



STAFF REPORT

SUBJECT: Resolution to Implement Provisions of Internal Revenue Code Section 414 (h)(2)

MEETING DATE: December 21, 2006 **AGENDA ITEM:** 6F

STAFF CONTACT: Bob Perkins

RECOMMENDATION:

Adopt a resolution to implement code provisions that will allow SBCAG employee retirement contributions to be made on a pre-tax basis.

DISCUSSION:

In 2002 the Santa Barbara County Board of Supervisors adopted a resolution implementing the provisions of Internal Revenue Code Section 414 (h)(2) for all County employees. This code section allows an employee's contribution to the retirement system to be made on a pre-tax basis. The Santa Barbara County Retirement Board also adopted a resolution at that time to accept pre-tax employee contributions.

SBCAG employees are members of the Santa Barbara County Employees' Retirement System but are still making retirement contributions on a post-tax basis. We have been advised that in order to change to pre-tax contributions, the attached resolution must be provided to the Retirement Office.

The recommended action does not have any cost implications for SBCAG. The amount of contributions to the retirement system will not change, however, by making contributions on a pre-tax basis employees will enjoy the tax benefit offered by this code section. If approved, this change will be coordinated with our payroll vendor to insure proper implementation of the IRS rules and guidelines.

COMMITTEE REVIEW: None

RESOLUTION OF THE SANTA BARBARA
COUNTY ASSOCIATION OF GOVERNMENTS

RESOLUTION TO ADOPT INTERNAL REVENUE)
CODE SECTION 414(h)(2), TO ALLOW MEMBER)
RETIREMENT CONTRIBUTIONS TO BE MADE)
ON A PRE-TAX BASIS)
_____)

RESOLUTION NO. 06-34

WHEREAS, employees of the Santa Barbara County Association of Governments (the "SBCAG") participate in the Santa Barbara County Employees' Retirement System ("SBCERS") in accordance with the County Employees Retirement Law (the "CERL") as set forth in the California Government Code, and

WHEREAS, members of SBCERS must make contributions to this retirement system in order to earn benefits thereunder, and

WHEREAS, members of SBCERS may elect to redeposit member contributions plus interest previously withdrawn and elect to purchase additional service credit as provided in the CERL through additional contributions to SBCERS, and

WHEREAS, presently these mandatory and elective member contributions are made on an after-tax basis, and

WHEREAS, under the Internal Revenue Code ("Code"), these member contributions to SBCERS may be made on a pre-tax basis as pick-ups in accordance with Section 414(h)(2) of the Code, and

WHEREAS, if member of SBCERS elects to make contributions for redeposits or for the purchase of additional service credit on a tax pick-up basis, this election must be made in accordance with a binding, irrevocable payroll deduction authorization, and

WHEREAS, it would be in the best interests of the SBCAG and its employees to provide a pre-tax pick-up of mandatory member contributions to SBCERS under section 414(h)(2) of the Code and to allow a pre-tax pick-up under Section 414(h)(2) of the Code of elective member contributions that are made for the purpose of purchasing service credit and redepositing amounts previously withdrawn from SBCERS, and

WHEREAS, in order to put these pick-ups into effect the SBCAG Board must adopt a resolution to pick up member mandatory contributions to SBCERS and to pick up member elective contributions to SBCERS when the member makes a binding irrevocable payroll deduction authorization for such pick-ups, and

WHEREAS, member contributions picked up by the SBCAG under Section 414(h)(2) of the Code must be payable from the same source as is used to pay compensation to the employee,

NOW, THEREFORE BE IT RESOLVED BY THE SBCAG BOARD OF DIRECTORS AS FOLLOWS:

Section 1. This resolution applies to all contributions that are required to be made by any employees of the SBCAG to the Santa Barbara County Employees' Retirement System ("SBCERS") on a regular, payroll deduction basis in order to participate in SBCERS and are made in accordance with the County Employees' Retirement Law ("CERL"). These member contributions to SBCERS include normal contributions and COLA contributions and are called "mandatory employee contributions" in this resolution.

Section 2. This resolution also applies to all employee contributions made to SBCERS for the purpose of purchasing service and/or redepositing amounts previously withdrawn plus interest pursuant to a binding irrevocable payroll deduction authorization made by the employee to have such contributions picked up for tax purposes and made on a pre-tax basis. These contributions to SBCERS are called "elective employee contributions" in this resolution.

Section 3. All mandatory employee contributions made to SBCERS, on and after the effective date of this resolution, even though designated as employee contributions and even though deducted from the employees' compensation, shall be picked up by the SBCAG for tax

purposes in accordance with Section 414(h)(2) of the Internal Revenue Code and therefore shall be treated as paid by the SBCAG to SBCERS in lieu of the contributions made by the employee to SBCERS.

Section 4. All elective employee contributions made to SBCERS, on and after the effective date of this resolution, even though designated as employee contributions and even though deducted from the employees' compensation, shall be picked up by the SBCAG for tax purposes in accordance with Section 414(h)(2) of the Internal Revenue Code and therefore shall be treated as paid by the SBCAG to SBCERS in lieu of the contributions made by the employee to SBCERS. This section shall only apply if the employee executes a binding, irrevocable payroll deduction authorization to have these contributions picked up by the SBCAG in accordance with Section 414(h)(2) of the Code. Such authorization shall be made at the time, in the manner and on a form provided by the SBCAG.

Section 5. All mandatory employee contributions and all elective employee contributions shall be paid from the same source as all other compensation is paid to employees of the SBCAG with respect to whom pick-up contributions are made under Section 414(h)(2) of the Code.

Section 6. No employee of the SBCAG shall have the option of choosing to receive mandatory employee contributions directly instead of having them paid by the SBCAG to SBCERS as provided in this resolution.

Section 7. If the employee chooses to have elective employee contributions picked up by the SBCAG and executes an irrevocable, binding payroll deduction with respect to these contributions, the employee shall not have the option of choosing to receive these contributions directly instead of having them paid by the SBCAG to SBCERS.

Section 8. The effective date of the pick-up of mandatory employee contributions by the SBCAG is the later of:

- (a) the date on which this resolution is adopted; or
- (b) the ending date of the first pay period on the 2007 biweekly payroll schedule.

This resolution does not apply to any mandatory employee contributions made to SBCERS before the effective date specified in this resolution.

Section 9. The effective date of the pick-up of elective employee contributions by the SBCAG is the later of:

- (a) the date on which this resolution is adopted; or
- (b) the first pay period ending after the date of the employee's execution of the required irrevocable payroll deduction authorization form.

This resolution does not apply to any elective employee contributions made to SBCERS before the effective date specified in this resolution.

PASSED AND ADOPTED by the SBCAG Board of Directors this 21st day of December, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Jim Kemp
Executive Director
Santa Barbara County
Association of Governments

Joe Centeno
Chair
Santa Barbara County
Association of Governments

APPROVED AS TO FORM:

:

Kevin E. Ready, Sr.
Deputy County Counsel