

COMPLIANCE AUDIT

City of Lower Burrell Police Pension Plan Westmoreland County, Pennsylvania For the Period January 1, 2015 to December 31, 2016

March 2018



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE
AUDITOR GENERAL

The Honorable Mayor and City Council
City of Lower Burrell
Westmoreland County
Lower Burrell, PA 15068

We have conducted a compliance audit of the City of Lower Burrell Police Pension Plan for the period January 1, 2015 to December 31, 2016. We also evaluated compliance with some requirements subsequent to that period when possible. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

The objectives of the audit were:

1. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior audit report; and
2. To determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objectives identified above. To determine if municipal officials took appropriate corrective action to address the findings contained in our prior audit report, we inquired of plan officials and evaluated supporting documentation provided by officials evidencing that the suggested corrective action has been appropriately taken. To determine whether the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, our methodology included the following:

- We determined whether state aid was properly determined and deposited in accordance with Act 205 requirements by verifying the annual deposit date of state aid and determining whether deposits were made within 30 days of receipt for all years within the period under audit.

- We determined whether annual employer contributions were calculated and deposited in accordance with the plan's governing document and applicable laws and regulations by examining the municipality's calculation of the plan's annual financial requirements and minimum municipal obligation (MMO) and comparing these calculated amounts to amounts actually budgeted and deposited into the pension plan as evidenced by supporting documentation.
- We determined whether annual employee contributions were calculated, deducted, and deposited into the pension plan in accordance with the plan's governing document and applicable laws and regulations by testing total members' contributions on an annual basis using the rates obtained from the plan's governing document in effect for all years within the period under audit and examining documents evidencing the deposit of these employee contributions into the pension plan.
- We determined whether retirement benefits calculated for the plan member who retired during the current audit period, represent payments to all (and only) those entitled to receive them and were properly determined and disbursed in accordance with the plan's governing document, applicable laws and regulations by recalculating the amount of the monthly pension benefit due to the retired individual and comparing these amounts to supporting documentation evidencing amounts determined and actually paid to the recipient.
- We determined whether the January 1, 2013 and January 1, 2015 actuarial valuation reports were prepared and submitted to the former Public Employee Retirement Commission (PERC) by March 31, 2014 and 2016, respectively, in accordance with Act 205 and whether selected information provided on these reports is accurate, complete, and in accordance with plan provisions to ensure compliance for participation in the state aid program by comparing selected information to supporting source documentation.
- We determined whether all annual special ad hoc postretirement reimbursements received by the municipality were authorized and appropriately deposited in accordance with Act 147 by tracing information to supporting documentation maintained by plan officials.
- We determined whether provisions of the Deferred Retirement Option Plan (DROP) were in accordance with the provisions of Act 205 by examining provisions stated in the plan's governing documents.

City officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the City of Lower Burrell Police Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. In conducting our audit, we obtained an understanding of the city's internal controls as they relate to the city's compliance with those requirements and that we considered to be significant within the context of our audit objectives, and assessed whether those significant controls were properly designed and implemented. Additionally and as previously described, we tested transactions, assessed official actions, performed analytical procedures, and

interviewed selected officials to provide reasonable assurance of detecting instances of noncompliance with legal and regulatory requirements or noncompliance with provisions of contracts, administrative procedures, and local ordinances and policies that are significant within the context of the audit objectives.

The results of our procedures indicated that, in all significant respects, the City of Lower Burrell Police Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following finding further discussed later in this report:

Finding – Partial Compliance With Prior Audit Recommendation – Failure To Reinstate Killed In Service Benefit In Pension Plan’s Governing Document

The finding contained in this audit report repeats a condition that was cited in our previous audit report that has not been corrected by city officials. We are concerned by the city’s failure to correct this previously reported audit finding and strongly encourage timely implementation of the recommendation noted in this audit report.

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it.

The contents of this report were discussed with officials of the City of Lower Burrell and, where appropriate, their responses have been included in the report. We would like to thank city officials for the cooperation extended to us during the conduct of the audit.

February 22, 2018



EUGENE A. DEPASQUALE
Auditor General

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BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The Act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans. Section 402(j) of Act 205 specifically requires the Auditor General, as deemed necessary, to make an audit of every municipality which receives general municipal pension system state aid and of every municipal pension plan and fund in which general municipal pension system state aid is deposited.

Annual state aid allocations are provided from a 2 percent foreign (out-of-state) casualty insurance premium tax, a portion of the foreign (out-of-state) fire insurance tax designated for paid firefighters and any investment income earned on the collection of these taxes. Generally, municipal pension plans established prior to December 18, 1984, are eligible for state aid. For municipal pension plans established after that date, the sponsoring municipality must fund the plan for three plan years before it becomes eligible for state aid. In accordance with Act 205, a municipality's annual state aid allocation cannot exceed its actual pension costs.

In addition to Act 205, the City of Lower Burrell Police Pension Plan is also governed by implementing regulations adopted by the former Public Employee Retirement Commission published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes including, but not limited to, the following:

Act 67 - The Third Class City Code, Act of November 24, 2015 (P.L. 242, No. 67), as amended, 11 Pa. C.S. § 10101 et seq.

The City of Lower Burrell Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 7-2011, as amended, adopted pursuant to Act 67. The plan is also affected by the provisions of collective bargaining agreements between the city and its police officers. The plan was established May 19, 1961. Active members are required to contribute 5 percent of compensation, plus \$1 per month for the service increment benefit. As of December 31, 2016, the plan had 16 active members, 1 terminated member eligible for vested benefits in the future, and 18 retirees receiving pension benefits from the plan.

BACKGROUND – (Continued)

As of December 31, 2016, selected plan benefit provisions are as follows:

Eligibility Requirements:

Normal Retirement	Age 50 and 20 years of service.
Early Retirement	None
Vesting	A member is 100% vested after 12 years of service.

Retirement Benefit:

Benefit equals 50% of compensation, plus a service increment of 2.5% of the basic normal retirement benefit for each year of service in excess of 20 years, (but not greater than \$100 per month).

Survivor Benefit:

Before Retirement Eligibility	Refund of member contributions.
After Retirement Eligibility	A monthly benefit equal to 100% of the pension the member was receiving or was entitled to receive on the day of the member's death.

Service Related Disability Benefit:

Benefit equal 50% of the member's salary at the time the disability was incurred, offset by Social Security disability benefits received for the same injury.

Non-Service Related Disability Benefit:

If less than 10 years of service, benefit equals 25% of the member's annual compensation, if more than 10 years of service, benefit equals 50% of the member's annual compensation.

CITY OF LOWER BURRELL POLICE PENSION PLAN
STATUS OF PRIOR FINDINGS

Compliance With Prior Audit Recommendations

The City of Lower Burrell has complied with the prior audit recommendations concerning the following:

Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid

Municipal officials reimbursed \$8,581 to the Commonwealth for the overpayment of state aid, plus interest resulting from the reporting errors on AG 385 submitted in the prior audit period. In addition, plan officials accurately reported the required pension data on the AG 385 forms submitted during the current audit period.

Incorrect Data On Certification Form AG 64 Resulting In An Excess Reimbursement For Special 2002 Ad Hoc

Municipal officials reimbursed \$155 to the Commonwealth for the excess reimbursement received, plus interest as recommended.

Partial Compliance With Prior Audit Recommendation

The City of Lower Burrell has partially complied with the prior audit recommendation concerning the following as further discussed in the Finding and Recommendation section of this report:

· Failure To Properly Pay Killed In Service Benefit

As disclosed in our prior audit report covering the period January 1, 2011 to December 31, 2012, municipal officials were required to work with representatives of the Commonwealth to ensure that a deceased officer's surviving spouse received, both currently and prospectively, the mandated killed in service benefits due pursuant to Act 51 provisions. Furthermore, it was also recommended that the city reinstate a killed in service benefit provision to ensure the plan is in compliance with the Third Class City Code. As disclosed in our prior audit report covering the period January 1, 2013 to December 31, 2014, municipal officials worked with appropriate representatives of the Commonwealth and ensured that the proper benefits due are being paid to the recipient; however, the city again failed to provide a provision for a killed in service benefit in the pension plan's governing document, Ordinance No. 7-2011, as required by the Third Class City Code as disclosed in the finding and recommendation in this report.

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – Partial Compliance With Prior Audit Recommendation – Failure To Reinstate Killed In Service Benefit In Pension Plan’s Governing Document

Condition: As disclosed in the Status of Prior Findings section of this report, although city officials worked with representatives of the Commonwealth to ensure that a deceased officer’s surviving spouse is receiving the mandated killed in service benefits due pursuant to Act 51 provisions, the city again failed to reinstate a provision for a killed in service benefit in the pension plan’s governing document, Ordinance No. 7-2011, as required by the Third Class City Code.

Criteria: Section 4301 of the Third Class City Code states, in part:

Cities shall establish, by ordinance, a police pension fund... to be maintained by an equal and proportionate monthly charge against each member of the police force, which shall not exceed annually four per centum of the pay of such member and an additional amount not to exceed one per centum of the pay of such member to be paid by such member or the municipal corporation to provide sufficient funds for payments required by subsection (d) of section 4303 to surviving spouses even if they remarry, or if no spouse survives or if such person survives and subsequently dies, then to the child or children under the age of eighteen years, of members of the police force or of members retired on pension or who die in service...[Emphasis added.]

Furthermore, Section 4303(a) of the Third Class City Code states, in part:

The basis of the apportionment of the pension shall be determined by the rate of the monthly pay of the member at the date of injury, death, honorable discharge, vesting under section 4302.1 or retirement, or the highest average annual salary which the member received during any five years of service preceding injury, death, honorable discharge, vesting under section 4302.1 or retirement, whichever is the higher. [Emphasis added.]

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

In addition, Section 4303(c) of the Third Class City Code states, in part:

The spouse of a member of the police force or a member who retires on pension who dies or if no spouse survives or if such person survives and subsequently dies or remarries, then the child or children under the age of eighteen years of a member of the police force or a member who retires on pension who dies on or after the effective date of this amendment, shall, during the lifetime of the surviving spouse, even if the surviving spouse remarries, or until reaching the age of eighteen years in the case of a child or children, be entitled to receive a pension calculated at the rate of fifty per centum of the pension the member was receiving or would have been receiving had he been retired at the time of his death and may receive the pension the member was receiving or would have been receiving had he been retired at the time of his death.

Finally, Section 4308 of the Third Class City Code states, in part:

In the event of the death of a member of the police force not in the line of service before the member becomes entitled to the pension aforesaid and such member is not survived by a spouse or family entitled to payments as hereinbefore provided, the total amount of contributions paid into the pension fund by the member shall be paid over to his estate. [Emphasis added.]

Based on these sections of the Third Class City Code taken as a whole, the Department has concluded that the Code mandates the provision of a benefit for survivors of police officers killed in service.

Cause: City officials believe that the plan's governing document and the actuarial data provided to the pension plan's actuary are in compliance with Act 317 and maintain that the General Assembly through Act 51 provides that benefits are to be paid by the Commonwealth when a municipal police officer is killed in service and that the department's interpretation of the act is incorrect.

Effect: The continued failure to reinstate a killed in service benefit could result in a potential unrecognized liability to the plan or deny plan members benefits to which they are statutorily entitled.

Recommendation: We again recommend that city officials review the plan's governing document and take appropriate action to ensure compliance with the Third Class City Code.

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

Management’s Response: The city stands by its response in the prior audit report as follows:

The Finding acknowledges the applicability of Act 51 of 2009 and the Commonwealth’s obligation to pay killed in service benefits. The City is in full agreement that Act 51 benefits apply to this situation, but respectfully disagrees with other important components of the Department’s analysis.

Fundamentally, the Finding is premised upon a strained interpretation of the Third Class City Code. Specifically, “the Department has concluded that the Code mandates the provision of a benefit for survivors of police officers killed in service.” Killed in service benefits are prescribed simply and clearly in Act 600 (as they are in 53 P.S. § 891). Despite the General Assembly’s clear prescription in other instances, the Third Class City Code is essentially silent on the subject of “killed in service” benefits. “It is a principle of statutory construction that when the legislature adopts a statute it must be presumed that it does so with full knowledge of existing statutes relating to the same subject.” Seliga v. SERS, 682 A.2d 77, 79 (Pa. Commw. Ct. 1996) (citations omitted); *see also* Gault v. PSERS, 720 A.2d 1090, 1094 (Pa. Commw. Ct. 1998) (interpreting Seliga to mean: “where a statute contains a particular provision, the omission of that provision in the enactment of a similar section is significant to show a different intention.”).

The provisions of the Third Class City Code identified in the Finding are more easily understood and accurately interpreted to mean that an officer who otherwise has a sufficient pension right will not have that benefit extinguished by reason of death. Indeed, the most applicable provision (prescribing the survivor benefit) says that the survivor(s) “shall . . . be entitled to receive a pension calculated at the rate of fifty per centum of the pension the member was receiving or would have been receiving **had he been retired at the time of his death** and may receive the pension the member was receiving or would have been receiving **had he been retired at the time of his death.**” 53 P.S. § 39303(c) (emphasis supplied).

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

The General Assembly’s failure to identify and specifically provide a killed in service benefit in the Third Class City Code is critical on two levels. First, it points decidedly away from the Department’s interpretation of the Third Class City Code in the Finding. Second, it explains the General Assembly’s lack of repeal of any provision in the Third Class City Code. On this point, Act 51 specifically repealed the killed in service benefit (53 P.S. § 771(e)(2)) provided through Act 600. This begs the critical question in reaching a proper interpretation of Act 51. Since (as the Department acknowledges) Act 51 provides for benefits when an officer in a Third Class City (or any municipality) is killed in service, why is there no repeal of a killed in service benefit under the Third Class City Code? There is only one answer that makes sense - the Third Class City Code does not contain a killed in service benefit in the first instance. This answer fits with the plain language and clear intent of the General Assembly. Certainly, Act 51 is aimed at ensuring a full and uniform killed in service benefit to survivors. There is no indication, and it is difficult to imagine any, that the General Assembly intended to establish differential treatment depending upon whether an officer was employed in a borough or township as compared to a third class city. Unfortunately, the Department’s interpretation would result in just that type of effect. The City, therefore, requests that the Department reconsider its initial analysis and an interpretation that would have the payment of benefits (and the financial viability of a police pension plan in a third class city) hinge upon the time that it took to repeal a benefit not provided for in the first place. The General Assembly neither provided nor intended such a result through its legislative enactments.

The set off language in Section 1(d) applies to “any worker’s compensation or pension or retirement benefits *paid* to such survivors.” Use of the word “paid” is significant. In other set-off provisions, the General Assembly has not hesitated to broaden the reach of a set-off where it so intended. For instance, in the tort context, municipalities enjoy a set-off “if a claimant receives **or is entitled to receive** benefits from a policy of insurance . . .” 42 Pa.C.S. § 8553(d) (emphasis supplied). There are numerous other examples. *See, e.g.* 75 P.S. § 1720 (subrogation rights limited where benefits “paid or payable” per another insurance contract or program). To this end, the monthly benefits payable to the widow are reduced by the worker’s compensation paid. If, however, she had chosen not to apply for or receive worker’s compensation benefits the set-off would not apply under Act 51. So too, there is no applicable set-off here because pension or retirement benefits have not been paid. The City has complied with the plain language and import of Act 51.

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

Regarding the city no longer providing a killed in service benefit, city officials believe that the plan's governing document and the actuarial data provided to the pension plan's actuary are in compliance with Act 317. For the reasons set forth above, city officials maintain that the General Assembly through Act 51 provides that benefits are to be paid by the Commonwealth when a municipal police officer is killed in service. The Department's interpretation would thwart the plain intent of the General Assembly and the clear import of Act 51. Moreover, the Department's approach would subject Third Class cities and the members of the police pension plan (having already been put in the position of dealing with the tragic loss of an officer) to inequitable and significant financial burdens not required of other municipalities.

Auditor's Conclusion: As previously cited, it is the position of the Department that the Third Class City Code mandates a benefit for survivors of police officers killed in service. Therefore, based on the Criteria previously stated, the city should reinstate a killed in service benefit provision to ensure the plan is in compliance with the Third Class City Code.

CITY OF LOWER BURRELL POLICE PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

Historical trend information about the plan is presented herewith as supplementary information. It is intended to help users assess the plan's funding status on a going-concern basis, assess progress made in accumulating assets to pay benefits when due, and make comparisons with other state and local government retirement systems.

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2011, is as follows:

	(1)	(2)	(3)	(4)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)
01-01-11	\$ 5,393,454	\$ 8,344,700	\$ 2,951,246	64.6%
01-01-13	5,778,641	8,969,532	3,190,891	64.4%
01-01-15	7,336,541	10,332,168	2,995,627	71.0%

Note: The market value of the plan's assets at 01-01-11 has been adjusted to reflect the smoothing of gains and/or losses over a 5-year averaging period. This method will lower contributions in years of less than expected returns and increase contributions in years of greater than expected returns. The net effect over long periods of time is to have less variance in contribution levels from year to year.

CITY OF LOWER BURRELL POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

The comparability of trend information is affected by changes in actuarial assumptions, benefit provisions, actuarial funding methods, accounting policies, and other changes. Those changes usually affect trends in contribution requirements and in ratios that use the actuarial accrued liability as a factor.

Analysis of the dollar amount of the actuarial value of assets, actuarial accrued liability, and unfunded (assets in excess of) actuarial accrued liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial accrued liability (Column 4) provides one indication of the plan's funding status on a going-concern basis. Analysis of this percentage, over time, indicates whether the system is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan.

CITY OF LOWER BURRELL POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER
AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2011	\$ 432,734	100.0%
2012	418,748	100.0%
2013	509,819	100.0%
2014	501,729	100.0%
2015	572,523	100.0%
2016	622,594	100.0%

CITY OF LOWER BURRELL POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
NOTES TO SUPPLEMENTARY SCHEDULES
(UNAUDITED)

The information presented in the supplementary schedules was determined as part of the actuarial valuation at the date indicated. Additional information as of the latest actuarial valuation date follows:

Actuarial valuation date	January 1, 2015
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	10 years
Asset valuation method	Market value
Actuarial assumptions:	
Investment rate of return	7.5%
Projected salary increases	5.0%

CITY OF LOWER BURRELL POLICE PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

The Honorable Richard Callender
Mayor

Mr. Joseph Grillo
Councilman

Mr. Robert Hamilton
Councilman

Mr. Christopher Fabry
Councilman

Mr. Christopher Koziarski
Councilman

Mr. Anthony Farina
City Controller

Mr. Brian J. Eshbaugh
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