4,167).

2. SFERS Executive Director Contract. Due to the complexity of the executive director job and the expertise/experience required, as well as the desire to recruit the highest quality candidates, the amendment authorizes the Retirement Board in the future to enter into individual contracts with executive directors.