



**CITY OF HAMILTON**  
**CORPORATE SERVICES DEPARTMENT**  
**Financial Services**

<b>TO:</b>	Chair and Members Audit, Finance and Administration Committee
<b>COMMITTEE DATE:</b>	August 15, 2018
<b>SUBJECT/REPORT NO:</b>	Hamilton Street Railway (HSR) Pension Plan - Pension Benefit Guarantee Fund (PBGF) Exemption (FCS18075)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Barbara Howe (905) 546-2424 Ext. 5599
<b>SUBMITTED BY:</b>	Rick Male Director, Financial Services, Taxation and Corporate Controller Finance and Corporate Services Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the Mayor, on behalf of Council, send a letter to the Premier and the Minister of Finance to lobby for a retroactive exemption of Pension Benefit Guarantee Fund (PBGF) for the period 2009 to 2014 and to request a meeting with the Premier and/or Minister to discuss the matter.

**EXECUTIVE SUMMARY**

In 2009, The City of Hamilton (City) was deemed to be the plan sponsor for the Hamilton Street Railway (HSR) pension plan rather than Hamilton Street Railway. As such the City should have been exempt from paying Pension Benefit Guarantee Fund (PBGF) fees on this plan effective January 1, 2009. The City requested the exemption, however, it took almost six years to receive a response from the Province granting the exemption; and unfortunately, the response only provided an exemption on a go forward basis. Ultimately, this means that the City will have paid in excess of \$800,000 in PBGF fees which it should have been exempt from paying. The PBGF funds are meant to help fund the pension obligations in single employer defined pension benefit plans in the event that the plan sponsors become insolvent. It is extremely improbable that the City of Hamilton would become insolvent and as such the HSR pensioners will never be eligible to receive any benefits from the PBGF.

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*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

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The City engaged a Lawyer on a contingency fee basis in an attempt to have the fee exemption applied retroactively to 2009. This was not successful and now having exhausted all legal recourse available, the City will pay the 2013 and 2014 outstanding PBGF to avoid penalties and interest. The fees for 2013 and 2014 amount to \$293,880. With the change in the Provincial government, it is recommended that the Mayor continue to lobby the Premier and the new Provincial government to have the exemption applied retroactive to January 1, 2009.

***Alternatives for Consideration – Not Applicable***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: The Province has provided the HSR plan an exemption from paying the PBGF fees effective January 1, 2015 onward and has denied the request for retroactivity to 2009, when the City became the plan sponsor and asked for the exemption.

The City will have paid \$832,124 in PBGF fees for the period 2009 to 2014 inclusive.

The most current valuation for the HSR pension plan shows that there is a going concern deficit of \$39 million in the plan which the City is responsible to fund. Should the City be successful in getting the PBGF exemption applied back to 2009, the recovered fees could be used to partially fund the plan deficit.

The HSR plan will require a new valuation at December 31, 2019 and under legislation any new deficits arising from the valuation can be deferred 12 months. The HSR plan is expected to continue to require special payments to fund its future deficits.

Staffing: None

Legal: The amendment to Section 47(1) of Regulation 909 to the Pension Benefit Act RSO 1990 to exempt the HSR plan came into force January 1 2016. To provide retroactivity, the Province would have to provide a subsequent amendment to the regulations.

**HISTORICAL BACKGROUND**

The Pension Benefit Guarantee Fund is 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 fund is mandatory unless exempt under Regulation 909 of the Pension Benefit Act (PBA).

Section 47(1) of Regulation 909 to the Pension Benefit Act (PBA) lists closed plans sponsored by various municipalities including the Hamilton Wentworth Retirement Plan

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(HWRF) and the Hamilton Municipal Retirement Fund (HMRF). Presumably they have been given exempt status since there is no or little risk that a public-sector employer will become insolvent.

Prior to the 2009 court case the employer and sponsor of the HSR pension plan was the HSR. The 2009 court case determined that the City of Hamilton was the actual employer and sponsor. Consequently, the City, seeking to make the Hamilton Street Railway plan exempt under this Regulation, began making inquiries in early 2010 to both the Financial Services Commission of Ontario (FSCO) and the Ministry of Finance on the process required to become an exempt plan. No response was received from our various attempts.

In 2013, the HSR plan text was revised and restated to incorporate the changes reflected in the 2009 court case, including the naming of the City as the plan sponsor rather than the HSR, which would further support our claim for a PBGF exemption. As a result, in December 2013 a recommendation from AF&A Report 13-011 (Item 8.10) was approved at the December 11, 2013 Council Meeting, directing the Mayor and City Treasurer to request that the Minister of Finance exempt the HSR.

A response to our letter was received in March 2014 requesting further information which we promptly provided in April 2014. There was no further communication from the Ministry and by September 2014 the City followed up to the inquiry only to find that the Ministry representative assigned to the case had retired and our request had been lost.

Over the course of the next 15-month period the Ministry did keep us apprised of the status of our request and by December 2015, almost 6 years after our original inquiry, we received a notification that the amended regulation was approved on a go forward basis, meaning that we would be responsible for fees required up to 2015.

During this same 15-month period, the City made various requests to FSCO to defer the outstanding PBGF fees pending the Ministry's decision, none of which were acknowledged, other than their continued delinquent payment notifications.

In 2016, the City with the assistance of the plan's actuary made another attempt to exempt the plan for the retroactive period 2009-2015, but to no avail. Finally, in 2017 we engaged McCarthy Tetrault LLP on a contingency basis to seek a retroactive refund of \$538,244 for the period 2009-2012 and a discharge from the outstanding payments for 2013-2015.

In late May 2018, FSCO contacted our legal counsel and advised that they would not assess fees for 2015 citing that upon further review the legislation applied to 2015 and therefore would exempt the City for the 2015 fees. The retroactive period of 2009-2014 was still denied.

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**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

None

**RELEVANT CONSULTATION**

McCarthy Tetrault LLP was consulted on the feasibility of pursuing retroactivity.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

None

**ALTERNATIVES FOR CONSIDERATION**

None.

**ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

**Community Engagement & Participation**

*Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.*

**Our People and Performance**

*Hamiltonians have a high level of trust and confidence in their City government.*

**APPENDICES AND SCHEDULES ATTACHED**

None

BH/dw