



Agenda Item No. (10)(D)
Special Order of Business

To: Board of Directors
Meeting of November 19, 2021

From: Elizabeth J. Masson, Partner, Hanson Bridgett LLP
Joseph M. Wire, Auditor-Controller
Denis J. Mulligan, General Manager

Subject: **INFORMATIONAL REPORT ON PENSION PLANS COVERING DISTRICT EMPLOYEES**

Recommendation

This report on the pension plans covering Golden Gate Bridge, Highway and Transportation District (District) employees is provided for informational purposes only and does not require any action.

Summary

All eligible District employees participate in one of four pension plans,¹ depending on their union affiliation:

- **CalPERS**: Miscellaneous (all employees except those represented by ATU, IBU or MEBA) employees participate in the CalPERS Pension Plan.
- **Amalgamated Transit Union (“ATU”)**: ATU bus operators participate in the ATU Pension Plan.
- **Inland Boatmen’s Union (“IBU”)**: Ferry deckhands and terminal agents participate in the IBU Pension Plan.
- **Marine Engineers’ Beneficial Association (“MEBA”)**: Ferry vessel masters participate in the MEBA Pension Plan.

The first section of this report provides comparison data about the four pension plans covering District employees. The second section provides additional information about the ATU Pension Plan.

I. Comparison Data of Four Pension Plans Covering District Employees

¹ For more information on each plan, please refer to Footnote (11) Pension Plans, of the District’s Annual Comprehensive Financial Report (“CAFR”) for the fiscal year ending June 30, 2021.

Covered District Participants

The approximate number of plan participants who are (1) active employees, and (2) retirees or terminated employees to whom benefits are owed (“terminated vested”), are summarized below:

District Covered Participants

	Actives	Retirees/ Terminated Vested	Total District Participants
CalPERS	453	810	1263
ATU	250	433	683
IBU (includes casuals)	131	26	157
MEBA	25	13	38

Contribution Rates

For each plan, the District’s and covered employees’ contributions as a percentage of wages is shown in the following chart and described in detailed below.

FY 21/22 Contribution Rates

	District	Employee
CalPERS - Classic 2.5% at 55	35.43%	8%
CalPERS - New Classic 2.0% at 60	35.43%	7%
CalPERS - PEPRA 2.0% at 62	35.43%	7%
ATU - Classic	32.50%	7%
ATU - PEPRA	32.50%	7.25%
IBU - Deckhands	21.32% ²	2.5%
IBU - Ticket Agents	24.07% ³	2.5%
MEBA	14.34% ⁴	1%

- **CalPERS**: The District’s CalPERS contribution rate is 35.43%, or \$17.6mm budgeted for FY 21/22. The employee contribution rate ranges from 7% - 8% depending on the employee’s CalPERS tier.
- **ATU**: The District’s ATU contribution rate is 32.5%, or \$7mm budgeted for FY 21/22. ATU “classic” employees contribute 7%, while ATU PEPRA employees contribute 7.25%.
- **IBU**: The District contributes 21.32% for the deckhands, and 24.07% for the terminal agents, or \$796K budgeted for FY 21/22. The employee contribution rate is 2.5%.

² 21.32% is comprised of \$456.72 per month and 7.5% of wages per bargaining agreement (equivalent to 15.17% of wages) and 6.15% in supplemental contributions from the Plan’s rehabilitation plans.

³ 24.07% is comprised of \$456.72 per month and 8% of wages per bargaining agreement (equivalent to 17.13% of wages) and 6.95% in supplemental contributions from the Plan’s rehabilitation plans.

⁴ 14.34% consists of 8% to the MEBA Pension and 6.35% into the District’s 457 Plan.

- **MEBA:** The District contributes 14.34% or \$329K budgeted for FY 21/22. The employee contribution rate is 1% (deferred to the 457 Plan).

Contribution rates for the ATU Plan are established by the bargaining parties and memorialized in the parties' Memorandum of Understanding (MOU), while benefit levels are set by the Trust Board that administers the ATU Plan.

Market Value of Plan Assets

The approximate market value of total plan assets for each plan is shown below:

Pension Market Value

	Market Value Date	Market Value	
CalPERS	6/30/21	\$ 469.0	Billion
ATU	6/30/21	\$ 106.2	Million
IBU	6/30/21	\$ 302.4	Million
MEBA	4/30/21	\$ 1.0	Billion

The market values listed above for the ATU Plan directly relate solely to District employees and retirees. Because the CalPERS pension plan, the IBU Plan and the MEBA Plan are multi-employer plans to which the District is one of several contributing employers, the market values listed for those plans relate mostly to non-District employees and retirees, i.e. employees and retirees of all other employers that contribute to the plans.

Percentage Funded

The funded percentage of each plan is the market value ("MV") of plan assets as a percentage of the plan's accrued benefit liability. According to each plan's most recent actuarial report, the plan's funded percentage is as follows:

Percentage Funded (MV of Assets / Accrued Liability)

	Actuarial Valuation Date	% Funded
CalPERS	6/30/20	72%
ATU	1/1/21	52%
IBU	7/1/20	78%
MEBA	1/1/20	92%

Investment Return

Assets of each plan are invested according to the plan's investment policy. The five-year annualized investment return of each plan is as follows:

Five Year Annualized Investment Return

	Five Year Annualized Return as of	Five Year Annualized Return
CalPERS	6/30/21	10.3%
ATU	6/30/21	8.2%
IBU	6/30/21	10.5%
MEBA	12/31/20	5.7%

Of note, the MEBA pension's conservative investment strategy differs from the others as it is targeted at maintaining assets rather than asset growth.

II. Additional Information about ATU Pension Plan

Plan Governance – Duties and Powers of Board of Trustees

The ATU Plan is governed by a six-member Board of Trustees appointed by the District's Board of Directors, three of whom are nominated by each of the District and the ATU. The ATU Pension Trust Board operates independently from the District or the ATU Union. Under the Trust Agreement establishing the ATU Plan, unit voting applies to all Board decisions, meaning that the District-nominated Trustees as a unit cast one vote and the ATU-nominated Trustees as a unit cast one vote. Any deadlocked vote must be submitted to arbitration in accordance with the Trust Agreement.

The Board of Trustees is subject to fiduciary standards under Article XVI, Section 17 of the California Constitution, which requires the Board to discharge its duties with respect to the Plan solely in the interest of, and for the exclusive purposes of (1) providing benefits to participants and their beneficiaries, (2) minimizing employer contributions to the Plan, and (3) defraying reasonable expenses of administering the Plan. The Constitution further provides that, consistent with the exclusive fiduciary responsibilities vested in the Board, the Board has the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the Plan.

The Trust Agreement, and the written Plan document, authorize the Board of Trustees to establish rules and procedures for Plan administration, invest Plan assets, contract with professionals to assist with Plan administration and operations, and make certain changes to benefits under the Plan, subject to the fiduciary standards described above. The Plan document requires the Board, in making benefit changes, to consider factors including but not limited to the Plan's funding status and estimated accrued liability for benefits, the estimated actuarial impact of the change, and the impact of changes in the cost of living of retirees.

Minimum Funding Standards under Federal Law Do Not Apply – Board of Trustees Is Not Legally Required to Take Action to Address Funding Issues

The ATU Plan, the IBU Plan and the MEBA Plan all cover employees in bargaining units that are subject to collective bargaining agreements or MOUs with the District. However, unlike the IBU and MEBA pension plans, the ATU Plan is not subject to federal law governing multi-employer, private-sector pension plans that cover employees in a collective bargaining unit. The rules that govern the IBU and MEBA pension plans require compliance with minimum funding standards set forth in the Internal Revenue Code and related federal law. For the IBU and MEBA pension plans, if the funded percentage of the plan goes below certain statutory thresholds, the plan's governing board must take action specified within the legal framework to increase contributions, decrease benefits, or a combination of both. The actions taken must be designed to improve the plan's funding status to certain statutory benchmarks within a 10-year period.

There is no similar legal framework that applies to the ATU Pension Plan, meaning that the Plan's Board of Trustees is not legally required to take any specific action to improve the ATU Plan's funding status, regardless of the funded percentage. However, as fiduciaries the ATU Trustees are legally obligated to take steps to insure the financial soundness of the Plan, separate from the prescriptive legal framework that governs the IBU Plan and MEBA Plan.

Although the ATU Plan's Board of Trustees is not legally required to take any specific action to address the Plan's funding status, the Board previously has requested that the Plan's actuary provide an analysis of potential Plan changes and their effect on the Plan's funding level. In response, the Plan's actuary identified Plan changes that were projected to eventually result in fully-funded status of the Plan at the current contribution levels.

Distinctive Benefit Features that Compound ATU Plan Funding Issues

The ATU Plan contains benefit features that are unlike the benefit features of the District's other three pension plans, and that compound the Plan's funding issues by increasing the cost of the funding the pensions:

- “Unreduced” early retirement: Under CalPERS, the IBU Plan and the MEBA Plan, if a participant retires prior to “normal retirement age” as defined in the plan, their benefit amount is reduced to account for the early retirement, i.e. the fact that the retiree is starting to receive benefit payments earlier, and will thus receive more periodic payments, as well as for the additional earnings potential associated with the early receipt of benefits. Under the ATU Plan, there is no reduction in benefit amounts for early retirements, and employees can retire as early as age 50, with 25 years of service.
- Subsidized joint and survivor annuity: Under all four District pension plans, a married participant may elect a “survivor annuity” form of benefit, meaning that when the retiree dies, a monthly benefit will continue to be paid to the retiree's surviving spouse. One such option is called a “50% joint and survivor annuity”, under which the surviving spouse will receive 50% of the amount that is paid to the retiree. Under CalPERS, the IBU Plan and the MEBA Plan, the amount of the benefit paid to a retiree who selects that option is

reduced to account for the cost of the benefit paid to the retiree's survivor, so that the total benefit paid does not exceed the amount the retiree earned under the plan. Under the ATU Plan, however, the benefit paid to the retiree is not reduced, meaning the retiree receives the full amount of the benefit earned under the plan (i.e. the amount that would be paid if there were no survivor benefit), and the retiree's surviving spouse also continues to receive 50% of that amount after the retiree dies.

- Pension "Spiking" for Classic Members: Because of the unique scheduling structure of work performed by employees covered by the ATU Plan (bus operators), participants in the ATU Plan are able to "spike" their pension in the year prior to their retirement by working a significant amount of overtime hours such that their retirement benefit amount does not correlate to their typical earnings. The rules for calculating retirement benefit amounts under the other three District pension plans do not accommodate this type of pension "spiking", meaning that participants in those plans generally are paid a retirement benefit related to their typical earnings over a given period of employment (for example, under the MEBA Plan, earnings over a three-year period or five-year period are used to determine benefit amounts). As discussed below, changes intended to address pension spiking under the ATU Plan that would result in benefit amounts more closely related to covered employees' typical earnings, and reduce future underfunding of the Plan, could be made for current employees under the California "vested rights" rule.
- Service Credit: Under all of the District's pension plans, a participant's retirement benefit amount is determined in part by the employee's years of "credited service" which generally relates to years of active employment. Until last year, the ATU Plan included provisions under which employees who were absent from work due to an unpaid personal leave of absence (for example, due to a suspension of their driver's license) continued to earn additional years of service credit under the Plan during the leave of absence. The ATU Plan's Board of Trustees adopted a Plan amendment in 2020 to revise the Plan's service credit rules to align with the CalPERS service credit rules, and eliminated the ability to earn service credit during an unpaid leave of absence, going forward.

2020 "ACERA" Case on "Vested Rights" Would Allow Benefit Changes for Current Employees

Generally, under the California "vested rights" rule, pension benefits for current employees of a public agency may be reduced only in limited circumstances. The recent adoption of the above mentioned new service credit rules by the ATU Plan's Board of Trustees is consistent with this vested rights rule, as applied by the California Supreme Court last year in the case of *Alameda County Deputy Sheriffs' Association et al. v. Alameda County Employees' Retirement Association et al.* ("ACERA").

The Court ruled in the *ACERA* case that pension benefits for current employees can be changed only if the change "bears some material relation to the theory of a pension system and its successful operation", e.g., a change to address pension "spiking" or other abusive practices. A change made for such a permissible purpose that does not include a new "comparable advantage" for current employees is allowed, if providing a comparable advantage would undermine, or be inconsistent with, the permissible purpose of the change. Additional changes to the ATU Plan affecting benefits

for current employees would be subject to the *ACERA* test, meaning benefit changes for a permissible purpose would not need to include a comparable advantage, if doing so would undermine, or be inconsistent with, the permissible purpose of the change.

Administration and Operation – Recent Action by the Board of Trustees to Address Historical Issues with Quality of Services Provided by Plan Professionals

- **Attorneys:** For several years, the ATU Plan’s Board of Trustees was advised by legal counsel who did not have significant experience working with governmental pension plans. The Board of Trustees recently completed a “request for proposal” process to replace the outgoing legal counsel (a qualified firm engaged in 2019) with a firm that has experience advising public retirement boards in California.
- **Administrator:** Historically, the ATU Plan was not administered by a professional third-party administrator. In mid-2019, the Board of Trustees hired a professional third-party administrator to perform day-to-day Plan administrative functions.
- **Investment Consultant:** As shown below, the ATU Plan’s investment returns trailed the applicable benchmark in every time frame over the past 10 years. Hypothetically, for a plan with \$100 million in assets, a 2% lower return over a five-year period equates to approximately \$10.4 million in lost investment earnings. The Board of Trustees recently conducted a “request for proposal” and replaced the Plan’s investment consultant.

The following excerpt from the ATU Plan investment performance report for the period ending March 31, 2021 shows that the Plan’s investment return has historically ranked well below the median (50th percentile) return, with the 3-year annualized return ranking in the 97th percentile, and the 5-year annualized return ranking in the 98th percentile. This chart also shows that the “benchmark” portfolio has consistently outperformed the Plan’s investment portfolio, with the benchmark earning higher returns on a 1-year, 3-year, 5-year, 7-year and 10-year annualized return basis.

Golden Gate Transit - ARB

TOTAL FUND PERFORMANCE SUMMARY - GROSS

	Market Value	Ending March 31, 2021											
		3 Mo	Rank	1 Yr	Rank	3 Yrs	Rank	5 Yrs	Rank	7 Yrs	Rank	10 Yrs	Rank
Total Plan Composite	\$103,808,984	2.8%	59	31.1%	77	6.2%	97	7.8%	98	6.5%	89	7.2%	83
Allocation Index		2.7%	62	31.8%	66	7.6%	91	8.9%	85	--	--	--	--
Policy Index		2.1%	90	31.9%	64	9.0%	76	9.6%	55	8.1%	37	8.8%	14
InvMetrics Public DB \$50mm-\$250mm Gross Median		3.0%		32.3%		9.6%		9.9%		7.7%		7.9%	

Fiscal Impact

There is no fiscal impact associated with this report.

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