

BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN

LUZERNE COUNTY

COMPLIANCE AUDIT REPORT

FOR THE PERIOD

JANUARY 1, 2009, TO DECEMBER 31, 2010



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ABBREVIATION

PMRS - Pennsylvania Municipal Retirement System

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.

Pension plan aid is provided from a 2 percent foreign casualty insurance premium tax, a portion of the foreign 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 Black Creek Township Nonuniformed Pension Plan is also governed by implementing regulations adopted by the 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 15 - Pennsylvania Municipal Retirement Law, Act of February 1, 1974 (P.L. 34, No. 15), as amended, 53 P.S. § 881.101 et seq.

Act 69 - The Second Class Township Code, Act of May 1, 1933 (P.L. 103, No. 69), as reenacted and amended, 53 P.S. § 65101 et seq.

The Black Creek Township Nonuniformed Pension Plan is a single-employer cash balance pension plan locally controlled by the provisions of Ordinance No. 3 of 2003, adopted pursuant to Act 15. Active members may voluntarily contribute up to 15 percent of compensation to the plan. The municipality is required to contribute 15 percent of each member's compensation.



Board of Township Supervisors
Black Creek Township
Luzerne County
Rock Glen, PA 18246

We have conducted a compliance audit of the Black Creek Township Nonuniformed Pension Plan for the period January 1, 2009, to December 31, 2010. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with *Government Auditing Standards* applicable to performance audits issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The objective of the audit was 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 objective identified above. The Black Creek Township Nonuniformed Pension Plan participates in the Pennsylvania Municipal Retirement System (PMRS), which is an agent multiple-employer public employee retirement system that acts as a common investment and administrative agent for participating municipal pension plans. PMRS issues a separate Comprehensive Annual Financial Report, copies of which are available from the PMRS accounting office. PMRS's financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

Township officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Black Creek Township Nonuniformed 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 township's internal controls as they relate to the township's compliance with those requirements and that we considered to be significant within the context of our audit objective, and assessed whether those significant controls were properly designed and implemented. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to the extent necessary to satisfy the audit objective.

The results of our tests indicated that, in all significant respects, the Black Creek Township Nonuniformed 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 findings further discussed later in this report:

Finding No. 1 – Improper Allocation Of State Aid

Finding No. 2 – Receipt Of State Aid In Excess Of Entitlement

Finding No. 3 – Incorrect Data On Certification Form AG 385 Resulting In
An Overpayment Of State Aid

Finding No. 4 – Failure To Appoint A Chief Administrative Officer

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

The contents of this report were discussed with officials of Black Creek Township and, where appropriate, their responses have been included in the report.

January 13, 2012

JACK WAGNER
Auditor General

BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Improper Allocation Of State Aid

Condition: In 2010, the township improperly allocated a portion of the forfeited amount of a terminated member’s account balance to make retroactive contributions to the accounts of permanent part-time members of the pension plan. The township was eligible to use the municipal contribution portion of the forfeited funds, but not the state aid portion.

Criteria: Section 402(f)(2) of Act 205 states:

No municipality shall be entitled to receive an allocation of general municipal pension system State aid in an amount which exceeds the aggregate actual financial requirements of any municipal pension plans for police officers, paid firefighters or employees other than police officers or paid firefighters maintained by the municipality, less the amount of any aggregate annual member or employee contributions during the next succeeding plan year, as reported in the most recent complete actuarial report filed with the commission.

In addition, Section 402(d) of Act 205 states, in part:

Eligible recipients of general municipal pension system State aid. Any county of the second class which, prior to the effective date of this chapter, received allocations for its police pension fund pursuant to the act of May 12, 1943 (P.L. 259, No. 120), or any city, borough, incorporated town or township or any home rule municipality formerly classified as a city, borough, incorporated town or township which employs one or more full-time municipal employees. . . .

Furthermore, Section 402(e)(2) of Act 205 states, in part:

The applicable number of units shall be attributable to each active employee who was employed on a full-time basis for a minimum of six consecutive months. . . .

Therefore, Act 205 state aid funding may only be used to fund the pension costs attributable to full-time employees.

Cause: Township officials failed to establish adequate internal control procedures to ensure that state aid funds were not used to fund the accounts of part-time plan members.

Effect: The part-time members’ accounts were improperly funded with state aid funds.

BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Recommendation: We recommend that the township reimburse \$10,867 to the current reserve account with PMRS to offset future municipal obligations for full-time members of the pension plan.

Management's Response: Municipal officials indicated that they would provide a written response within ten working days; however, no such response has been provided.

Finding No. 2 – Receipt Of State Aid In Excess Of Entitlement

Condition: As a result of Finding No. 1, the township received state aid in excess of the nonuniformed pension plan's annual pension costs for full-time members in the years 2009 and 2010. The pension costs attributable to full-time members was \$3,506 and \$3,290 and the employee forfeitures available to be used to offset these costs were \$17,663 and \$14,157 for the years 2009 and 2010 respectively. Therefore, no state aid was required to fund the plan's pension costs for full-time employees in those years. Consequently, the state aid allocations of \$3,128 and \$3,235 for the years 2009 and 2010 are excess state aid allocations and should be reimbursed to the Commonwealth.

Criteria: Section 402(f)(2) of Act 205 states:

No municipality shall be entitled to receive an allocation of general municipal pension system State aid in an amount which exceeds the aggregate actual financial requirements of any municipal pension plans for police officers, paid firefighters or employees other than police officers or paid firefighters maintained by the municipality, less the amount of any aggregate annual member or employee contributions during the next succeeding plan year, as reported in the most recent complete actuarial report filed with the commission.

Cause: Plan officials failed to establish adequate internal control procedures to ensure the township's annual state aid allocations were reconciled to the actual pension costs for full-time members of the plan after the application of eligible plan forfeitures.

BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Effect: It is this department's opinion that because the entire proceeds of the insurance premium tax on foreign casualty insurance companies are distributed annually to each eligible recipient municipality, it is inappropriate to use state aid in one year to offset pension costs in other years. Consequently, the overpayments of state aid in the years 2009 and 2010, in the total amount of \$6,363, must be returned to the Commonwealth for redistribution.

Recommendation: We recommend that the municipality return the \$6,363 of excess state aid received in the years 2009 and 2010 to the Commonwealth from the nonuniformed pension plan. A check in this amount, with interest compounded annually from date of receipt to date of repayment, at a rate earned by the plan, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 11 Stanwix Street, Suite 1450, Pittsburgh, PA 15222. A copy of the interest calculation must be submitted along with evidence of payment.

Furthermore, we recommend that plan officials annually reconcile the amount of state aid allocated to the pension plan after the application of any available forfeitures to the plan's pension costs attributable to full-time members.

Management's Response: Municipal officials indicated that they would provide a written response within ten working days; however, no such response has been provided.

Finding No. 3 – Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid

Condition: The township certified 5 ineligible nonuniformed employees (5 units) and overstated payroll by \$94,855 in 2011 on Certification Form AG 385.

Criteria: Pursuant to Act 205, at Section 402(e)(2), in order to be eligible for certification, an employee must have been employed on a full-time basis for at least six consecutive months and must have been participating in a pension plan during the certification year.

BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 3 – (Continued)

Cause: Plan officials failed to establish adequate internal control procedures to ensure the accuracy of the data certified.

Effect: The data submitted on this certification form is used, in part, to calculate the state aid due to the municipality for distribution to its pension plan. Because the township’s state aid allocation was based on pension costs, the incorrect certification of pension data affected the township’s state aid allocation, as identified below:

<u>Normal Cost</u>	<u>Payroll Overstated</u>	<u>State Aid Overpayment</u>
15.0%	\$ 94,855	\$ 14,229

Recommendation: We recommend that the total excess state aid, in the amount of \$14,229, be returned to the Commonwealth. A check in this amount, with interest compounded annually from date of receipt to date of repayment, at a rate earned by the pension plan, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 11 Stanwix Street, Suite 1450, Pittsburgh, PA 15222. A copy of the interest calculation must be submitted along with the check.

We also recommend that plan officials establish adequate internal control procedures to ensure compliance with the instructions that accompany Certification Form AG 385 to assist them in accurately reporting the required pension data.

Management’s Response: Municipal officials indicated that they would provide a written response within ten working days; however, no such response has been provided.

Finding No. 4 – Failure To Appoint A Chief Administrative Officer

Condition: Municipal officials did not appoint a chief administrative officer (CAO) for the nonuniformed pension plan by ordinance, resolution or by a motion recorded in the minutes of a council meeting.

Criteria: Section 102 of Act 205 defines the CAO as “The person who has primary responsibility for the execution of the administrative affairs of the municipality in the case of the municipality, or of the pension plan in the case of the pension plan, or the designee of that person.”

BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 4 – (Continued)

Municipal officials may appoint two CAOs - one for the pension plan and one for the municipality or appoint one person to fill both positions. Act 205 identifies specific duties for each position, as follows:

CAO of the Municipality

- Supervise and direct the preparation of actuarial reports (Section 201(d));
- Certify and file actuarial valuation reports with the Public Employee Retirement Commission (Section 201(b)); and
- Make actuarial report information available to plan members (Section 201(e)).

CAO of the Pension Plan

- Annually, determine and submit to the governing body of the municipality the financial requirements of the pension plan and minimum municipal obligation (Section 302(b), Section 302(c), Section 303(b), Section 303(c) and Section 304); and
- Provide the governing body of the municipality with a cost estimate of the effect of any proposed benefit plan modification (Section 305(a)).

Cause: Plan officials were unaware of the need to appoint a CAO for the nonuniformed pension plan in accordance with Act 205 provisions.

Effect: The failure to formally appoint a CAO could result in important filing deadlines being overlooked, state aid being adversely affected and delayed and investment opportunities being lost.

Recommendation: Because of the significance of the CAO's responsibilities to the municipality and nonuniformed pension plan, we recommend that the CAO be formally appointed by ordinance, resolution or motion recorded in the minutes of a council meeting. Such ordinance, resolution or motion should detail the CAO's responsibilities and be filed with other plan documents.

Management's Response: Municipal officials indicated that they would provide a written response within ten working days; however, no such response has been provided.

BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN
POTENTIAL WITHHOLD OF STATE AID

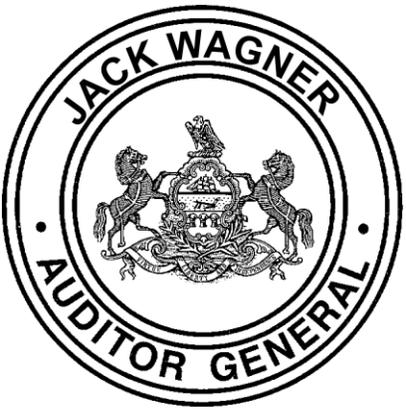
A condition such as that reported by Finding No. 1 contained in this audit report may lead to a total withholding of state aid in the future unless that finding is corrected. However, such action will not be considered if sufficient written documentation is provided to verify compliance with this department's recommendation. Such documentation should be submitted to: Department of the Auditor General, Bureau of Municipal Pension Audits, 406 Finance Building, Harrisburg, PA 17120.

In addition, Finding Nos. 2 and 3 contained in this audit report cite overpayments of state aid to the township in the total amount of \$20,592. Conditions of this nature may lead to a total withholding of state aid in the future unless those findings are corrected. A check in this amount with interest, at a rate earned by the pension plan, should be made payable to: Commonwealth of Pennsylvania, and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 11 Stanwix Street, Suite 1450, Pittsburgh, PA 15222.

BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

SCHEDULE OF STATE AID
AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid Deposited	Employer Contributions
2005	\$ 5,854	\$ 5,944
2006	3,089	14,540
2007	6,413	11,471
2008	6,373	2,937
2009	3,128	None
2010	3,235	None



BLACK CREEK TOWNSHIP NONUNIFORMED PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania

Black Creek Township Nonuniformed Pension Plan
Luzerne County
P.O. Box 3
Rock Glen, PA 18246

Ms. Bonnie Adams	Chairperson, Board of Township Supervisors
Mr. Dennis Feerrar	Secretary/Treasurer
Ms. Kristine M. Cline	Pennsylvania Municipal Retirement System

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, Room 318 Finance Building, Harrisburg, PA 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.