



**CITY OF LOWER BURRELL POLICE
PENSION PLAN**

WESTMORELAND COUNTY

COMPLIANCE AUDIT REPORT

FOR THE PERIOD

JANUARY 1, 2009, TO DECEMBER 31, 2010

COMMONWEALTH OF PENNSYLVANIA

EUGENE A. DEPASQUALE - AUDITOR GENERAL

DEPARTMENT OF THE 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.

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 Lower Burrell Police 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 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 Lower Burrell Police Pension Plan is a single-employer defined benefit pension plan locally controlled during the current audit period by the provisions of Ordinance No. 2-2003, adopted pursuant to Act 317. The plan is also affected by the provisions of collective bargaining agreements between the city and its police officers.



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Department of the 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, 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 finding and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding 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. Our methodology addressed determinations about the following:

- Whether state aid was properly determined and deposited in accordance with Act 205 requirements.
- Whether employer contributions are determined and deposited in accordance with the plan's governing document and applicable laws and regulations.
- Whether employee contributions are required and, if so, are determined, deducted and deposited into the pension plan and are in accordance with the plan provisions and applicable laws and regulations.
- Whether benefit payments, if any, represent payments to all (and only) those entitled to receive them and are properly determined in accordance with applicable laws and regulations.

- Whether obligations for plan benefits are accurately determined in accordance with plan provisions and based on complete and accurate participant data; and whether actuarial valuation reports are prepared and submitted to the Public Employee Retirement Commission (PERC) in accordance with state law and 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.
- Whether the special ad hoc postretirement adjustment granted to eligible pensioners is in accordance with applicable laws and regulations and whether the ad hoc reimbursement received by the municipality was treated in accordance with applicable laws and regulations.
- Whether benefit payments have only been made to living recipients, based on the Social Security numbers found in the pension records for retirees and beneficiaries.

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 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 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 objective.

The results of our tests 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 – Failure To Properly Pay Killed In Service Benefit

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. However, we are extremely concerned about the funded status of the plan contained in the schedule of funding progress included in this report which indicates **the plan's funded ratio is 57.1% as of January 1, 2009**. We encourage city officials to monitor the funding of the police pension plan to ensure its long-term financial stability.

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.

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale". The signature is fluid and cursive, with a long horizontal stroke at the end.

May 14, 2013

EUGENE A. DEPASQUALE
Auditor General

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – Failure To Properly Pay Killed In Service Benefit

Condition: Subsequent to the current audit period, a city police officer was killed in service on October 12, 2011. At the time of the police officer's death, the City of Lower Burrell Police Pension Plan provided for a 50 percent killed in service benefit. Act 51 of 2009 amended the Emergency and Law Enforcement Personnel Death Benefits Act and was signed into law by Governor Rendell on October 12, 2009. The act provides for a \$100,000 lump sum payment and a mandated monthly killed in service benefit to be paid by the Commonwealth, less any Workers' Compensation or pension or retirement benefits paid to such survivors of a law enforcement officer killed in the line of duty. The police officer's surviving spouse has received the mandated \$100,000 lump sum payment issued by the Commonwealth pursuant to Act 51 of 2009 and is also receiving monthly Workers' Compensation benefits. The Commonwealth's Department of General Services has begun making payments to the police officer's surviving spouse pursuant to Act 51. The payments currently being made by the Commonwealth are supplementing the Workers' Compensation benefits to equal 100 percent of the police officer's base monthly salary at the time of his death. However, as previously noted, Act 51 requires the Commonwealth to pay the mandated killed in service benefit of 100 percent less any benefits being paid by Workers' Compensation or pension benefits being paid to such survivors. Since the City of Lower Burrell Police Pension Plan had a killed in service benefit in place at the time of the police officer's death pursuant to the Third Class City Code, it would appear that the pension plan is liable to pay a portion of the benefits mandated by Act 51 of 2009.

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.

The city's Ordinance No. 2-2003, in effect at the time of the police officer's death, at Section 141.06(a)(2), states:

The widow of a member of the Police Department and the Police Pension Fund who is killed in the service in the line of duty on or after the passage of this section shall receive annually during her lifetime or so long as she does not remarry, a pension equal to fifty percent of the annual compensation the member was receiving at the time of his death.

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

With regard to the amount of the killed in service benefit payable, Section 1(d) of Act 51 of 2009 states, in part:

...and an amount equal to the monthly salary, adjusted in accordance with subsection (f) of this section, of the deceased paid firefighter, ambulance service or rescue squad member or law enforcement officer, less any workers' compensation or pension or retirement benefits paid to such survivors, and shall continue such monthly payments until there is no eligible beneficiary to receive them. For the purpose of this subsection, the term "eligible beneficiary" means the surviving spouse or the child or children under the age of eighteen years or, if attending college, under the age of twenty-three years, of the firefighter, ambulance service or rescue squad member or law enforcement officer who died as a result of the performance of his duty. (Emphasis added)

Therefore, it would appear that the plan has an obligation to pay a portion of the killed in service benefit based on the provisions of the Third Class City Code and the provisions contained in the plan's governing document in effect at the time of the police officer's death.

Cause: City officials had initiated the process to amend the plan's governing document to remove the killed in service benefit prior to the police officer's death. Subsequent to the police officer's death, the city adopted Ordinance No. 7-2011 on November 14, 2011. The amended ordinance did not contain a killed in service benefit; consequently, the city felt the responsibility to pay the killed in service benefit should be borne exclusively by the Commonwealth.

Effect: Although the surviving spouse is currently receiving the mandated Act 51 benefits through Workers' Compensation and through payments made by the Commonwealth, the source of the payments does not comply with Act 51, the Third Class City Code, and the provisions contained in the plan's governing document in effect at the time of the police officer's death.

Recommendation: We recommend that plan officials continue to work with the appropriate representatives of the Commonwealth to ensure that the deceased police officer's surviving spouse receives, both currently and prospectively, the mandated killed in service benefits due pursuant to Act 51 provisions.

Management's Response: 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.

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

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. Commmw. Ct. 1996) (citations omitted); *see also* Gault v. PSERS, 720 A.2d 1090, 1094 (Pa. Commmw. 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.

Finally, the City has no objection to continuing to work “with the representatives of the Commonwealth to ensure that the officer’s surviving spouse receives and continue to receives the mandated killed in service benefits due pursuant to Act 51 provisions.” We note that, based upon the City’s knowledge and understanding, these Act 51 benefits have been accurately calculated and are being paid appropriately.

CITY OF LOWER BURRELL POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

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. The City of Lower Burrell’s Ordinance No. 2-2003, in effect at the time of the police officer’s death provided for a 50 percent killed in service benefit to a police officer’s surviving spouse. The fact that the City subsequently adopted Ordinance No. 7-2011, which deleted the killed in service provision and was intended to supersede Ordinance No. 2-2003 in its entirety is of no moment in this matter as it was not adopted until after the police officer’s death.

The Commonwealth is responsible for making payments required by Act 51 of 2009; however, these payments are to be offset by any amounts for which the municipality actually pays to a surviving spouse or eligible child. The plan’s governing document in effect at the time of the police officer’s death has defined the City’s payment responsibilities to the police officer’s surviving spouse. Therefore, the City should be paying the 50 percent killed in service benefit pursuant Ordinance No. 2-2003 with the Commonwealth paying the remaining 50 percent balance on the survivor benefit mandated by Act 51 less the amount of any Workers’ Compensation benefits paid to such eligible beneficiary under the act.

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, 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	\$ 4,403,158	\$ 6,731,040	\$ 2,327,882	65.4%	\$ 1,083,763	214.8%
01-01-07	4,901,062	7,160,378	2,259,316	68.4%	1,090,831	207.1%
01-01-09	4,340,911	7,607,141	3,266,230	57.1%	1,213,060	269.3%

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 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.

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 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
2005	\$ 342,148	100.0%
2006	381,981	100.0%
2007	415,081	100.0%
2008	422,231	100.0%
2009	415,725	100.0%
2010	416,824	100.0%

CITY OF LOWER BURRELL POLICE 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	Level dollar
Remaining amortization period	16 years
Asset valuation method	Fair value, 5-year smoothing
Actuarial assumptions:	
Investment rate of return	8.0%
Projected salary increases	5.0%
Cost-of-living adjustments	3.5%

CITY OF LOWER BURRELL POLICE PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania

City of Lower Burrell Police Pension Plan
Westmoreland County
2800 Bethel Street
Lower Burrell, PA 15068

The Honorable Donald L. Kinosz	Mayor
Mr. David Regoli	City Councilman
Mr. Frank Trozzi	City Councilman
Mr. Richard Callender	City Councilman
Mr. Joseph Grillo	City Councilman
Ms. Kelly Cook	City Clerk
Mr. Anthony Farina	City Controller
Mr. Brian J. Eshbaugh	City Treasurer

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