

CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Financial Services Division

TO: Chair and Members Audit, Finance and Administration Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: December 9, 2013	
SUBJECT/REPORT NO: Hamilton Street Railway (HSR) Pension Plan, Pension Benefits Guarantee Fund (PBGF) Exemption (City Wide) (FCS13086)	
SUBMITTED BY: Mike Zegarac Acting General Manager Finance & Corporate Services	PREPARED BY: Barb Howe (905) 546-2424 ext. 5599
SIGNATURE: 	

RECOMMENDATION

That the Mayor and City Treasurer correspond with the Minister of Finance to request the Hamilton Street Railway (HSR) Pension Plan (1994) be included as an exempt plan under Section 47(1) of Regulation 909 to the *Pension Benefit Act* (PBA) RSO 1990, retroactive to January 1, 2009, as per the letter attached as Appendix "A" to Report FSC13086.

EXECUTIVE SUMMARY

Under Section 47(1) of the Regulations to the Pension Benefit Act (PBA), closed plans administered by various municipalities are named as exclusions to the Pension Benefits Guarantee Fund (PBGF) assessment fees. The Hamilton Street Railway Pension Plan (1994) is not named among the listed exempt plans. Prior to 2009, the plan text named the Hamilton Street Railway (HSR) as the administrator and employer of the plan. The

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Plan was revised and restated as of January 1, 2009, and among the changes included a revision making the City the administrator and an employer of the plan.

It is believed, these changes will now make the plan exempt of the PBGF assessment fees. As a result, attached as Appendix A to FCS13086, is a letter to the Minister of Finance requesting an amendment to include the HSR plan in Section 47(1) of the regulations to the PBA, retroactive to January 1, 2009, and a refund of all assessment payments made between 2009 and 2013.

This change, if approved, would result in a retroactive refund of \$657,584 and an annual savings of \$150,000.

Alternatives for Consideration –Not Applicable.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial:

It is recommended that the City make an application to the Ministry of Finance to include the Hamilton Street Railway Pension Plan (1994) as an exempt plan under Section 47(1) of the regulations to the Pension Benefit Act. In addition, that a request be made to have the change made retroactive to January 1, 2009, when the plan was revised and restated. If approved, both retroactively and on a go forward basis, such a change will result in a refund of \$657,584 for past assessment fees plus a savings of approximately \$150,000 per year.

Staffing: None.

Legal:

To initiate a change to Section 47(1) of Regulation 909 to the Pension Benefit Act RSO 1990 requires that the Treasurer, as the administrator of the plan, make a request in writing to the Minister of Finance.

HISTORICAL BACKGROUND (Chronology of events)

The Pension Benefits Guarantee Fund (PBGF) was established under the Ontario Pension Benefits Act in 1980. To this day, Ontario remains the only province to provide a protection program for members and beneficiaries of privately sponsored single-employer defined benefit pension plans in the event of plan sponsor insolvency.

Participation in the PBGF is mandatory for all registered defined benefit pension plans in Ontario, with a few exceptions, namely:

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- multi-employer pension plans;
- jointly-sponsored pension plans;
- plans established for fewer than three years; and
- select plans named in Regulations made under the Ontario Pension Benefits Act.

Section 47(1), of Regulation 909 of the Pension Benefit Act exempts various closed pension plans administered by municipalities including the Hamilton Wentworth Retirement Plan (HWRF) and the Hamilton Municipal Retirement Fund (HMRF), administered by the City of Hamilton. The Hamilton Street Railway Plan is not included among the named plans.

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

An application to the Ministry of Finance is required to amendment to Section 47(1) of the Regulations to the Pension Benefit Act to include the Hamilton Street Railway Pension Plan (1994) as an exempt plan.

RELEVANT CONSULTATION

Legal Services Division, City of Hamilton; and
Ministry of Finance Staff

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The purpose of the PBGF is to guarantee payment of certain benefits in respect of employment in Ontario in the event a pension plan is wound up in whole or in part under certain circumstances. The administrator of a pension plan providing defined benefits is required to file a certificate in respect of the annual assessment payable to the PBGF.

The PBGF assessment fee is based on a flat fee for each member of the plan plus an additional fee based on the solvency deficit of the fund. Prior to the January 1, 2009 valuation, the Hamilton Street Railway Pension Plan was in a surplus position and consequently the fee owed was inconsequential since it was limited to a flat fee per member. Pursuant to a Settlement Agreement reached between Amalgamated Transit Union (ATU) and the City, the plan text was revised and restated to incorporate provisions

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of the settlement; consequently as of January 1, 2009, the plan is now in a deficit position. As a result, the PBGF fees have increased. Below is a table of the assessment fees paid since the first deficit valuation dated as at January 1, 2009:

Assessment Year	Year Paid	PBGF Fee
2008	2009	\$ 119,340.00
2009	2010	\$117,396.00
2010	2011	\$116,640.00
2011	2012	\$152,131.24
2012	2013	\$152,077.24

Since 2009, the PBGF fees have been funded from the pension reserve. Under Section 47(1), of the regulations to the Pension Benefit Act, certain plans are exempt from the PBGF assessment. The City believes that now that the plan text has been revised and restated effective January 1, 2009, to include a change that names the City as the administrator and an employer under the plan, they now qualify to be exempt of these fees.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

None.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES / SCHEDULES

Appendix "A" to Report FCS13086 - Letter to Minister of Finance.

December 12, 2013

The Honourable Charles Sousa
Minister of Finance
7 Queen's Park Crescent
7th Floor
Toronto, ON M7A 1Y7

Dear Minister Sousa:

Re: Request by the City of Hamilton to include the City's Closed "Hamilton Street Railway Pension Plan (1994)" as an exempt plan under Section 47(1) of General Regulation R.R.O 1990, Regulation 909 Retroactive to January 1, 2009

The purpose of this letter is to request your assistance in obtaining the necessary amendment to Section 47(1) of Regulation 909 of R.R.O. 1990, pursuant to the *Pension Benefits Act*, R.S.O 1990 c.P. 8 Section 115(1)(x) to add the City's closed Hamilton Street Railway Pension Plan (1994) to the List. Section 47(1) of Regulation 909 under the *Pension Benefits Act* exempts a number of public defined-benefit pension plans from certain reporting requirements under Section 18(7) of Regulation 909, certain winding up responsibilities under Section 30 of the Regulation and the payment of annual assessments to the Provincial Pension Benefits Guarantee Fund under Section 37 of the Regulation.

You will see that the Plans listed in Section 47(1) are plans that are in essence publicly guaranteed by the municipalities concerned. Indeed, the City already has two other closed Plans exempted; being the Corporation of the City of Hamilton Municipal Retirement Fund and the Hamilton-Wentworth Retirement Fund. The reason for requesting the City's Hamilton Street Railway Pension Plan (1994) to be exempted is as a result of a recently-completed "Class Action Proceeding" in the courts. That Court Action resulted in the closed Hamilton Street Railway Pension Plan, retroactive to January 1, 2009, becoming administered by the City and the City designated as the Plan Administrator and an employer of that plan. That essentially put the City in the position of the guarantor as the City is for the other two; i.e. the Corporation of the City of Hamilton Municipal Retirement Fund and the Hamilton-Wentworth Retirement Fund.

Prior to 2009, the Hamilton Street Railway Pension Plan was independent of the City, but now is the responsibility of the City.

In addition to seeking the necessary amending Regulation, pursuant to Section 115(1)(x) to exempt the Plan going forward, and requesting the exemption be made

retroactive to the January 1, 2009 date, the City is also requesting that a retroactive payment be made to the City in the amount of \$657,584.00 for the assessments paid to the Pension Benefits Guarantee Fund for 2009, 2010, 2011, 2012 and 2013, as per the Chart below:

Assessment Year	Year Paid	PBGF Fee
2008	2009	\$119,340.00
2009	2010	\$117,396.00
2010	2011	\$116,640.00
2011	2012	\$152,131.24
2012	2013	\$152,077.24

The reason for the request for the return of the assessments to the City back to 2009 is that the assessments were, in essence, a duplication of the public responsibility for guaranteeing the benefits under that defined- benefit pension plan, which "fell to the City" as of January 1 2009.

City Council on December 11, 2013 authorized this request to you and the City would be grateful if this request could be accommodated in terms of the exemption being made retroactive for the years 2009-2013 and then onward and as well there be a payment for the years 2009 through 2013 as per the Chart above.

Attached is a copy of the Restated Plan Text showing the City as the Administrator and employer of the Plan and its retroactivity to January 1, 2009. If you require any further information, the City would be happy to provide that to you so that the necessary Regulation could be processed.

Yours very truly,

R. Bratina
Mayor

Mike Zegarac, Acting General Manager/Treasurer
Finance & Corporate Services

Attachment: Restated Plan Text