

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING AGENDA

**Wednesday
June 27, 2018
2:00 – 2:30 P.M.**

**PERS
11410 SW 68th Parkway
Tigard, OR**

	ITEM	PRESENTER
Action and Discussion Item		
2:00-2:30	Reconsideration of Jackson/Josephine County 2017-19 Employer Contribution Rates	VAUGHN

The Board may meet in Executive Session during this agenda pursuant to ORS 1925.660(2)(h).

Public testimony will be taken on action items at the Chair's discretion.

Please contact 503.603.7785 in advance of the meeting to notify staff of your request to provide testimony at the meeting.

<http://www.oregon.gov/PERS/>

2018 Meetings: · June 1 August 3* October 5 · December 7* * Audit Committee

Stephen Buckley Krystal de Asis Steve Demarest Lawrence Furnstahl, Vice Chair John Thomas, Chair Yvette Elledge-Rhodes, Interim Director
SL1



Oregon

Kate Brown, Governor

Public Employees Retirement System

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June 27, 2018

TO: Members of the PERS Board
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section
SUBJECT: Reconsideration of Employer Rates for Jackson County and Josephine County

BACKGROUND

At the June 1, 2018 Board meeting, the Board passed a motion to “notify the court of the Board’s intent to withdraw, reconsider, and affirm the 2017-19 individual employer contribution rate orders for Jackson County and Josephine County based on the following issues: 1) The Job Council was not insolvent under ORS 238.670(1)(a) or OAR 459-009-0400 and therefore contingency reserve funds should not be used to pay any part of The Job Council’s transition liability; and 2) Jackson and Josephine Counties are the successors to The Job Council under OAR 459-009-0070(12).” On June 1, 2018, DOJ so notified the court of the Board’s intent. The purpose of this supplemental Board meeting is the reconsideration of the employer rates for Jackson County and Josephine County.

OVERVIEW

On September 30, 2016, the Board adopted 2017-19 employer rates for all but two employers: Jackson County and Josephine County (“the Counties”). The Board delayed adoption of the employer rates for the Counties because staff was recommending that the transition liability of The Job Council (“TJC”) be divided equally between the two counties and the Counties objected. The Board directed staff to continue working on options for allocating the transition liability for the dissolved TJC and discuss with the Counties. Staff did additional research, evaluated the options again, and met with representatives from the Counties; however, staff’s recommendation did not change. On November 18, 2016, staff renewed its recommendation that the outstanding transition liability of TJC be assigned equally to the Counties and the Board adopted the employer rates for the Counties that included the outstanding transition liability of TJC.

Two options considered by staff at that time were: 1) determining that TJC was insolvent, which would provide the Board the option of using a portion of the Contingency Reserve to pay the outstanding transition liability under ORS 238.670(1)(a); and 2) identifying a successor entity and assigning the outstanding transition liability to the successor entity. These analyses were performed prior to the adoption of our insolvent employer rule, OAR 459-009-0400. Staff is now asking the Board to reconsider and reaffirm the Counties’ rate orders in light of the analysis under the insolvent employer rule and the successor employer provision in OAR 459-009-0070(12).

INSOLVENT EMPLOYER/CONTINGENCY RESERVE

The Board’s discretion to use a portion of the Contingency Reserve for an insolvent employer under ORS 238.670(1)(a) is triggered only once an employer is determined to be insolvent. The

insolvent employer rule was adopted in May 2017, after adoption of the Counties' employer rates, but staff had been working on developing the policy and definition for some time. The definition of "insolvent employer" outlined in OAR 459-009-0400(1) is consistent with the analysis staff applied when evaluating whether TJC was an insolvent employer:

- (a) The employer has dissolved either by statute or administrative action as an ongoing entity;
- (b) There are no assets from which PERS can collect to cover the dissolved employer's PERS liability or there are inadequate assets to cover all PERS liability; and
- (c) There is no entity either by operation of law or contractual agreement that is responsible for the dissolved employer's remaining liability, or PERS is unable to assign the remaining liability to an entity.

TJC appears to meet the first two criteria listed, as they dissolved effective June 30, 2015, and indicated to PERS that they did not have assets sufficient to pay their outstanding PERS liability. However, staff's analysis was, and still is, that TJC does not meet the last criteria because the Counties are responsible for the remaining transition liability.

TJC was created by the Counties through an intergovernmental agreement (IGA) under ORS Chapter 190. ORS 190.080(3) and (5)(b) address the debts and liabilities of the intergovernmental entity:

- (3) The debts, liabilities and obligations of an intergovernmental entity *shall* be, jointly and severally, the debts, liabilities and obligations of the parties to the intergovernmental agreement that created the entity, unless the agreement specifically provides otherwise.

* * *

- (5) Any moneys collected by or credited to an intergovernmental entity shall not accrue to the benefit of private persons. Upon dissolution of the entity, title to all assets of the intergovernmental entity shall vest in the parties to the intergovernmental agreement. The agreement creating the entity *shall* provide a procedure for:
 - (a) The disposition, division and distribution of any assets acquired by the intergovernmental entity; and
 - (b) The assumption of any outstanding indebtedness or other liabilities of the entity *by the parties to the intergovernmental agreement that created the entity.*

(Emphasis added.)

Staff's plain language interpretation of ORS 190.080(3) and (5)(b) was, and still is, that the liabilities of TJC must be assumed "...by the parties to the intergovernmental agreement that created the entity," namely, Jackson and Josephine counties. Since the Counties are required by

statute to assume the liabilities of TJC, there is “an entity...by operation of law...that is responsible for the dissolved employer’s remaining liability...”; therefore, TJC does not meet the third criteria outlined in OAR 459-009-0400(1) and is not an insolvent employer.

This is further supported by the Liabilities and Transfers section of the most recent IGA between the Counties regarding TJC, which states in part:

Any liability which may accrue to the Governments due to TJC’s acts, errors, or omissions, or TJC’s performance or failure to perform pursuant to the requirement of state or federal law shall be apportioned among the Governments equally.

* * *

Upon any termination of this Agreement, TJC shall pay or make provisions for payment of its creditors, including reimbursement to the federal government or other governmental agencies of amounts required to be paid to them upon termination of this Agreement and the liquidation of TJC. Thereafter, the assets remaining shall be distributed equally to the Governments.

As mentioned previously, the Board’s discretion to use a portion of the Contingency Reserve arises only if the employer is insolvent. Under OAR 459-009-0400(1), TJC was not an insolvent employer; therefore, the Contingency Reserve was not available to pay all or part of TJC’s outstanding transition liability under ORS 238.670(1)(a).

SUCCESSOR ENTITY

OAR 459-009-0070(12) allows the Board to determine an employer’s successor and assign the employer’s unfunded actuarial liability to that successor:

Dissolution of an employer or non-participating employer. In the event a public employer is dissolved, no longer has PERS eligible employees, or is no longer eligible to participate in PERS, the employer or its successor will be required to make the contributions necessary to fund any remaining unfunded actuarial liability, as provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, for PERS benefits. The Board will determine the method and amount of funding this unfunded actuarial liability or the return of any surplus, as well as the determination of the employer’s successor.

Although this paragraph does not specifically mention a transition liability, it references paragraph (9)(b) of the same rule, which describes the transition liability.

While staff did not previously recommend the Board make an official decision regarding a successor employer, in September 2016 staff researched whether the Rogue Workforce Partnership or another entity could be a successor entity to which the outstanding transition liability could be assigned, but were unable to identify a successor entity other than the Counties. The language of the Counties’ Amendment to their IGA, adopted in June 2015 for purposes of winding down TJC, states in part:

For the purpose of this paragraph, winding down and terminating the operations of TJC includes, but is not limited to:

- a. Transferring assets of TJC, with or without consideration, in one or more installments to an organization that has a mission similar to the mission of TJC, all as determined by the liquidating agent in his/her sole discretion, if the liquidating agent, in his/her sole discretion, determines that the financial assets of TJC are sufficient to pay remaining operating expenses and current liabilities of TJC.

The Amendment did not replace any of the existing language in the IGA previously cited, but amended the IGA by adding this language to the Liabilities and Transfers section of the IGA. Staff's assessment is that this language, which relates to the disposition of TJC's assets, cannot relieve the Counties' responsibility for TJC's outstanding liabilities. Based on ORS 190.080(3) and (5)(b) mentioned above, as well as OAR 459-009-0400(1), staff now recommends the Board officially declare that the Counties are the successor employer of TJC for PERS purposes according to OAR 459-009-0070(12).

BOARD OPTIONS

The Board may:

1. Pass a motion to "reaffirm the adoption of the 2017-19 individual employer contribution rates for Jackson County and Josephine County, having determined that Contingency Reserve funds are not available to pay all or part of The Job Council's transition liability, as The Job Council was not insolvent, and declare that Jackson and Josephine Counties are the successors to The Job Council for PERS purposes."
2. Pass a motion to "temporarily reaffirm the 2017-19 individual employer contribution rate orders adopted by the Board on November 18, 2016, for Jackson County and Josephine County and instruct the actuary to calculate new individual employer contribution rates for Jackson County and Josephine County for 2017-19 that do not include the transition liability of The Job Council."

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Reaffirmation of the employer rates complies with the Board's rate-setting principles and fulfills its statutory obligation to set employer rates for the 2017-19 biennium, and also ensures that neither the system as a whole nor the State and Local Government Rate Pool incurs liability for employer-specific decisions.

Attachment 1 – *Relevant Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR)*

Attachment 2 – *The Job Council Intergovernmental Entity Agreement, Article VII – Liabilities and Transfers*

Attachment 3 – *Amendment No.1 to the Amended and Reinstated Intergovernmental Agreement*

190.080 Powers of intergovernmental entity created by intergovernmental agreement; limits; debts of entity; procedure for distribution of assets; rules. (1) An intergovernmental entity created by an intergovernmental agreement under ORS 190.010 may, according to the terms of the agreement:

(a) Issue revenue bonds under ORS chapter 287A or enter into financing agreements authorized under ORS 271.390 to accomplish the public purposes of the parties to the agreement, if after a public hearing the governing body of each of the units of local government that are parties to the agreement approves, by resolution or order, the issuance of the revenue bonds or entering into the financing agreement;

(b) Enter into agreements with vendors, trustees or escrow agents for the installment purchase or lease, with option to purchase, of real or personal property if the period of time allowed for payment under an agreement does not exceed 20 years; and

(c) Adopt all rules necessary to carry out its powers and duties under the intergovernmental agreement.

(2) Except as provided in ORS 190.083, an intergovernmental entity may not levy taxes or issue general obligation bonds.

(3) The debts, liabilities and obligations of an intergovernmental entity shall be, jointly and severally, the debts, liabilities and obligations of the parties to the intergovernmental agreement that created the entity, unless the agreement specifically provides otherwise.

(4) A party to an intergovernmental agreement creating an intergovernmental entity may assume responsibility for specific debts, liabilities or obligations of the intergovernmental entity.

(5) Any moneys collected by or credited to an intergovernmental entity shall not accrue to the benefit of private persons. Upon dissolution of the entity, title to all assets of the intergovernmental entity shall vest in the parties to the intergovernmental agreement. The agreement creating the entity shall provide a procedure for:

(a) The disposition, division and distribution of any assets acquired by the intergovernmental entity; and

(b) The assumption of any outstanding indebtedness or other liabilities of the entity by the parties to the intergovernmental agreement that created the entity.

(6) An intergovernmental entity created by intergovernmental agreement under ORS 190.010 may be terminated at any time by unanimous vote of all the parties to the intergovernmental agreement or as provided by the terms of the agreement. [1991 c.583 §4; 2001 c.840 §3; 2003 c.195 §7; 2007 c.783 §71]

238.670 Reserve accounts in fund. (1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection, but the board may not credit further amounts to the reserve account if the amounts in the reserve account exceed \$50 million. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371

(1), for its review and comment. [Formerly 237.281; 2001 c.945 §5; 2017 c.746 §11]

459-009-0400

Insolvent Employer

(1) For the purposes of this rule, an “insolvent employer” is an employer that meets all of the following requirements:

(a) The employer has dissolved either by statute or administrative action as an ongoing entity;

(b) There are no assets from which PERS can collect to cover the dissolved employer’s PERS liability or there are inadequate assets to cover all PERS liability; and

(c) There is no entity either by operation of law or contractual agreement that is responsible for the dissolved employer’s remaining liability, or PERS is unable to assign the remaining liability to an entity.

(2) If PERS determines an employer is insolvent, the board may take action to satisfy some or all of the outstanding liability of an insolvent employer to the fund through the Contingency Reserve established under ORS 238.670(1).

Statutory Authority: ORS 238.650 & 238A.450

Statutes Implemented: ORS 238.670

459-009-0070

Actuarial Pooling of Employer Liability

(9) Unfunded actuarial liabilities or surplus.

(b) If a political subdivision elects to join the State and Local Government Rate Pool as provided in section (4) of this rule, any transition unfunded actuarial liabilities or surplus as of the day immediately preceding the effective date of entering the pool will remain part of the actuarial calculation of employer costs for each individual political subdivision, until fully amortized, and will not be pooled with other public employers in the State and Local Government Rate Pool.

(12) Dissolution of an employer or non-participating employer. In the event a public employer is dissolved, no longer has PERS eligible employees, or is no longer eligible to participate in PERS, the employer or its successor will be required to make the contributions necessary to fund any remaining unfunded actuarial liability, as provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, for PERS benefits. The Board will determine the method and amount of funding this unfunded actuarial liability or the return of any surplus, as well as the determination of the employer's successor.

Statutory Authority: ORS 238.650

Statutes Implemented: 2005 OL, Ch. 808, Sec. (12), (13), (14), ORS 238.225 & 238.605

Article VI

Amendment

Any amendment to this Agreement must be agreed to by each member Government.

Article VII

Liabilities and Transfers

1. Any liability which may accrue to the Governments due to TJC's acts, errors, or omissions or TJC's performance or failure to perform pursuant to the requirements of state or federal law shall be apportioned among the Governments equally. Nothing in this provision shall be interpreted as any waiver of the rights and immunities to which Jackson and Josephine County are subject due to the respective status as an Oregon Public Body. Each Governmental entity hereby expressly retains all the provisions of the Oregon Tort Claims Act found at ORS 30.260-300.

2. Upon any termination of this Agreement, TJC shall pay or make provision for payment of its creditors, including reimbursement to the federal government or other governmental agencies of amounts required to be paid to them upon termination of this Agreement and the liquidation of TJC. Thereafter, the assets remaining shall be distributed equally to the Governments.

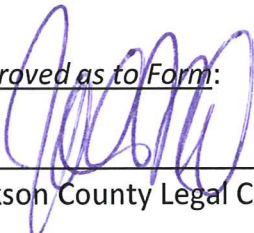
IN WITNESS WHEREOF, this Agreement is executed by the parties hereto effective on and after March 15, 2012. (*Date of adoption by majority vote of both Governments*)

JACKSON COUNTY
BOARD OF COUNTY COMMISSIONERS

 3/15/12
Don Skundrick Chair Date

 3-15-12
John Rachor, Vice-Chair Date

 3/15/12
Dennis C.W. Smith Date

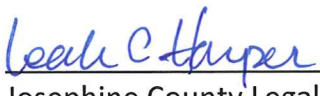
 3/15/12
Jackson County Legal Counsel Date

JOSEPHINE COUNTY
BOARD OF COUNTY COMMISSIONERS

 3/26/12
Simon Hare, Chair Date

 3/26/12
Don Reedy, Vice-Chair Date

 3/26/12
Harold Haugen Date

 3-23-12
Josephine County Legal Counsel Date

**AMENDMENT NO. 1 TO THE
AMENDED AND REINSTATED
INTERGOVERNMENTAL AGREEMENT**

This Amendment No. 1 is made to the Amended and Reinstated Intergovernmental Agreement dated March 26, 2012 ("IGA") by the Board of Commissioners of Jackson County and the Board of Commissioners of Josephine County ("the Governments") with respect to The Job Council ("TJC").

The Governments agree that the IGA shall be amended as follows:

1. Article V, Duration and Termination, shall be amended to add the following:

3. If this Agreement is terminated pursuant to the provisions of paragraph 1 of this Section, this Agreement shall continue to be in force and in effect after the last day of TJC's then current fiscal year for the sole purpose of winding down and terminating the operations of TJC. TJC shall appoint a liquidating agent for the purpose of conducting all winding down and terminating the operations of TJC. For the purpose of this paragraph, winding down and terminating the operations of TJC includes, but is not limited to:

- a. Transferring assets of TJC, with or without consideration, in one or more installments to an organization that has a mission similar to the mission of TJC, all as determined by the liquidating agent in his/her sole discretion, if the liquidating agent, in his/her sole discretion, determines that the financial assets of TJC are sufficient to pay remaining operating expenses and current liabilities of TJC.
- b. A final audit of the financial statements of TJC; and
- c. Any and all other activities necessary for winding down and terminating the operations of TJC.

Except as modified and amended herein, all other terms and provisions of the IGA shall remain in full force and effect.

**JACKSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

**JOSEPHINE COUNTY
BOARD OF COUNTY COMMISSIONERS**

Absent 6-7-30-2015
Doug Breidenthal, Chair

K. O. Heck
K. O. Heck, Chair

Rick Dyer P.D. 6-7-30-2015
Rick Dyer, Vice Chair

Cheryl Walker
Cheryl Walker, Vice Chair

Colleen Roberts 6-7-30-2015
Colleen Roberts, Commissioner

Simon G. Hare
Simon G. Hare, Commissioner

Approved as to Form:

Approved as to Form:

[Signature]
Jackson County Legal Counsel

Leah C. Harper
Josephine County Legal Counsel

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JACKSON COUNTY

Oregon

Office of County Counsel

Joel C. Benton
County Counsel

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www.jacksoncounty.org

June 26, 2018

VIA ELECTRONIC MAIL to:
Joli.A.Whitney@pers.state.or.us
PERS.BOARD@pers.state.or.us

Chair John Thomas
Oregon Public Employees Retirement Board
11410 SW 68th Parkway
Tigard, OR 97281

RE: Written Testimony for June 27, 2018 PERS Board Meeting
Agenda Item: Reconsideration of Jackson/Josephine County 2017-19 Employer Contribution Rates

Dear Chair Thomas:

I submit this testimony on behalf of Jackson County regarding the above agenda item scheduled for consideration at the June 27, Special PERS Board Meeting.

In November 2016, the Board adopted 2017-19 employer rates for Jackson and Josephine Counties ("Rate Order"). Over the Counties' objection, that Rate Order allocated to the Counties the transition liability of a separate dissolved entity, The Job Council. The Counties timely filed a petition for judicial review from that order in Marion County Circuit Court (Case No. 17CV01027). The Court Action remains pending, although its resolution has been substantially delayed by the Board's June 1 decision to reconsider its prior Rate Order.

I urge the Board to adopt Option #2, which is consistent with past practice of PERS to not assign liability of a dissolved entity to a third party without an agreement. It would also provide finality to this issue and require PERS staff to look to the proper parties or the contingency fund to address TJC's transition liability. In all events, the Board should decline to reaffirm the Rate Order for several reasons.

First, PERB should not condone PERS staff's effort to create a new record solely for litigation purposes by purporting to have the Board ratify analysis that was not completed by PERS staff or PERB at the time the Rate Order was adopted in November 2016. Although PERS staff contends in its memorandum that it analyzed whether The Job Council ("TJC") was insolvent and whether it was appropriate to use the Contingency Reserve prior to the Board's November 2016 meeting, the facts discovered during discovery in the litigation do not support that assertion. Even though TJC provided PERS staff with notice of its intent to dissolve months before its dissolution date in June 2016, PERS staff did nothing to

investigate TJC's financial condition or whether any of its assets or services would be transferring to a new entity or entities.

After the Board directed PERS staff to continue working with TJC and the Counties on options for allocating the transition liability, PERS staff did nothing more than engage in a few internet searches of the Rogue Workforce Partnership and hold a cursory meeting with the Counties. At that meeting, it was apparent to the Counties' representatives that PERS did not understand what had occurred following TJC's dissolution and, more specifically, that neither County had received any assets or employees from TJC nor were they performing any of TJC's functions. Instead, as detailed in the attached letter from James Fong to Debra Hembree, two other entities—the Rogue Workforce Partnership and the ResCare—had either received TJC's assets and employees and were now performing TJC's functions. Therefore, it is inappropriate and there is no basis in fact or law for the Board then or now to find that either County is the successor entity to TJC and to assign the transitional liability of TJC to the Counties.

Second, PERB should not retroactively apply to TJC an administrative rule (OAR 459-009-0400) that had not been adopted (or even proposed to the Board) in November 2016. Application of that rule in this instance is inconsistent with Oregon law and prior agency practice. Indeed, over the course of nearly 20 years, PERS has taken no action on more than 15 non-report employers who have an unfunded actuarial liability or a transition liability. In the three instances in which PERS allocated the liability to another PERS employer(s) it did so by agreement or legislation. Of the other entities, at least one, like TJC, was created by intergovernmental agreements, but PERS has not sought payment from the sponsoring governments.

For all of these reasons as well as those previously presented to the Board, the Board should decline to reaffirm the Rate Order and should, instead, adopt Option #2.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joel C. Benton', written over a thin horizontal line.

Joel C. Benton
County Counsel



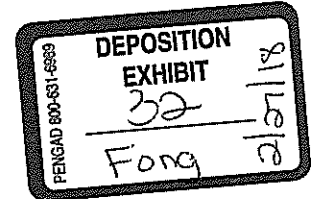
**ROGUE WORKFORCE
PARTNERSHIP**

100 E. Main St., Suite A
Medford, OR 97501-6125
(541) 842-2500

November 3, 2016

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

Via Email and First Class Mail



Dear Debra:

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

Sincerely,


James G. Fong
Executive Director

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



Josephine County, Oregon

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June 26, 2018

Chair John Thomas
Oregon Public Employees Retirement Board
11410 SW 58th Parkway
Tigard, OR 97281

VIA ELECTRONIC MAIL to:
Joli.A.Whitney@pers.state.or.us
PERS.BOARD@pers.state.or.us

RE: Written Testimony for June 27, 2018 PERS Board Meeting - Agenda Item - Reconsideration of Jackson/Josephine County 2017-19 Employer Contribution Rates

Dear Chair Thomas:

I submit this testimony regarding the above agenda item scheduled for consideration at the June 27, Special PERS Board Meeting.

In November 2016, the Board adopted 2017-19 employer rates for Jackson and Josephine Counties ("Rate Order"). Over the Counties' objection, that Rate Order allocated to the Counties the transition liability of a separate dissolved entity, The Job Council. The Counties timely filed a petition for judicial review from that order in Marion County Circuit Court (Case No. 17CV01027). The Court Action remains pending, although its resolution has been substantially delayed by the Board's June 1 decision to reconsider its prior Rate Order.

I/ urge the Board to adopt Option #2, which is consistent with past practice of PERS to not assign liability of a dissolved entity to a third party without an agreement. It would also provide finality to this issue and require PERS staff to look to the proper parties or the contingency fund to address TJC's transition liability. In all events, the Board should decline to reaffirm the Rate Order for several reasons.

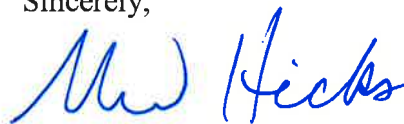
First, PERB should not condone PERS staff's effort to create a new record solely for litigation purposes by purporting to have the Board ratify analysis that was not completed by PERS staff or PERB at the time the Rate Order was adopted in November 2016. Although PERS staff contends in its memorandum that it analyzed whether The Job Council ("TJC") was insolvent and whether it was appropriate to use the Contingency Reserve prior to the Board's November 2016 meeting, the facts discovered during discovery in the litigation do not support that assertion. Even though TJC provided PERS staff with notice of its intent to dissolve months before its dissolution date in June 2016, PERS staff did nothing to investigate TJC's financial condition or whether any of its assets or services would be transferring to a new entity or entities.

After the Board directed PERS staff to continue working with TJC and the Counties on options for allocating the transition liability, PERS staff did nothing more than engage in a few internet searches of the Rogue Workforce Partnership and hold a cursory meeting with the Counties. At that meeting, it was apparent to the Counties' representatives that PERS did not understand what had occurred following TJC's dissolution and, more specifically, that neither County had received any assets or employees from TJC nor were they performing any of TJC's functions. Instead, as detailed in the attached letter from James Fong to Debra Hembree, two other entities—the Rogue Workforce Partnership and the ResCare—had either received TJC's assets and employees and were now performing TJC's functions. Therefore, it is inappropriate and there is no basis in fact for the Board then or now to find that either County is the successor entity to TJC and to assign the transitional liability of TJC to the Counties.

Second, PERB should not retroactively apply to TJC an administrative rule (OAR 459-009-0400) that had not been adopted (or even proposed to the Board) in November 2016. Application of that rule in this instance is inconsistent with Oregon law and prior agency practice. Indeed, over the course of nearly 20 years, PERS has taken no action on more than 15 non-report employers who have an unfunded actuarial liability or a transition liability. In the three instances in which PERS allocated the liability to another PERS employer(s) it did so by agreement or legislation. Of the other entities, at least one, like TJC, was created by intergovernmental agreements, but PERS has not sought payment from the sponsoring governments.

For all of these reasons as well as those previously presented to the Board, the Board should decline to reaffirm the Rate Order and should, instead, adopt Option #2.

Sincerely,



Wally Hicks
County Legal Counsel

Attachment
cc: Joel Benton



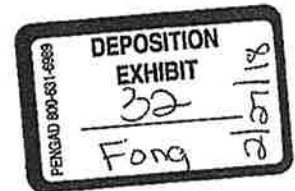
**ROGUE WORKFORCE
PARTNERSHIP**

100 E. Main St., Suite A
Medford, OR 97501-6125
(541) 842-2500

November 3, 2016

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

Via Email and First Class Mail



Dear Debra:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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