



MINUTES

ROGUE WORKFORCE PARTNERSHIP • CORPORATE DIRECTORS

August 18, 2016 ♦ 100 E. Main St., Suite A - Board Room ♦ Medford, OR

MEMBERS PRESENT

Commissioner Rick Dyer
Michael Donnelly (via phone)
Gregg Edwards
Jessica Gomez

MEMBERS ABSENT

Commissioner Cheryl Walker
Nikki Jones
Tamara Nordin

OTHERS PRESENT

Jim Fong, Executive Director, Rogue Workforce Partnership
Colleen Padilla, Executive Director, SOREDI
Ron Fox, Past Executive Director, SOREDI
Sherri Emitte, Rogue Workforce Partnership (via video/phone)
Aurora King, Rogue Workforce Partnership
Julie Gillis, Rogue Workforce Partnership
David Fricke, Rogue Workforce Partnership
Tami Allison, Rogue Workforce Partnership

Quorum Present: Yes

1) CALL TO ORDER

The meeting was called to order by Chair Jessica Gomez at 3:04 pm.

2) CONSENT AGENDA

***COMMISSIONER RICK DYER MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED.
THE MOTION WAS SECONDED BY GREGG EDWARDS AND APPROVED UNANIMOUSLY.***

3) RON FOX RECOGNITION

Ron Fox was honored for his many years of dedicated and impactful service as a pivotal member of the RWP - both the Corporate Directors and the full Workforce Board. Members of the group shared their sentiments and appreciation with Ron on his powerful contributions to improve our community as SOREDI Executive Director, and RWP leader.

4) RWP GOVERNANCE

Bylaws

Jim distributed the latest draft of the Corporate Director's bylaws, and reminded members that, due to changes in state policy, we no longer have the latitude of having a larger board with a smaller quorum (less than 50% of members present).

The new draft bylaws propose to have the full Workforce Board be the strategy group with the Corporate Directors focusing more on the details at hand. From a legal point of view, the Corporate Directors is a very distinct and different group than the Workforce Board because the Workforce Board is federally mandated and has its own set of responsibilities. The Corporate Directors have a different set of responsibilities taken on for the non-profit corporation that is Rogue Workforce Partnership. Jim also added that the chain of liability goes from the service provider, to the fiscal entity (RWP), to the County Commissioners.

John Chamberlin, the RWP's attorney expert in WIOA, joined by conference all and walked through the draft bylaws. John explained:

- The Rogue Valley Workforce Consortium is comprised of one local elected official from each county.
- The Rogue Workforce Partnership Workforce Board is federally determined and appointed by the Consortium.
- Grant monies are administered by a non-profit, tax-exempt Oregon Corporation which is Rogue Workforce Partnership who is governed by the Corporate Directors and has 7-9 members not federally determined. Both commissioners from the Rogue Valley Workforce Consortium are directors of the corporate board.
- When a person ceases to sit on the workforce board, they cannot act as a corporate director.
- When a commissioner ceases to be a commissioner, they will be replaced by their replacement commissioner.
- Rogue Workforce Partnership is free to structure the Corporate Directors as they see fit with the exception that to be tax-exempt, they must have at least five members.
- The Executive Director is always employed by the non-profit.

Some suggested changes were discussed. John indicated that he will make it a part of the bylaws that the Corporate Directors will be the nominating committee for officers.

John noted that the key is that the Corporate Directors and the Workforce Board always be in sync.

John added that to enact the bylaws, they must be adopted by a vote of the Workforce Board and Corporate Directors. To modify the bylaws, it takes a majority of the members the Corporate Directors and of the Workforce Board.

John suggested having joint meetings of the Workforce Board and Corporate Directors, and noted that some workforce areas do their annual meeting as a joint meeting.

The bylaws will be taken to the Workforce Board meeting in September for their approval.

The Corporate Directors are in agreement to move forward to the September Workforce Board meeting and have either a joint, or a staggered meeting.

Mission, Vision, Promise

The group entered into a work session to refine the Mission, Vision, and Promise of the Rogue Workforce Partnership.

Mission:

To advance the region's economic vitality by developing a business-responsive workforce that promotes prosperity

Vision:

A strong regional economy and prosperous community fueled by skilled workers, quality jobs, and thriving businesses.

Our Promise:

Remains unchanged for now. May be refined later.

5) UPDATES

WIOA Services & Contract

Aurora shared a handout that provides a rough snapshot of WIOA Adult and Dislocated Workers local performance measures, as well as a handout showing ResCare PY 16 Contract Performance Outcomes. And, reported that more information will also be shared at the September Workforce Board meeting that will include a comparative analysis of the services provided over the past three years.

The group discussed wanting to show retention. It's currently problematic for RWP to pay profit for retention. Tracking retention through OED wage match data is a too much of a time-delayed process that doesn't allow for us to pay for profit using this data. And, it is extremely labor intensive for ResCare Talent Development Specialists to try to obtain check stubs to document the retention.

Jessica indicated that she would like to have a more detailed conversation about retention in the future. She feels it is worth putting in the effort to close the loop with the employers – possibly even figuring out a way to link someone's training permanently to their record – not just wage, but also their credential, badge, etc. Aurora indicated there is a mechanism in place for wage reporting; however, it is not recorded for 90-120 days after.

Jessica inquired as to the barriers of the data warehouse. Jim answered that the state continues to make headway on this and giving us the capacity to analyze data longitudinally (linking all the information). There needs to be a way for the data to be useful to both the individual and the employer. Jim also indicated that there is “right to privacy” laws that are huge barriers in this discussion; although, NCRC takers can authorize to share their profile publicly, so there should be a way for the individual to authorize sharing of their information.

Aurora went on to report that approximately 68% of training investments made were in our sector strategies.

Aurora handed out Oregon Employment Department Jobs in Demand in the Rogue Valley and indicated:

- It’s difficult to fill in the information that shows the hidden job market. (Jessica suggested we may want to look into those occupations that could be paid with unreported wages)
- Difficult to fill jobs are that more manual, entry level jobs
- The main list is the higher end jobs

Quality Assurance and Finance Manager with ERP experience were two occupational titles that were suggested to be added to the list.

Other suggestions included checking with staffing agencies, or possibly doing a survey to see which occupations are the most difficult to fill and if they charge a higher premium for the harder to fill positions.

Julie gave a quick update on College Dreams In-School Youth Program and provided a handout to the group.

The number of youth served (80) was questioned as being low. Jessica asked for this number to be presented in context.

The RWP staff will bring a draft dashboard to the Workforce Board meeting in September as a first attempt at arriving at valuable information to share with the board.

Rogue Workforce Academy

Jim reported the first Rogue Workforce Academy was held and attended by approximately 70 staff from the various partner agencies – ResCare, OED, DHS, Goodwill, RCC.

Ford Family Foundation

Jim reported that Southern Oregon Success partners met recently with the Ford Family Foundation to explore and expand partnership. A good connection was made with particular discussion on the dynamic work going on with Adverse Childhood Experiences and Self-Healing Communities.

Sector Strategies & College and Career for All

Good work and events are happening with RAMP (Rogue Advanced Manufacturing Partnership) and Rogue Tech Collective. Sector work is coming together nicely and alignment is being created with K-12 partners. The Health Care group will be convened in the very near future.

September 16, 2016 Community Partners Outreach Meeting

Jim reminded the group of the event.

6) OTHER ITEMS

No other items were brought before the RWP Corporate Directors.

7) ADJOURN

With no further business, the RWP Corporate Directors meeting was adjourned at 5:08 pm.

Respectfully Submitted,



Tami Allison
Executive Projects Manager

Approved

Date

Jessica Gomez, RWP Chair



Rogue Workforce Partnership - Corporate Directors Meeting


Thursday, November 17, 2016 • 3:00-5:00 p.m. | 100 E. Main Street, Suite A - Board Room • Medford

Video/Phone Conference access available at <https://global.gotomeeting.com/join/652451429>. Select your audio preference:

1) Use telephone: 1 (571) 317-3122; Access Code: 652-451-429 (normal long distance charges will apply); 2) Or, use computer microphone & speakers (headset is recommended to avoid reverb)


Agenda

1. **Call to Order** (2m) Jessica Gomez
 - Welcome & Introductions

2. **Consent Agenda** (1m) - **Action Item**  Jessica

Consent agenda items are voted on as a single block unless a member wishes to pull an item(s) out for discussion

 - a. **Approval of Minutes** –
 - August 18, 2016 - RWP Corporate Directors Meeting

3. **RWP Governance / Administration** (20m) Jim Fong
 - Membership
 - Revising RVWC By-Laws
 - PERS & Counties - Update & Guidance 
 - 2017 RWP Calendar Draft

with Pat Huycke

4. **Feedback on Dashboard** (45-60m) Aurora King , Sherri Stratton, Dave Fricke
 - Exploratory Conversation - Which 7-8 draft metrics makes sense to focus on?
(John Underwood & Shawn Hogan also invited to this meeting & conversation)

5. **Coordination, Guidance & Decision-Making for RWP**
 - **Contract Management & Monitoring** (30m) Aurora, Dave, Julie Gillis

How are we doing? How are things going?
Monitoring update; Contract review & schedule, etc.


 - **ResCare**
 - **College Dreams**

 - **RWP – Workforce Board Dec 15th Meeting - Agenda Prep** (20m) Jessica, Jim & RWP Team
 - Dashboard
 - “Marketing”/Communicating the value proposition of WorkSource Rogue Valley to employers / business leaders & avoid the experience of being overwhelmed with information; Infographic
 - Brainstorm on asking members to present on:
 - **Sector Strategies**
 - RAMP – Mike, John, Norm
 - Industry Recognized Credentials / Curriculum Alignment – Cathy K-P, Aurora & Mike
 - Rogue Tech Collective
 - Tech Tour – Adam, Trever & Scott
 - Governor Brown site visit - Adam, Trever
 - RCC Web Development – Trever & Juliet Long
 - Unifying Our Industry & Education / Workforce Partnerships
 - Business/ Education Partnership – Norm, John
 - Oct 10th Community Partners Meeting – Jessica, Jim
 - **College & Career for All** – Scott, Brian, Kirk, Jim

- RWP/SORED I & RCC “marketing” of career pathways – Colleen, Serena St. Clair
- **WorkSource Rogue Valley Services**
 - Governor Brown Site Visit & Next Steps Follow-up – Jim, Sherri S.
 - Sector Academy – Mike, Dave & Julie
 - Foundational Skills Training – fee for service
 - Career pathways development
 - Service & retail jobs as stepping stones

6. Other Items Jessica

7. Adjourn Jessica

= Documents are attached, or will be handed out or presented at meeting

Auxiliary aids and services are available upon request to individuals with disabilities. Please contact Tami Allison at 776-5100 (Voice/TDD) at least 48 hours in advance of the meeting to allow staff sufficient time to arrange for auxiliary aid



**ROGUE WORKFORCE
PARTNERSHIP**

100 E. Main St., Suite A
Medford, OR 97501-6125
(541) 776-5100

November 3, 2016

Leah Harper
Assistant Legal Counsel
Josephine County Office of Legal Counsel
500 NW 6th Street, Dept. 13
Grants Pass, OR 97526
lharper@co.josephine.or.us

Via Email and First Class Mail

Dear Leah:

Thank you for our telephone conversation on October 25th, your subsequent letter of October 28th, and for inviting us to participate in your meeting / conference call with PERS on October 31, 2016. We were pleased to provide information concerning the entities that are now performing the functions previously performed by The Job Council and the relationship between ResCare, Rogue Workforce Partnership and WorkSource Rogue Valley.

In addition to the information we provided on the call, and as an additional response to the information requested by PERS through your letter, I have sent a follow-up letter directly to Debra Hembree of Oregon PERS with a written synopsis of the information we shared on the conference call. I've also copied you, Wally Hicks and Joel Benton on this letter.

In addition, I also want to raise a concern to you and Wally about the comments made during the call by Josephine County's outside counsel, Oren Haker. It became apparent during the telephone conversation that in addition to the other options discussed, Josephine County is asserting that PERS should pursue civil action against Rogue Workforce Partnership and/or ResCare as responsible parties for The Job Council's PERS liability under a "successor entity" theory. This is directly contrary to the conversation we had with you on October 25th in which you communicated that Josephine County's position to PERS is that neither Josephine County, Jackson County nor Rogue Workforce Partnership are responsible for The Job Council's liability.

This is a claim and issue that I will present to the Corporate Directors of Rogue Workforce Partnership for advice and further instructions. During the interim time period, our legal counsel, Patrick G. Huycke, has advised that Rogue Workforce Partnership staff not directly communicate with representatives of Josephine County regarding this issue. Please direct any inquiries you may have to Pat. I believe you have his contact information.

You might be aware that books and records of The Job Council are stored at Rogue Workforce Partnership offices and/or in nearby storage facilities. If required and upon reasonable notice,

Ms. Leah Harper
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representatives of Josephine County will be given access to the books and records for review should the need arise.

Sincerely,


James G. Fong
Executive Director

cc: Pat Huycke, Huycke O'Connor Jarvis, LLP
Rogue Workforce Partnership Corporate Directors
Joel Benton, Jackson County Counsel



November 3, 2016

Debra Hembree
Actuarial Services Coordinator
Oregon PERS
11410 SW 68th Parkway
Tigard, OR 97223
debra.hembree@state.or.us

Via Email and First Class Mail

Dear Debra:

Leah Harper, Assistant Legal Counsel for Josephine County, invited us to participate on the October 31, 2016 conference call with you, other representatives from Oregon PERS, the Oregon Department of Justice, Jackson County and Josephine County. We were pleased to provide clarifying information concerning the entities that are now performing the functions previously performed by The Job Council and the relationship between ResCare, Rogue Workforce Partnership and WorkSource Rogue Valley.

For your records, listed below is a written synopsis of the information we provided:

1. *Information on what assets or accounts were transferred from The Job Council at dissolution:*

In the Amendment No. 1 to the Amended and Reinstated Intergovernmental Agreement, dated June 30, 2015, the Boards of County Commissioners of Jackson and Josephine Counties agreed that The Job Council would appoint a Liquidating Agent in order to terminate the operations of The Job Council. Those duties specifically included transferring the assets of The Job Council to an organization that has a mission similar to the mission of The Job Council. On April 22, 2016, when the liquidation of The Job Council was substantially complete, the directors of The Job Council directed the Liquidating Agent to transfer to Rogue Workforce Partnership all assets of The Job Council remaining after payment of operating expenses. The assets and liabilities transferred to Rogue Workforce Partnership included:

\$614,259	Cash
4,032	Prepaid rent (leases were assigned from TJC to Rogue Workforce Partnership)
9,710	Prepaid Bus Tokens and Gas Cards (subsequently donated to ResCare)
10,000	Fully depreciated fixed assets (office furniture, cubicles, computers)
(10,356)	Deferred Revenue
(35,170)	PTO Payable
<u>(1,020,028)</u>	Remaining Obligations on Assigned Building and Copier Leases (through 2020)
(\$427,553)	Net Assets (Liabilities) Transferred

2. *Information on the new entity that is performing The Job Council's function:*

The new entity that is performing The Job Council's prior workforce service functions is a company named ResCare. ResCare is a for-profit, publically-traded corporation headquartered in Louisville,

Kentucky. They provide workforce, homecare, residential and pharmacy services nationwide (see more information at <http://www.rescare.com/>).

In the spring of 2015, in order to provide continuity of workforce services in the region, the Rogue Workforce Partnership and the Oregon Department of Human Services conducted a joint public procurement process. ResCare submitted a bid and was chosen to provide these workforce services that had previously been provided by The Job Council through funding from both the Rogue Workforce Partnership (*Workforce Investment Act funds from the United States Department of Labor via the Oregon Department of Community Colleges and Workforce Development*) and the Oregon Department of Human Services.

When The Job Council dissolved on June 30, 2015, all employees were laid off; however, the majority of its staff was hired by ResCare, thus providing continuity of workforce services to customers. A small handful of previous Job Council staff were also hired by either the Rogue Workforce Partnership or the Oregon Employment Department. No Job Council staff were hired by or transferred to any positions providing any workforce services at either Jackson or Josephine County.

3. *Information on the relationship between the Rogue Workforce Partnership and WorkSource Rogue Valley:*

The Rogue Workforce Partnership, is an Oregon non-profit corporation created in 1998. The board of Rogue Workforce Partnership is the federal and state authorized local Workforce Development Board (*previously known as a Workforce Investment Board*) for Jackson and Josephine County. The mission of Rogue Workforce Partnership is to advance the region's economic vitality by developing a business-responsive workforce that promotes prosperity.

One of the Rogue Workforce Partnership's primary functions is to oversee and align the region's public workforce system by bringing together multiple publicly-funded workforce programs, state agencies and other organizations to create a seamless set of employment and training services to serve all Southern Oregonians. In March 2008, the Oregon Department of Community Colleges and Workforce Development, the Oregon Employment Department and all of the local Workforce Investment (*Development*) Boards across the state, embarked on a statewide service integration effort under the umbrella brand name of [WorkSource Oregon](#). A joint [Compass Policy for Alignment and Integration of WorkSource Oregon System](#) describes this partnership in greater detail.

[WorkSource Rogue Valley](#) (WSRV) is our region's localized name for WorkSource Oregon that serves Jackson and Josephine Counties. The region's workforce centers are also part of the nationwide network of workforce One-Stop Centers authorized by the Department of Labor and branded "[American Job Center](#)."

In its most up-to-date configuration, WorkSource Rogue Valley brings together staff from ResCare and the Oregon Employment Department as core service providers in these One-Stop Centers. In addition, for our region, these workforce centers also house out-stationed staff from the Oregon Department of Human Services.

During the first year of transition, the decision was made to keep The Job Council name on the exterior of the existing buildings of the One-Stop Centers in order to avoid confusion to customers or partners. We did not want customers to think that services were no longer available, or for partners to stop referring customers. At the same time, to start an orderly transition, The Job Council name was removed from all internal signage, documents, name badges, etc. We are now just in the process of changing the signage on the exterior of the buildings.

The Rogue Workforce Partnership oversees the WorkSource Rogue Valley consortium and all of the services it provides at the regional level. We convene and facilitate consortium meetings. We also procure for and administer the specific services funded through a variety of funds, but primarily the Workforce Innovation and Opportunity Act funds (*previously the Workforce Investment Act*) from the United States Department of Labor and sent through the Oregon Department of Community Colleges and Workforce Development.

In addition to the written information above, I also wanted to respond to a comment in which you indicated that Oregon PERS had not had any communication from The Job Council regarding its liquidation and dissolution. Attached is the letter that Pat Huycke sent on behalf of The Job Council on June 25, 2015, informing Oregon PERS about its termination.

Please let me know if you have any additional questions, or if we can be of any further assistance in this matter.

Sincerely,


James G. Fong
Executive Director

cc: Wally Hicks, Josephine County Legal Counsel
Leah Harper, Josephine County Assistant Legal Counsel
Joel Benton, Jackson County Counsel
Pat Huycke, Huycke O'Connor Jarvis, LLP
Rogue Workforce Partnership Corporate Directors



Josephine County, Oregon

OFFICE OF LEGAL COUNSEL

M. Wally Hicks, Legal Counsel
Leah C. Harper, Assistant Legal Counsel
500 NW 6th Street, Dept. 13
Grants Pass, OR 97526
(541) 474-5226 / FAX (541) 474-5223

OCT 28 2016

October 26, 2016

Jim Fong
Executive Director
Rogue Workforce Partnership
100 E. Main Street
Medford, OR 97501
JimF@rogueworkforce.org

Pat Huycke
Huycke O'Connor Jarvis LLP
823 Alder Creek Drive
Medford, OR 97504
pgh@medfordlaw.net

Via Email and First Class Mail

Re: Request for Information

Dear Jim and Pat:

This letter will confirm our telephone conversation yesterday, when we discussed the current status of Josephine County's dispute with PERS, and our request for information on transferred assets.

As I explained, Josephine County is disputing PERS' claim that Josephine County is responsible for any outstanding PERS liability upon the dissolution of The Job Council. Our attorney, Oren Haker, sent several requests to PERS for information on the specific amount of any purported PERS liability, and the method for calculating that purported PERS liability. In response, PERS send us a letter dated July 26, 2016 (attached). This letter stated that PERS had the fiduciary duty to collect the transitional liability, and that, by their calculations, as of December 31, 2014, the Job Council's transitional liability was \$4,676,513. Further, their letter stated that PERS staff would recommend to the PERS Board that Josephine County be allocated one-half of The Job Council's transition liability as of December 31, 2015, that the transition liability be reflected in Josephine County's employer contribution rates effective July 1, 2017, and that those rates be adopted by the PERS Board at its meeting on September 30, 2016.

Wally Hicks and Oren Haker then attended the PERS Board meeting on September 30, 2016 in Tigard. At the meeting, Wally explained that Josephine County had no money to fund law enforcement, let alone pay the purported PERS liability. PERS asked several questions, and it became apparent that the PERS Board was under the impression that the employees of The Job Council, along with the assets, went to Josephine and Jackson Counties upon dissolution. The PERS Board asked several questions regarding the successor entity of The Job Council; Wally explained that he could not speak to those questions as The Job Council or its successor were not present. After about 20 minutes of discussion, the Executive Director of PERS mentioned that PERS had an insolvency fund which might be able to be used to pay the

Mr. Jim Fong
Mr. Pat Huycke
October 26, 2016
Page 2

transition liability. At the end of the meeting, the PERS Board decided to delay any decision until the November meeting, so that Josephine County and PERS representatives could look into settling the matter.

After the meeting, Wally contacted State Representative Carl Wilson to assist with good faith negotiations with PERS. We also sent a Request for Public Records to the PERS Public Records Officer, requesting documents regarding the insolvency fund and other entities that have dissolved or disincorporated (attached). Similarly, Stephanie Vaughn, the Policy Analysis and Compliance Manager for PERS, has asked us to obtain the following information:

1. Information on what assets or accounts were transferred from The Job Council at dissolution;
2. Information on the new entity that is performing The Job Council's function; and
4. Information on the relationship between the Rogue Workforce Partnership and Worksource Rogue Valley.

We would appreciate it if you could provide us with as much of this information as you can as soon as possible. A conference call between me, Wally, Oren Haker, Stephanie Vaughn, and Carl Wilson has been scheduled for Monday, October 31 at 9:30 – 10:30 a.m. Wally and Oren will be present in Tigard, and Rep. Wilson and I will be attending by telephone. You are welcome to sit in on this meeting if you would like; it might be helpful if you were there to clarify any questions that PERS has. We will be contacting Joel Benton from Jackson County to see if he would like to attend as well.

Finally, enclosed please find information that we received from Joel Benton on the Policy and Funding of the Use of the Contingency Reserve.

Thank you for your assistance and cooperation in our attempt to settle the purported liability to PERS. We look forward to working collaboratively to resolve this issue; as we discussed, it is the County's principal position that this liability, if it exists, should be absorbed by PERS. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,



Leah C. Harper
Assistant Legal Counsel

Enclosures



Josephine County, Oregon

OFFICE OF LEGAL COUNSEL

M. Wally Hicks, Legal Counsel
Leah C. Harper, Assistant Legal Counsel
500 NW 6th Street, Dept. 13
Grants Pass, OR 97526
(541) 474-5226 / FAX (541) 474-5223

October 18, 2016

Alan Smith
Records Officer, PERS
P.O. Box 23700
Tigard, OR 97281-3700
Alan.Smith@state.or.us

Re: Request for Public Records

Dear Mr. Smith:

Pursuant to ORS 192.420, Josephine County requests that PERS and its employees make available for inspection or provide copies of the following records:

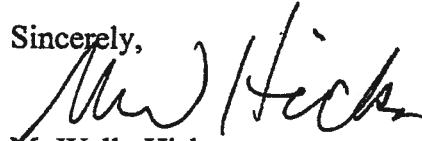
1. All records, documents, and financial statements of PERS relating to the dissolution of the Multnomah Fire District.
2. All records, documents, and financial statements of PERS relating to the disincorporation of the city of Damascus.
3. All records, documents, and financial statements of PERS relating to the dissolution of intergovernmental entities and charter schools.
4. All records, documents, and financial statements of PERS relating to the dissolution of all other municipal entities, districts, or other PERS members that have been dissolved or disincorporated since 1996.
5. All records and documents, including but not limited to trial balance sheets, general ledgers, and listings of expenditures, regarding any contingency funds of PERS.
6. All records and documents, including but not limited to trial balance sheets, general ledgers, and listings of expenditures, regarding any insolvency funds of PERS.
7. All records and documents regarding any policies or procedures for allocating liabilities of PERS employers upon dissolution.

If the requested documents consist of more than 500 pages, please contact me to arrange a time for inspection and copying. Please provide written response within ten (10) days of this request.

Mr. Adam Smith
Public Records Officer, PERS
October 17, 2016
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Please contact me at (541) 474-5226 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Wally Hicks". The signature is written in a cursive style with a large, prominent "H" and "X".

M. Wally Hicks
County Legal Counsel

cc: Oren Haker, Stoel Rives



Oregon

Kate Brown, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
888-320-7377
TTY (503) 603-7766
www.oregon.gov/pers

July 26, 2016

Oren B. Haker
Stoel Rives LLP
760 SW Ninth Ave, Ste 3000
Portland OR 97205-2584

RE: Disposition of The Job Council's Transition Liability

Dear Mr. Haker:

We have considered the legal and policy issues involved in the disposition of the Job Council's PERS transition liability. Our conclusion is that we have both legal authority, and a fiduciary responsibility, to allocate the transition liability to Josephine and Jackson counties. This allocation will occur as part of the December 31, 2015 actuarial valuation, which is currently in progress.

In your July 1, 2016 letter, you asked about the calculation of pooled vs. non-pooled liabilities, and the legal authority for making that distinction. Enclosed with this letter is a history of the development of the Job Council's transition liability, from its inception in 2002 through 2014, the most recent actuarial valuation. Pooled liabilities are calculated at the pool level, and we have previously advised that the Job Council's share of the State and Local Government Rate Pool's liability will remain with the pool.

As to legal authority, ORS 238.227(3) requires that contributions for liabilities incurred after an employer joins the pool be calculated separately from contributions for liabilities incurred before the employer joined the pool. The calculation of a transition liability complies with this provision.

You also asked about PERS' statutory authority to transfer liabilities from one participating employer to another. As we have noted previously, we believe that ORS 190.080(3) allows for the Job Council's transition liability to be allocated between the employers that formed the entity, and we do not agree that the IGA forming the Job Council prohibits this.

Further, ORS 238.601 provides in relevant part that:

“[The PERS board] shall administer the system to create and maintain long-term stability and viability in the system, and shall act to achieve full funding for the benefits provided by the system, giving equal consideration to the interests of the public employer and the employee to the extent that treatment does not violate the fiduciary duties of the board. Nothing in this section shall be construed to impose a fiduciary duty on the board to consider the interests of public employers, and the board shall consider the interests of public employers only with respect to matters unrelated to the board's fiduciary duties as trustee of the fund.”

Oren B. Haker
July 26, 2016
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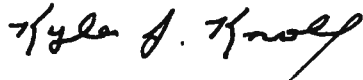
In other words, the PERS Board has a fiduciary duty to ensure that benefits earned by PERS members are fully funded, and that employer interests are considered to the extent that those interests do not conflict with the funding obligation. The former requires that every effort be made to collect on liabilities incurred by employers in providing benefits to their employees, even if those employers cease active participation in PERS. The latter is not served by transferring those unfunded liabilities to all other participating employers, where there is a logical successor. We believe that is the case here.

Staff will recommend to the Board that Josephine County be allocated one-half of the Job Council's transition liability as of December 31, 2015, and that that allocation be reported in the county's individual 2015 valuation report. If included, the allocated transition liability will be reflected in the county's employer contribution rates effective July 1, 2017. Those rates will be adopted by the PERS Board at its September 30, 2016 meeting. The amortization period for the transition liability allocated to the county would be through December 31, 2027; the same amortization period as Josephine County's existing transition liability.

As of the December 31, 2014 actuarial valuation, the Job Council's transition liability was \$4,676,513. If included, the actual rate impact of allocating half of that amount to Josephine County will be determined in the 2015 valuation, but is estimated to be an increase of approximately 1.5 percent of payroll.

Please feel free to contact Debra Hembree at debra.hembree@pers.state.or.us, or 503-603-7704, if you have further questions.

Sincerely,



Kyle J. Knoll, Chief Administration Officer
Financial & Administrative Services Division
Oregon Public Employees Retirement System

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM
INTERIM ACTUARIAL VALUATION AS OF DECEMBER 31, 2002
ENCLOSED WITH LETTER DATED DECEMBER 19, 2003

Employer: 2814 The Job Council

Table 3 THE UNFUNDED ACTUARIAL LIABILITY AS OF DECEMBER 31, 2002		Total UAL
1	UAL as of December 31, 2001 (Actuarial Value of Assets)	\$ 1,762,801
2	Regular Employer Contributions	611,976
3	Supplemental Employer Deposits	-
4	UAL Lump-Sum Account Amortization	-
5	Less, Normal Cost	418,382
6	Available for Amortization	193,594
7	Interest	133,429
8	Reallocated Balances in LGRP / SLGRP	<u>157,914</u>
9	Expected Balance December 31, 2002	\$ 1,860,550
10	2002 Investment Loss	3,882,121
11	2002 Other (Gain) Loss	<u>(183,124)</u>
12	Total Actuarial (Gain) Loss for 2002	\$ 3,698,997
13	UAL as of December 31, 2002 (Actuarial Value of Assets)	\$ 5,559,546

Outstanding UAL Balances		
14	Remaining 1999 UAL	\$ 4,008,706
15	Remaining 2000 (Gain) Loss	299,581
16	Remaining 2001 (Gain) Loss	2,498,649
17	Remaining 2002 (Gain) Loss	3,698,997
18	2003 PERS Reform Legislation	<u>(4,946,386)</u>
19	UAL as of December 31, 2002 (Actuarial Value of Assets)	\$ 5,559,546

Deferred Investment (Gains) or Losses		
20	Unrecognized Reserves from 2000	\$ 345,749
21	Unrecognized Reserves from 2001	1,353,502
22	Unrecognized Reserves from 2002	2,734,083
23	Impact of 90%/110% Corridor	<u>(3,006,644)</u>
24	Total Adjustments	\$ 1,426,690
25	UAL as of December 31, 2002 (Fair Market Value of Assets)	\$ 6,986,236

26	Transition Liability (if applicable)	\$ 4,008,706

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

ACTUARIAL VALUATION AS OF DECEMBER 31, 2003

ENCLOSED WITH LETTER DATED MARCH 18, 2005

Employer: 2814 The Job Council

Table 3 THE UNFUNDED ACTUARIAL LIABILITY AS OF DECEMBER 31, 2003		Total UAL
1	UAL as of December 31, 2002 (Actuarial Value of Assets)	\$ 5,559,546
2	Regular Employer Contributions	528,477
3	Supplemental Employer Deposits	-
4	UAL Lump-Sum Account Amortization	-
5	Less, Normal Cost	392,066
6	Available for Amortization	136,411
7	Interest	439,413
8	Reallocated Balances in LGRP / SLGRP	<u>(44,470)</u>
9	Expected Balance December 31, 2003	\$ 5,818,079
10	2003 Investment (Gain) Loss	(1,644,234)
11	2003 Other (Gain) Loss	<u>2,350,454</u>
12	Total Actuarial (Gain) Loss for 2003	\$ 706,220
13	UAL as of December 31, 2003 (Actuarial Value of Assets)	\$ 6,524,299

Outstanding UAL Balances		
14	Remaining 1999 UAL	\$ 4,292,626
15	Remaining 2000 (Gain) Loss	281,825
16	Remaining 2001 (Gain) Loss	2,350,738
17	Remaining 2002 (Gain) Loss	3,481,938
18	Remaining 2003 (Gain) Loss	706,220
19	2003 PERS Reform Legislation	<u>(4,589,047)</u>
20	UAL as of December 31, 2003 (Actuarial Value of Assets)	\$ 6,524,299

Deferred Investment (Gains) or Losses		
21	Unrecognized Reserves from 2001	\$ 582,330
22	Unrecognized Reserves from 2002	1,578,945
23	Unrecognized Reserves from 2003	<u>(2,127,061)</u>
24	Total Adjustments	\$ 34,214
25	UAL as of December 31, 2003 (Fair Market Value of Assets)	\$ 6,558,513

26	Transition Liability (if applicable)	\$ 4,292,626

Section 3 - Unfunded Accrued Liability (UAL)

As shown in the table below, there has been no change in the amount of the market value UAL allocated to any employer. The only change is in the portion that is pooled and the portion that is the responsibility of an individual employer. In general, a greater portion of the liability has been pooled.

C. Summary of Market Value UAL Before and After Fresh Start	January 1, 2004	December 31, 2003
1. Allocated SLGRP UAL	\$3,181,628	(\$1,246,513)
2. Allocated pre-SLGRP pooled liability	(917,461)	3,512,400
3. Transition liability/(surplus)	4,294,346	4,292,626
4. Market value UAL (1. + 2. + 3.)	\$6,558,513	\$6,558,513

Outstanding Balance of Pre-SLGRP Pooled Liability

Prior to the formation of the SLGRP, some employers participated in the Local Government Rate Pool (LGRP). The UAL attributable to the LGRP at the time the SLGRP was formed is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the pre-SLGRP pooled liability attributable to the LGRP from the last valuation (following the fresh start) to the current valuation.

1. Pre-SLGRP pooled liability/(surplus) as of January 1, 2004	(\$254,129,466)
2. Employer rate attributable to pre-SLGRP pooled liability/(surplus) for 2004	-1.81%
3. Actual LGRP PERS payroll for 2004	894,180,087
4. Payment to pre-SLGRP pooled liability/(surplus) (2. x 3.)	(16,184,660)
5. Interest (8.00% x (1. - 4.))	(19,035,585)
6. Pre-SLGRP pooled liability/(surplus) as of December 31, 2004 (1. - 4. + 5.)	(\$256,980,391)

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the LGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation (following the fresh start) to the current valuation.

1. Transition liability/(surplus) as of January 1, 2004	\$4,294,346
2. Employer rate attributable to transition liability/(surplus) for 2004	8.49%
3. Actual employer PERS payroll for 2004	3,127,006
4. Payment to transition liability/(surplus) (2. x 3.)	265,477
5. Supplemental payment to transition liability	0
6. Interest	322,309
7. Transition liability/(surplus) as of December 31, 2004 (1. - 4. - 5. + 6.)	\$4,351,178

Section 3 - Tier 1/Tier 2 Unfunded Accrued Liability (UAL)

Allocation of Pre-SLGRP Pooled Liability

Prior to the formation of the SLGRP, some employers participated in the Local Government Rate Pool (LGRP). The UAL attributable to the LGRP at the time the SLGRP was formed is maintained separately from the SLGRP. The allocation of this liability is developed below.

1. Pre-SLGRP pooled liability/(surplus) as of December 31, 2005	(\$259,513,486)
2. Combined valuation payroll	
a. The Job Council	2,748,581
b. LGRP Total	968,595,711
3. Allocation of pre-SLGRP pooled liability/(surplus) $(1. \times (2a. \div 2b.))$	(\$736,421)

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the LGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation.

1. Transition liability/(surplus) as of December 31, 2004	\$4,351,178
2. Employer rate attributable to transition liability/(surplus) for 2005	8.49%
3. Actual employer Tier 1/Tier 2 payroll for 2005	2,812,924
4. Payment to transition liability/(surplus) $(2. \times 3.)$	238,817
5. Supplemental payment to transition liability	0
6. Interest	328,989
7. Transition liability/(surplus) as of December 31, 2005 $(1. - 4. - 5. + 6.)$	\$4,441,350

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation.

	PUC Transition Liability	Regular Transition Liability
1. Transition liability/(surplus) as of December 31, 2005	\$0	\$4,441,350
2. Employer rate attributable to transition liability/(surplus) for 2006	0.00%	8.49%
3. Actual employer payroll for 2006	\$2,607,676	\$2,607,676
4. Payment to transition liability/(surplus) (2. × 3.)	0	221,392
5. Supplemental payment to transition liability	0	0
6. Interest	0	337,597
7. Transition liability/(surplus) as of December 31, 2006 (1. - 4. - 5. + 6.)	\$0	\$4,557,555

Development of Transition Liability or Surplus Rate

The balance of the regular transition liability remaining on the valuation date is amortized over the period ending December 31, 2027 and expressed as a percentage of combined valuation payroll. The balance of the PUC transition liability remaining on the valuation date is amortized over three years. The table below develops the transition liability/(surplus) rate as of the valuation date.

	12/31/2006	12/31/2005
1. Transition liability/(surplus) due to change to PUC	\$0	\$0
2. Remaining transition liability/(surplus)	4,557,555	4,441,350
3. Total transition liability/(surplus) (1.+ 2.)	4,557,555	4,441,350
4. Combined valuation payroll	2,577,652	2,748,581
5. 3-year amortization factor	2.831	2.831
6. Regular amortization factor	14.212	14.635
7. Transition liability/(surplus) rate due to change to PUC (1. + 4. + 5.)	0.00%	0.00%
8. Remaining transition liability/(surplus) rate (2. + 4. + 6.)	12.44%	11.04%
9. Total transition liability/(surplus) rate (7.+ 8.)	12.44%	11.04%

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation. Transition liability or surplus rates shown below are those paid on Tier 1/Tier 2 payroll for the indicated periods. For some surplus employers, this rate may differ from the rate paid on OPSRP general service or OPSRP police and fire payroll. In those cases, the payment to transition (surplus) shown below is the payment reflecting the rates on different payroll.

	PUC Transition Liability	Regular Transition Liability
1. Transition liability/(surplus) as of December 31, 2006	\$0	\$4,557,555
2. January 1, 2007 through June 30, 2007		
A. Transition liability/(surplus) rate	0.00%	8.49%
B. Actual employer payroll	\$1,299,244	\$1,299,244
C. Payment to transition liability/(surplus)	\$0	\$110,306
3. July 1, 2007 through December 31, 2007		
A. Transition liability/(surplus) rate	0.00%	11.04%
B. Actual employer payroll	\$1,245,127	\$1,245,127
C. Payment to transition liability/(surplus)	\$0	\$137,462
4. Supplemental payment to transition liability	0	0
5. Interest	0	344,783
6. Transition liability/(surplus) as of December 31, 2007 (1.-2C.-3C.- 4.+5.)	\$0	\$4,654,570

Development of Transition Liability or Surplus Rate

	12/31/2007	12/31/2006
1. PUC transition liability/(surplus)	\$0	\$0
2. Regular transition liability/(surplus)	4,654,570	4,557,555
3. Total transition liability/(surplus) (1.+ 2.)	4,654,570	4,557,555
4. Combined valuation payroll	2,496,933	2,577,652
5. 3-year amortization factor	2.831	2.831
6. Regular amortization factor	13.772	14.212
7. PUC transition liability/(surplus) rate (1. + 4. + 5.)	0.00%	0.00%
8. Regular transition liability/(surplus) rate (2. + 4. + 6.)	13.54%	12.44%
9. Total transition liability/(surplus) rate (7.+ 8.)	13.54%	12.44%

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation. Transition liability or surplus rates shown below are those paid on Tier 1/Tier 2 payroll for the indicated periods. For some surplus employers, this rate may differ from the rate paid on OPSRP general service or OPSRP police and fire payroll. In those cases, the payment to transition (surplus) shown below is the payment reflecting the rates on different payroll.

	Transition Liability
1. Transition liability/(surplus) as of December 31, 2007	\$4,654,570
2. January 1, 2008 through June 30, 2008	
A. Transition liability/(surplus) rate	11.04%
B. Actual employer payroll	1,428,420
C. Payment to transition liability/(surplus)	157,698
3. July 1, 2008 through December 31, 2008	
A. Transition liability/(surplus) rate	11.04%
B. Actual employer payroll	1,496,080
C. Payment to transition liability/(surplus)	165,167
4. Supplemental payment to transition liability	0
5. Interest	346,536
6. Adjustment due to merger	0
7. Transition liability/(surplus) as of December 31, 2008 (1. - 2C. - 3C. - 4. + 5. + 6.)	\$4,678,241

Development of Transition Liability or Surplus Rate

It is anticipated that the PUC transition liability / (surplus), which was amortized on a rolling three-year basis commencing July 1, 2007, will be fully amortized by the conclusion of the biennium ending on June 30, 2011. As a result, only the "Regular transition liability / (surplus)" is used in the calculation of advisory rates for the biennium commencing July 1, 2011.

	December 31, 2008	December 31, 2007
1. PUC transition liability/(surplus)	\$0	\$0
2. Regular transition liability/(surplus)	4,678,241	4,654,570
3. Total transition liability/(surplus) (1. + 2.)	4,678,241	4,654,570
4. Combined valuation payroll	2,895,353	2,496,933
5. 3-year amortization factor	N/A	2.831
6. Regular amortization factor	13.091	13.772
7. PUC transition liability/(surplus) rate (1. + 4. + 5.)	N/A	0.00%
8. Regular transition liability/(surplus) rate (2. + 4. + 6.)	12.34%	13.54%
9. Total transition liability/(surplus) rate (7. + 8.)	12.34%	13.54%

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation. Transition liability or surplus rates shown below are those paid on Tier 1/Tier 2 payroll for the indicated periods. For some surplus employers, this rate may differ from the rate paid on OPSRP general service or OPSRP police and fire payroll. In those cases, the payment to transition (surplus) shown below is the payment reflecting the rates on different payroll.

	Transition Liability
1. Transition liability/(surplus) as of December 31, 2008	\$4,678,241
2. January 1, 2009 through June 30, 2009	
A. Transition liability/(surplus) rate	11.04%
B. Actual employer payroll	1,258,206
C. Payment to transition liability/(surplus)	138,906
3. July 1, 2009 through December 31, 2009	
A. Transition liability/(surplus) rate	13.54%
B. Actual employer payroll	1,456,495
C. Payment to transition liability/(surplus)	197,209
4. Supplemental payment to transition liability	0
5. Interest	347,370
6. Transition liability/(surplus) as of December 31, 2009 (1. - 2C. - 3C. - 4. + 5.)	\$4,689,496

Development of Transition Liability or Surplus Rate

It is anticipated that the PUC transition liability / (surplus), which was amortized on a rolling three-year basis commencing July 1, 2007, will be fully amortized by the conclusion of the biennium ending on June 30, 2011. As a result, only the "Regular transition liability / (surplus)" is used in the calculation of transition liability or surplus rates for the biennium commencing July 1, 2011.

	December 31, 2009	December 31, 2008
1. PUC transition liability/(surplus)	\$0	\$0
2. Regular transition liability/(surplus)	4,689,496	4,678,241
3. Total transition liability/(surplus) (1. + 2.)	4,689,496	4,678,241
4. Combined valuation payroll	2,858,934	2,895,353
5. Regular amortization factor	12.622	13.091
6. Total transition liability/(surplus) rate (2. + 4. ÷ 5.)	13.00%	12.34%

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation. Transition liability or surplus rates shown below are those paid on Tier 1/Tier 2 payroll for the indicated periods. For some surplus employers, this rate may differ from the rate paid on OPSRP general service or OPSRP police and fire payroll. In those cases, the payment to transition (surplus) shown below is the payment reflecting the rates on different payroll.

	Transition Liability
1. Transition liability/(surplus) as of December 31, 2009	\$4,689,496
2. January 1, 2010 through June 30, 2010	
A. Transition liability/(surplus) rate	13.54%
B. Actual employer payroll	1,532,693
C. Payment to transition liability/(surplus)	207,527
3. July 1, 2010 through December 31, 2010	
A. Transition liability/(surplus) rate	13.54%
B. Actual employer payroll	1,738,342
C. Payment to transition liability/(surplus)	235,371
4. Supplemental payment to transition liability	0
5. Interest	339,728
6. Transition liability/(surplus) as of December 31, 2010 (1. - 2C. - 3C. - 4. + 5.)	\$4,586,326

Development of Transition Liability or Surplus Rate

It is anticipated that the PUC transition liability / (surplus), which was amortized on a rolling three-year basis commencing July 1, 2007, will be fully amortized by the conclusion of the biennium ending on June 30, 2011. As a result, only the "Regular transition liability / (surplus)" was used in the calculation of transition liability or surplus rates as of December 31, 2009 for the biennium commencing July 1, 2011. After December 31, 2009, the PUC transition liability / (surplus) will not be tracked separately.

	December 31, 2010	December 31, 2009
1. PUC transition liability/(surplus)	N/A	\$0
2. Regular transition liability/(surplus)	N/A	4,689,496
3. Total transition liability/(surplus)	4,586,326	4,689,496
4. Combined valuation payroll	3,339,929	2,858,934
5. Regular amortization factor	12.134	12.622
6. Total transition liability/(surplus) rate	11.32%	13.00%

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation. Transition liability or surplus rates shown below are those paid on Tier 1/Tier 2 payroll for the indicated periods. For some surplus employers, this rate may differ from the rate paid on OPSRP general service or OPSRP police and fire payroll. In those cases, the payment to transition (surplus) shown below is the payment reflecting the rates on different payroll.

	Transition Liability
1. Transition liability/(surplus) as of December 31, 2010	\$4,586,326
2. January 1, 2011 through June 30, 2011	
A. Transition liability/(surplus) rate	13.54%
B. Actual employer payroll	1,639,730
C. Payment to transition liability/(surplus)	222,019
3. July 1, 2011 through December 31, 2011	
A. Transition liability/(surplus) rate	13.00%
B. Actual employer payroll	827,068
C. Payment to transition liability/(surplus)	107,519
4. Supplemental payment to transition liability	0
5. Interest	340,543
6. Adjustment due to merged or spun-off employers	0
7. Transition liability/(surplus) as of December 31, 2011 (1. - 2C. - 3C. - 4. + 5. + 6.)	\$4,597,331

Development of Transition Liability or Surplus Rate

The rate adjustment attributable to a transition liability or surplus is determined by amortizing the liability or surplus on the valuation date over a fixed period, and expressing the result as a percentage of combined valuation payroll. For employers joining the SLGRP prior to December 31, 2009, the fixed period ends December 31, 2027. For all others, the fixed period ends 18 years after the date the employer joined the pool.

	December 31, 2011	December 31, 2010
1. Total transition liability/(surplus)	4,597,331	4,586,326
2. Combined valuation payroll	1,902,807	3,339,929
3. Regular amortization factor	11.626	12.134
4. Total transition liability/(surplus) rate	20.78%	11.32%

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation. Transition liability or surplus rates shown below are those paid on Tier 1/Tier 2 payroll for the indicated periods. For some surplus employers, this rate may differ from the rate paid on OPSRP general service or OPSRP police and fire payroll. In those cases, the payment to transition (surplus) shown below is the payment reflecting the rates on different payroll.

	Transition Liability
1. Transition liability/(surplus) as of December 31, 2011	\$4,597,331
2. January 1, 2012 through June 30, 2012	
A. Transition liability/(surplus) rate	13.00%
B. Actual employer payroll	849,801
C. Payment to transition liability/(surplus)	110,474
3. July 1, 2012 through December 31, 2012	
A. Transition liability/(surplus) rate	13.00%
B. Actual employer payroll	876,258
C. Payment to transition liability/(surplus)	113,914
4. Supplemental payment to transition liability	0
5. Interest	349,835
6. Adjustment due to merged or spun-off employers	0
7. Transition liability/(surplus) as of December 31, 2012 (1. - 2C. - 3C. - 4. + 5. + 6.)	\$4,722,778

Development of Transition Liability or Surplus Rate

The rate adjustment attributable to a transition liability or surplus is determined by amortizing the liability or surplus on the valuation date over a fixed period, and expressing the result as a percentage of combined valuation payroll. For employers joining the SLGRP prior to December 31, 2009, the fixed period ends December 31, 2027. For all others, the fixed period ends 18 years after the date the employer joined the pool.

	December 31, 2012	December 31, 2011
1. Total transition liability/(surplus)	4,722,778	4,597,331
2. Combined valuation payroll	1,818,178	1,902,807
3. Regular amortization factor	11.272	11.626
4. Total transition liability/(surplus) rate	23.04%	20.78%

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation. Transition liability or surplus rates shown below are those paid on Tier 1/Tier 2 payroll for the indicated periods. For some surplus employers, this rate may differ from the rate paid on OPSRP general service or OPSRP police and fire payroll. In those cases, the payment to transition (surplus) shown below is the payment reflecting the rates on different payroll.

	Transition Liability
1. Transition liability/(surplus) as of December 31, 2012	\$4,722,778
2. January 1, 2013 through June 30, 2013	
A. Transition liability/(surplus) rate	13.00%
B. Actual employer payroll	938,346
C. Payment to transition liability/(surplus)	121,985
3. July 1, 2013 through December 31, 2013	
A. Transition liability/(surplus) rate	20.78%
B. Actual employer payroll	978,402
C. Payment to transition liability/(surplus)	203,311
4. Supplemental payment to transition liability	0
5. Interest	340,805
6. Adjustment due to merged or spun-off employers	0
7. Transition liability/(surplus) as of December 31, 2013 (1. - 2C. - 3C. - 4. + 5. + 6.)	\$4,738,287

Development of Transition Liability or Surplus Rate

The rate adjustment attributable to a transition liability or surplus is determined by amortizing the liability or surplus on the valuation date over a fixed period, and expressing the result as a percentage of combined valuation payroll. For employers joining the SLGRP prior to December 31, 2009, the fixed period ends December 31, 2027. For all others, the fixed period ends 18 years after the date the employer joined the pool.

	December 31, 2013	December 31, 2012
1. Total transition liability/(surplus)	4,738,287	4,722,778
2. Combined valuation payroll	1,959,277	1,818,178
3. Regular amortization factor	10.703	11.272
4. Total transition liability/(surplus) rate	22.60%	23.04%

Transition Liability Information

Outstanding Balance of Transition Liability/(Surplus)

Upon joining the SLGRP, a transition liability or surplus was calculated to ensure that each employer entered the pool on a comparable basis. The transition liability is maintained separately from the SLGRP, and is reduced by contributions and increased for interest charges at the assumed interest rate. The table below shows the reconciliation of the transition liability or surplus from the last valuation to the current valuation.

	Transition Liability
1. Transition liability/(surplus) as of December 31, 2013	\$4,738,287
2. January 1, 2014 through June 30, 2014	
A. Transition liability/(surplus) rate ¹	20.78%
B. Actual employer payroll	938,507
C. Payment to transition liability/(surplus)	195,022
3. July 1, 2014 through December 31, 2014	
A. Transition liability/(surplus) rate ¹	20.78%
B. Actual employer payroll	977,450
C. Payment to transition liability/(surplus)	203,114
4. Supplemental payment to transition liability	0
5. Interest	336,362
6. Adjustment due to merged or spun-off employers	0
7. Transition liability/(surplus) as of December 31, 2014 (1. - 2C. - 3C. - 4. + 5. + 6.)	\$4,676,513

¹ Transition liability or surplus rates shown are those paid on Tier 1/Tier 2 payroll for the indicated periods. For some surplus employers, this rate may differ from the rate paid on OPSRP general service or OPSRP police and fire payroll. In those cases, the payment to transition (surplus) shown below is the payment reflecting the rates on different payroll.

Development of Transition Liability or Surplus Rate

The rate adjustment attributable to a transition liability or surplus is determined by amortizing the liability or surplus on the valuation date over a fixed period, and expressing the result as a percentage of combined valuation payroll. For employers joining the SLGRP prior to December 31, 2009, the fixed period ends December 31, 2027. For all others, the fixed period ends 18 years after the date the employer joined the pool.

	December 31, 2014	December 31, 2013
1. Total transition liability/(surplus)	4,676,513	4,738,287
2. Combined valuation payroll	2,021,725	1,959,277
3. Regular amortization factor	10.118	10.703
4. Total transition liability/(surplus) rate	22.86%	22.60%



Oregon

Kate Brown, Governor

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March 28, 2016

TO: Members of the PERS Board
FROM: Kyle J. Knoll, Chief Administration Officer
Mary Dunn, Assistant Chief Administration Officer
SUBJECT: Policy on the Funding and Use of the Contingency Reserve

ORS 238.670(1) authorizes the PERS Board to establish a reserve account with earnings and other income in years that earnings on the PERS Fund equal or exceed the assumed interest rate. The statute also states that the PERS Board will continue to fund the account until it determines the reserve is “adequately funded for the purposes specified.” The statute defines the purpose of the Contingency Reserve as preventing fund deficits due to insolvent PERS employers, covering legal expenses or judgements not associated with an individual member or employer, and “to provide for any other contingency that the board may determine to be appropriate.”

At the January 29, 2016 PERS Board meeting, staff posed two questions for policy review around “appropriate use” and “adequate funding” levels of the Contingency Reserve. We also solicited public comment, and received one response from Mr. Greg Hartman (Attachment 1).

POLICY ISSUES:

What is the appropriate method to determine adequate funding for the Contingency Reserve?

In researching best practices of other state and local pension systems, we have found no other systems that have a similar type of reserve. Therefore, the recommendation made here is based on the knowledge and experience for Oregon PERS, as other models do not exist to be considered.

For the last several biennia, PERS’ rationale for adequate Contingency Reserve funding was expressed as a percentage of the PERS Fund, rather than a flat dollar amount. We continue to advocate for setting the funding level based on a percentage, as that method would allow the target to float with the PERS Fund as its value changes over time.

Determining the appropriate funding level percentage should be based on the projected exposures that may tap into that reserve. The 1% funding level was used during a period of substantial legal challenges to legislative changes that reduced member benefits by tens of millions of dollar per year until those changes were resolved. The Oregon Supreme Court’s decision in the *Moro* case resolved the most recent major reform; thus reducing the potential claims against the system.

With this reduced exposure, PERS staff recommends reducing the funding level percentage for the Contingency Reserve from 1% of the PERS Fund to .25%. To illustrate, were that funding level applied to the PERS Fund’s 2015 ending balance, the Contingency Reserve would be adequately funded at a level of around \$170,122,000. To put that funding level in context, previous allocations of the Contingency Reserve by the PERS Board have been in the \$2-7 million range. Even holding aside the \$25 million of the reserve that is allocated for employer insolvencies, a .25% funding level would be more than adequate to cover the PERS Board’s previous allocations.

If the PERS Board adopts a lower adequate funding level, staff will return with a recommendation on the distribution of any excess funds.

What criteria should be applied to PERS Board approval of requests for use of the Contingency Reserve?

One of the expressly provided purposes for the Contingency Reserve in ORS 238.670(1)(a) is to “prevent any deficit in the fund by reason of insolvency of a participating public employer,” with this portion of the reserve to be funded only by earnings on employer contributions. In 2007, \$25 million was set aside for this purpose. To date, none of the \$25 million has been allocated, but PERS staff is currently developing an administrative rule that would further define “insolvency” in this context and perhaps lead to more clarity on when this portion of the reserve would be used.

The other specifically provided purpose of the Contingency Reserve is to pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member’s benefits or an individual employer’s liabilities. Lastly, the statute allows the reserve to be used to provide for any other contingency that the PERS Board may determine to be appropriate.

In narrowing the permissible purposes that may flow out of this more general grant of authority, consider that the Contingency Reserve is part of the PERS Fund, which is a trust fund for the exclusive benefit of its members. Therefore, any use of the Contingency Reserve must be consistent with the trust’s purpose, which we would suggest the following criteria be used to consider any request for use of the Contingency Reserve:

- Is the request consistent with the PERS Board’s responsibility to manage trust distributions?
- Would the distribution be consistent with the PERS Board’s fiduciary responsibilities?
- Would the distribution represent fiscally responsible management of the fund as a whole?

PERS Staff do not presuppose that these criteria would clearly resolve any future request, but are set forth merely to guide other parties considering whether to request a distribution from the Contingency Reserve as to what the PERS Board will apply when deciding the request. No action is sought on these criteria at this time, but staff is merely setting them forth for the PERS Board’s consideration when deliberating over future requests.

BOARD ACTION

The Board’s options for the Contingency Reserve Funding Policy include:

1. Pass a motion to “adopt a percentage basis funding level for the Contingency Reserve, and establish the percentage at this time to be .25% of the PERF.”
2. Pass a motion adopting a different method to determine an adequate funding level, or specific criteria to evaluate requests for a Contingency Reserve distribution.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

Attachments:

C.4. Attachment 1 – Greg Hartman Memo (February 12, 2016)

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February 12, 2016

BY EMAIL ONLY

Steve Rodeman
Executive Director
Public Employee Retirement System
PO Box 23700
Tigard, OR 97281-3700

Re: Contingency Fund ORS 238.670(1)
Our File No.: 5415-237

Dear Steve:

At the upcoming PERB meeting the board will consider issues relating to the contingency reserve including how to determine adequate funding as well as appropriate uses of the contingency reserve. The purpose of this letter is both to make some observations about the contingency reserve and offer some hopefully helpful thoughts on both topics.

While the funding of the contingency reserve has been the topic of recent litigation, particularly in the *City of Eugene* case, none of those cases have offered any specific guidance on the related issue of how to appropriately size the contingency funds nor any guidance on the appropriate uses of the contingency fund. In addition the trial court opinion by Judge Paul Lipscomb in the *City of Eugene* was later vacated by the Supreme Court, so that decision should not play a major role in the board's discussions.

Prior to any specific discussion about the contingency reserve some historical perspective is appropriate. ORS 238.670(1), which authorizes the contingency fund, is currently part of a five-part statute and should be analyzed in the context of that overall statutory scheme. ORS 238.670(1) as well as ORS 238.670(2) were passed in 1951, shortly after the initiation of the system, and for the most part the operative language of these two reserve statutes has not changed. The contingency statute provides that it is to be used to prevent any "deficit of monies available for the payment of retirement allowances" arising from interest fluctuations, changes in mortality rates, loss of investment capital, or other unforeseen contingency. Though there is no legislative history to give any insight on the meaning of this language, contemporaneous PERS documents indicate that at that time there was a substantial concern that the newly-established system would not have sufficient money to pay benefits. It is reasonable to understand the "deficit of monies" language to mean exactly what it says and that initially the primary purpose of the contingency fund was to guard against not having the money to pay

benefits. This interpretation is further supported by ORS 238.670(2), which provides a preferential allocation of income to the fund which we currently call the benefits in force reserve. Clearly the legislature wanted to make certain that the fund set up to pay benefits would receive adequate earnings to carry out its statutory purpose.

The first major amendment to ORS 238.670 took place in 1967 with the addition of sections (3) and (4), which provide for the establishment of additional reserves “to offset gains and losses of invested capital” or alternatively for the amortization of gains or losses if that is preferable. At that same time the contingency reserve language of subsection (1) was amended to delete the reference to loss of investment capital (as well as “unforeseen” contingencies), with new cross-references to sections (3) and (4). Clearly in 1967 the legislature authorized new reserves to address loss of investment capital rather than assigning that responsibility to the contingency reserve. The reserve authorized by subsection (3) has provided the basis for the establishment of the reserve formerly known as the gain/loss reserve, now known as the Tier One rate guarantee reserve. I don’t recall that it has ever been used for another purpose as it is clear that the board has decided to use the authority under subsection (4) to deal with investment issues through amortization rather than by utilization of special reserves. In 1987 the legislature added subsection (5) which requires the board to report proposed earning creditings to the legislature.

In 2001 the legislature amended ORS 238.670(1) by adding three new provisions, subsections (a), (b), and (c), to add potential additional uses of a contingency reserve. A review of the 2001 legislative history of HB 134 which added these new provisions shows that there were multiple changes proposed to PERS, largely by those employers who were participating in the *City of Eugene* litigation which was pending at that time. Among these many changes were a number of proposed changes which would have allowed contingency fund reserves to be used in various ways for the benefit of the employers. During the course of multiple hearings on the bill both Bob Muir, then DOJ counsel to PERS, and David Heynderickx, then legislative counsel, testified at length on the impropriety of using the contingency reserve to pay expenses which were otherwise assigned to employers. Both argued that this was a breach of elementary trust law as well as potentially placing PERS’ IRS qualification in jeopardy. The legislature ultimately rejected all of those proposed changes to the contingency statute with the exception of subsections (a), (b), and (c), which are part of today’s statute. The limitation in subparagraph (a) which requires that only the portion of the reserve which is funded by employer fund earnings be used to address insolvency of participating public employers is clearly a result of the Muir and Heynderickx testimony. While (c) gives the board authority to utilize the fund that discretion is subject to the board’s fiduciary obligation to members and that discretion should not be used to pay expenses otherwise assigned to employers consistent with the testimony of Muir and Heynderickx in 2001.

With that background it should be clear that the uses of the contingency reserve under the current statute should be focused on subsections (a), (b), and (c), as given the current size of the fund there is not likely to be a lack of money to pay benefits, which is the focus of subsection (1). With the recent allocation of 2015 earnings the benefits in force reserve has in excess of \$22 billion with an additional \$23 billion in employer accounts available to pay benefits. This should lead to the

conclusion that the current contingency fund is substantially overfunded and that a much smaller fund would be sufficient to meet the needs of subsections (a), (b), and (c).

If the board determines that the current reserve is overfunded, then the historical practice would be to return those funds to the accounts from which they were derived. An exception to that is the specific authorization in ORS 238.670(3) which permits excess funds in the contingency reserve to be paid to a reserve established under subsection (3). Though there has been no recent analysis of the appropriate funding level of the Tier One rate guarantee reserve there would appear to be little question that at the current time it is underfunded. After payment to the Tier Two employee accounts the board should consider whether any additional funds should be paid to the Tier One rate guarantee reserve to assure that it is adequately funded. Certainly at a minimum any funds which would otherwise be returned to Tier One employee accounts should be used to increase the funding of the rate guarantee reserve.

The January 29, 2016 memo to the board on the contingency reserve notes one recent use of the reserve and one pending request for the use of the reserve. The first use of the reserve was the payment of back COLA benefits to retirees as a result of the *Moro* decision. Consistent with basic trust principles that payment should ultimately be charged to the portion of the contingency reserve funded by earnings from the benefits in force reserve as the payment of COLA benefits is specifically assigned by statute to the employers (ORS 238.360(3)).

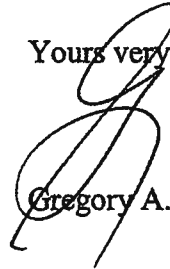
In settlement of the *City of Eugene* litigation a payment was made from the contingency reserve to certain employers to satisfy a judgment against PERS. In the *White* case the court approved the settlement agreement including a payment from the contingency reserve to satisfy the judgment against PERS, presumably under the authority of ORS 238.670(1)(b). In contrast, in *Moro* the court did not enter a judgment against PERS but only ruled that certain portions of the 2013 legislation were breaches of PERS contracts and set those portions of the legislation aside. There was no judgment against PERS and ORS 238.670(1)(b) provides no authority for the payment from the contingency reserve of COLA benefits. If the board decides that there should be a distribution of funds because the contingency reserve is overfunded then a lower distribution to the benefits in force reserve to take into account the monies already paid would be consistent with the statute and consistent with the board's fiduciary obligation.

The pending request is for an allocation from the contingency reserve to a small group of employers who argue that there was confusion on the appropriate start date for new members of the OPSRP system. They argue that PERS actions added to this confusion and that these confused employers should not be required to fully fund the benefits as required under OPSRP statutes. The board should reject that request if for no other reason than it relates to the OPSRP system which is a separate and distinct part of ORS Chapter 238. It is clear that the contingency fund established by ORS 238.670(1) was never meant to deal with issues relating to the OPSRP system. In addition, to the extent that this request is to compensate employers who did not properly comply with the statute that would run afoul of the board's fiduciary obligation not to use these funds simply to cover expenses otherwise assigned to employers within the system.

Steve Rodeman
February 12, 2016
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I trust that these comments will be helpful as the board addresses these contingency fund issues.

Yours very truly,



Gregory A. Hartman

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cc: Clients