

**CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN**

**LUZERNE COUNTY**

**COMPLIANCE AUDIT REPORT**

**FOR THE PERIOD**

**JANUARY 1, 2009, TO DECEMBER 31, 2010**





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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.

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 City of Wilkes-Barre Policemen's Relief 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 147 - Special Ad Hoc Municipal Police and Firefighter Postretirement Adjustment Act, Act of December 14, 1988 (P.L. 1192, No. 147), as amended, 53 P.S. § 896.101 et seq.
- Act 177 - General Local Government Code, Act of December 19, 1996 (P.L. 1178, No. 177), as amended, 53 Pa.C.S. § 101 et seq.
- Act 317 - The Third Class City Code, Act of June 23, 1931 (P.L. 932, No. 317), as amended, 53 P.S. § 35101 et seq.

The City of Wilkes-Barre Policemen's Relief Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of File of Council No. 26 of 1976, as amended. The plan covers police officers who were hired after July 8, 1976. The plan is also affected by the provisions of collective bargaining agreements between the city and its police officers.



The Honorable Mayor and City Council  
City of Wilkes-Barre  
Luzerne County  
Wilkes-Barre, PA 18711

We have conducted a compliance audit of the City of Wilkes-Barre Policemen's Relief 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 our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings 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. The City of Wilkes-Barre contracted with an independent certified public accounting firm for annual audits of the City of Wilkes-Barre Policemen's Relief Pension Plan's financial statements which are available at the city's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

City officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the City of Wilkes-Barre Policemen's Relief 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, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to the extent necessary to satisfy the audit objectives.

The results of our tests indicated that, in all significant respects, the City of Wilkes-Barre Policemen's Relief 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 – Noncompliance With Prior Audit Recommendation – Plan Provision Inconsistent With The Third Class City Code

Finding No. 2 – Noncompliance With Prior Audit Recommendation – Unauthorized Service Buyback Provision

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 the City of Wilkes-Barre and, where appropriate, their responses have been included in the report.

December 13, 2011

JACK WAGNER  
Auditor General

CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN  
STATUS OF PRIOR FINDINGS

Compliance With Prior Audit Recommendation

The City of Wilkes-Barre has complied with the prior audit recommendation concerning the following:

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

The city reimbursed \$13,077 to the Commonwealth for the overpayment of state aid received in 2008.

Noncompliance With Prior Audit Recommendations

The City of Wilkes-Barre has not complied with the prior audit recommendations concerning the following as further discussed in the Findings and Recommendations section of this report:

- Plan Provision Inconsistent With The Third Class City Code
- Unauthorized Service Buyback Provision

CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Noncompliance With Prior Audit Recommendation – Plan Provision  
Inconsistent With The Third Class City Code

Condition: As disclosed in the prior audit report, the city adopted a home rule charter pursuant to the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2901 et seq. (previously 53 P.S. § 1-101 et seq.) and provided a benefit to its police officers inconsistent with the Third Class City Code. The city continues to provide this benefit to its police officers inconsistent with the Third Class City Code, as follows:

Benefit	Plan Governing Document	Third Class City Code
Basis of pension	The basis of the apportionment of pension shall be determined by the rate of the monthly pay of the member at the date of injury, death, honorable discharge, or retirement, whichever is the higher, and except as to service increments provided for in section V (b) of File Council No. 11 of 2001, shall not exceed in any year one-half the annual pay of such member computed at such monthly or average annual rate, whichever is the higher.	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 5 years of service preceding injury, death, honorable discharge, vesting under section 4302.1 or retirement, whichever is the higher, and except as to service increments provided for in subsection (b) of this section, shall not in any case exceed in any year one-half the annual pay of such member computed at such monthly or average annual rate, whichever is the higher.

Criteria: On January 24, 2001, the Commonwealth Court of Pennsylvania issued its opinion in *Municipality of Monroeville v. Monroeville Police Department Wage Policy Committee*. Therein, the court held that Section 2962(c)(5) of the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. Section 2962(c)(5), “clearly precludes home rule municipalities from providing pension benefits different from those prescribed in general law including Act 600.” The court’s holding was in accord with the position taken by this Department since at least January 1995.

CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Cause: City officials are unable to amend the plan's governing ordinance to comply with the Third Class City Code due to the fact that pension benefits are a mandatory subject of bargaining. The city attempted to amend the benefit through collective bargaining; however, it was unsuccessful in doing so and had been ordered by the Pennsylvania Labor Relations Board to have the benefit continue as currently prescribed in the plan's governing document. It appears that the inconsistency may have resulted from errors in drafting the ordinance language by omitting language contained in the Third Class City Code.

Effect: The provision of unauthorized benefits could increase the plan's pension costs and reduces the amount of funds available for investment purposes or the payment of authorized benefits or administrative expenses. Since the city received its state aid allocations based on unit value during the current audit period, it did not receive excess state aid allocations attributable to the unauthorized benefits provided. However, providing unauthorized pension benefits could result in the receipt of state aid in excess of the city's entitlement in the future, or increase required municipal contributions to the plan.

Recommendation: We again recommend that the city ensure that pension benefits are in accordance with the Third Class City Code for all employees who began full-time employment on or after January 24, 2001 (the date *Monroeville* was issued) upon the renewal, extension, or renegotiation of the collective bargaining agreement. To the extent that the city is not in compliance with the Third Class City Code and/or is contractually obligated to provide benefits in excess of those authorized by the Third Class City Code to employees who began employment on or after January 24, 2001, the excess benefits must be reflected in the Act 205 actuarial valuation reports for the plan and funded in accordance with Act 205 funding standards. Furthermore, such benefits will be deemed ineligible for funding with state pension aid. In such case, the plan's actuary may be required to determine the impact, if any, of the unauthorized benefits on the city's future state aid allocations and submit this information to the department.

Management's Response: City officials agreed with the finding without exception.

Auditor's Conclusion: This finding repeats a condition that was cited in our previous two audit reports that has not been corrected by city officials. A written response was requested regarding the city's intended action relative to this issue, however, no response was received. 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.

CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – Noncompliance With Prior Audit Recommendation – Unauthorized Service Buyback Provision

Condition: As disclosed in the prior audit report, the city enacted an unauthorized service buyback provision. File of Council No. 11 of 2001, Section I, states:

Effective January 1, 2002, City employees are permitted to buy back all of the time which represents time served as a City of Wilkes-Barre employee and a participant in another City Pension Fund into the City Pension Fund in which they currently participate.

The buyback amount shall be calculated by the City and shall include an amount equal to the employee's contributions, plus interest at a rate established by the City at the time of the buyback.

The buyback must be initiated at the time of hire into another City job classification or after the effective date of this ordinance, whichever is later.

Criteria: The Third Class City Code does not authorize buybacks of prior service credits from another pension fund.

Cause: City officials failed to comply with the prior audit recommendation through the collective bargaining process.

Effect: The provision of unauthorized benefits increases the plan's pension costs and reduces the amount of funds available for investment purposes or the payment of authorized benefits or administrative expenses. Since the city received its state aid allocations based on unit value during the current audit period, it did not receive excess state aid allocations attributable to the unauthorized benefits provided. However, providing unauthorized pension benefits could result in the receipt of state aid in excess of the city's entitlement in the future, or increase required municipal contributions to the plan.

Recommendation: We again recommend that the city eliminate the unauthorized service buyback provision at its earliest opportunity to do so. To the extent that the city has already obligated itself to pay benefits to existing retirees in excess of those authorized by the Third Class City Code, the excess benefits must be reflected in the Act 205 actuarial valuation reports for the plan and funded in accordance with Act 205 funding standards. Furthermore, such benefits will be deemed ineligible for funding with state pension aid. In such case, the plan's actuary may be required to determine the impact, if any, of the unauthorized benefits on the city's future state aid allocations and submit this information to the department.

CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Management's Response: City officials agreed with the finding without exception.

Auditor's Conclusion: This finding repeats a condition that was cited in our previous two audit reports that has not been corrected by city officials. A written response was requested regarding the city's intended action relative to this issue, however, no response was received. 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.

CITY OF WILKES-BARRE POLICEMEN'S RELIEF 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, 2005, is as follows:

	(1)	(2)	(3)	(4)	(5)	(6)
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)	Covered Payroll (c)	Unfunded (Assets in Excess of) Actuarial Accrued Liability as a % of Payroll [(b-a)/(c)]
01-01-05	\$ 11,055,891	\$ 9,996,763	\$ (1,059,128)	110.6%	\$ 3,783,304	(28.0%)
01-01-07	13,645,433	12,829,457	(815,976)	106.4%	4,239,291	(19.2%)
01-01-09	13,776,220	15,233,364	1,457,144	90.4%	5,115,760	28.5%

Note: The market value of the plan's assets at 01-01-09 has been adjusted to reflect the smoothing of gains and/or losses subject to 130 percent of the market value of assets. 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 WILKES-BARRE POLICEMEN'S RELIEF 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.

Trends in unfunded (assets in excess of) actuarial accrued liability and annual covered payroll are both affected by inflation. Expressing the unfunded (assets in excess of) actuarial accrued liability as a percentage of annual covered payroll (Column 6) approximately adjusts for the effects of inflation and aids analysis of the plan's progress made in accumulating sufficient assets to pay benefits when due. Generally, where there is an unfunded actuarial accrued liability, the smaller this percentage, the stronger the plan. However, when assets are in excess of the actuarial accrued liability, the higher the bracketed percentage, the stronger the plan.

CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN  
SUPPLEMENTARY INFORMATION  
(UNAUDITED)

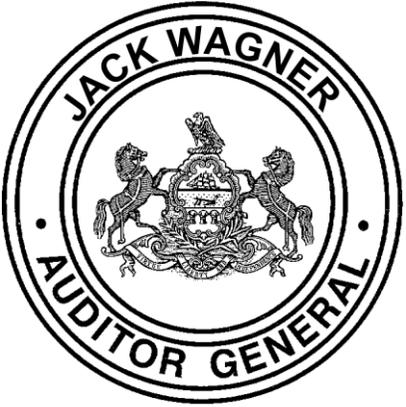
SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2005	\$ 497,215	100.0%
2006	293,650	100.0%
2007	282,025	100.0%
2008	289,386	100.0%
2009	347,813	100.0%
2010	398,491	100.0%

CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 NOTES TO SUPPLEMENTARY SCHEDULES  
 (UNAUDITED)

The information presented in the required 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, 2009
Actuarial cost method	Entry age normal
Amortization method	N/A
Remaining amortization period	N/A
Asset valuation method	Plan assets are valued using the method described in Section 210 of Act 205, as amended, subject to a ceiling of 130% of the market value of assets.
Actuarial assumptions:	
Investment rate of return	8.5%
Projected salary increases	5.5%
Cost-of-living adjustments	None assumed



CITY OF WILKES-BARRE POLICEMEN'S RELIEF PENSION PLAN  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett  
Governor  
Commonwealth of Pennsylvania

City of Wilkes-Barre Policemen's Relief Pension Plan  
Luzerne County  
40 East Market Street  
Wilkes-Barre, PA 18711

The Honorable Thomas M. Leighton	Mayor
Ms. Kathy Kane	Council Chairperson
Mr. James Ryan	City Clerk
Mr. Bernard Mengerlinghausen	City Controller
Ms. Laura Brace	City Pension Coordinator

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](http://www.auditorgen.state.pa.us).