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# Clear Communication is Key to Taxpayers Understanding Government Pension Plan Reporting Changes

**by Mary S. Stone, Ph.D., CPA and Robert H. Attmore, CPA**


**Mary S. Stone, Ph.D., CPA**


**Robert H. Attmore, CPA**

Does your government participate in traditional state administered or locally administered pension plans? If yes, you should know about new changes that make pension information more prominent and transparent.

Clear concise communication is essential when change occurs, misinformation abounds, and facts about the change are difficult to communicate in non-technical terms. Recent changes in the way governments measure and disclose information about pension plan assets and liabilities pose a communication challenge for counties, cities, states, school districts and other government entities sponsoring or participating in defined benefit pension plans.

For many government entities, the changes will make pension plans appear to be less well-funded than previously. This will likely prompt challenging questions from the media, plan participants and taxpayers. Before sensational stories about pension underfunding revealed in the financial statements of local and state governments begin, elected and appointed officials, trustees, and others involved with administering public pension plans need to understand the changes. They can then respond to constituents' questions and begin using the new information to make better decisions.

This article explains key changes in government pension accounting and reporting that occurred in fiscal-year 2014 when pension plans began applying Governmental Accounting Standards Board (GASB) Statement No. 67, *Financial Reporting for Pension Plans* and that will occur in FY 2015 when counties and other government entities begin applying GASB Statement No. 68, *Employer Pension Accounting*. It also suggests ways policy-makers can use the new pension disclosures to make better funding decisions, evaluate calls for benefit changes, and make other important policy decisions.

## New terms/New Disclosures

The employer's reported *net pension liability* computed following GASB's new standards is the item most likely to attract attention. Figure 1 shows the disclosure the Town of Ocean City, Maryland made in footnote 11 of its FY 2014 Comprehensive Annual Financial Report (CAFR). The disclosure is for the town's General Employees' Pension Plan Trust (EPPT). The town also discloses the net pension liability for its Public Safety Employees' Pension Plan.

The **total pension liability** is the portion of the promised pension benefits that plan participants have earned to date by working for the government. **Plan net position** is the

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# PRESIDENT'S CORNER

by Robert Reece, County Administrator, Pottawatomie County, Kansas

NACA President, Robert Reece

I hope everyone is doing well. I want to take a little time to update you on some of the activities NACA has been up to since the last issue of the Journal. NACA launched its first ever scholarship program this year with support from the ICMA-RC on behalf of the next generation of county professionals. To date, NACA has awarded scholarships to four individuals to attend the 2015 ICMA Emerging Professionals Leadership Institutes and ICMA Regional Summits.

The NACA scholarship winners were: Laura Barry, Senior Water Quality Analyst, Department of Environmental Engineering Chesterfield County, Virginia (Southeast); Caluha Barnes, Principal Analyst, County Administrator's Office, Sonoma county, California (West Coast); Dolly Catlin, Strategic Planner, Environmental Services Department, Planning & Zoning Division, Dunn County, Wisconsin (Midwest); and Richard Baron, Process and Project Coordinator, Information Technology, Coconino County, Arizona (Mountain Plains). Each scholarship recipient received $1,000 to cover the costs of their transportation, lodging, and registration fees for these regional events.

I was able to attend the Mountain Plains Regional Summit in Omaha, Nebraska on April 9–10, and I represented NACA on the ICMA Mountain Plains Regional Nominating Committee. The workshop topic, "Tools for the Balancing Act" provided interesting insights into results of a recent research project that explored local government success criteria and psychological profiles of public and private sector leaders. In addition, two candidates were interviewed by ICMA state association and affiliate leaders for the position of Regional Vice President on the ICMA Executive Board.

One of the ICMA program priorities highlighted at the Regional Summit is ICMA Insights, a completely redesigned tool for effective performance measurement and analytics for local government. ICMA has partnered with SAS to create this multi-tiered product which I encourage counties to consider using. You can view a two-minute video of the product description at this link.

NACA is gearing up for a robust presence at the upcoming NACo Annual Conference in Charlotte/Mecklenburg County. The County Solutions and Idea Marketplace is scheduled for July 10–13. The NACA Executive Board will gather on Saturday, July 11, from 9am to 11am, and we will host our traditional Idea Exchange together with our General Membership Meeting on Sunday, July 12, from 12noon to 3pm. I hope many of you will join us there. In addition, NACA will be the sponsor for two educational sessions on the NACo program: **A New Official's Guide to County Government** and **Budgeting 2.0: Service Delivery vs. Smaller Government**. I hope you'll be able to fit one of these sessions into your schedule.

The General Membership Meeting at the July NACo conference will be my last one as president of the association. I have enjoyed serving as the president as it has been an educational and rewarding experience. I look forward to continued close ties, and welcome another year on the board as past president. Peter Austin, County Administrator of Peoria County, Illinois, will take on the Presidency and I will work closely with him and the board to ensure continued service to our members as well as efforts to pave the way for the next generation of county professionals. I am very excited about the direction NACA is heading and increased involvement of our members. There are still many opportunities to participate in the association as we are always looking for members to participate on the various committees. Please take the time to visit the NACA website and volunteer to serve on a committee. Thank you once again for the opportunity to serve and I look forward to seeing you in Charlotte/Mecklenburg County in July.

*Robert E. Reece, NACA President*
*County Administrator, Pottawatomie County, Kansas*

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## Inside

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***Figure 1:* Town of Ocean City EPPT Net Pension Liability**

| | |
|---|---|
| Total pension liability | $ 59,269,203 |
| EPPT net position | (50,770,336) |
| Town's net pension liability | $ 8,498,867 |
| EPPT net position as % of total pension liability | 85.66% |

plan's net assets (primarily investments) measured at fair value, which is an estimate of the selling price of plan investments. The excess of the total pension liability over the plan net position is the town's **net pension liability**, or the amount by which the town's long-term obligation to provide benefits exceeds the amount already set aside in the pension plan trust fund.

The Town of Ocean City *disclosure* of its net pension liability in this year's CAFR was voluntary. Next year (FY 2015), when counties and other government entities adopt GASB Statement No. 68, they will be required to *recognize* and report the net pension liability on their statement of financial position. Many government entities expect that this change will significantly increase the amount of long-term liabilities reported on the face of the financial statements, and that it will have a negative impact on the government's reported net position, a key indicator of the financial health of the government.

The last line of Figure 1 reports EPPT net position as a percentage of the total pension liability. It shows that the value of pension plan trust assets equals 85.56% of the amount of pension benefits that has been earned. This is commonly referred to as the "funded ratio". The ultimate target is 100% funding and there is no generally agreed upon lower bench mark for assessing the adequacy of asset accumulation at a given point in time. Instead, funding adequacy should be evaluated relative to the financial resources of plan contributors, the riskiness of fund investments, general economic conditions, and the strength of policy-makers' commitment to making recommended actuarially-determined contributions to the pension fund.

The computation of the net pension liability has been standardized so that policy-makers and others can make meaningful comparisons across pension plans, government entities, and time. For financial reporting purposes the entry age normal (EAN) actuarial method and specified time periods for recognizing the costs of plan amendments, the effects of changes in assumptions, and differences between actual and expected performance are used. Many government pension plans and employers already use the EAN method to determine periodic actuarially determined funding contributions, but government employers may use different assumptions and time periods to recognize costs for financial reporting purposes. GASB Statements 67 and 68 do not require changes in the way plan funding contributions are determined. Funding policy is decided by state or local policy-makers in consultation with plan actuaries.

In thinking about the new required disclosures, it is important to remember that there are different ways to measure the pension liability at any point in time. Differences in the way an item is measured, however, do not change the economics of the underlying pension liability. It remains the amount that ultimately must be paid to retirees and their beneficiaries. The net pension liability discussed above is an accounting measure that usually differs from the actuarial pension liability used by actuaries to determine contributions to the pension fund.

The decoupling of *pension accounting* and *pension funding* means that plans and policy-makers can no longer look to accounting requirements to discipline funding. Instead they should establish and adhere to reasonable, systematic and actuarially-based funding methods.

The discount rate used to compute the net pension liability is an interest rate that reflects the long-term expected rate of return on invested plan assets to the extent that plan assets and projected returns on those assets will be sufficient to provide promised benefits. Use of a lower blended discount rate for plans that are not expected to have sufficient funds to pay promised benefits results in a higher net pension liability that more accurately reflects the government employer's obligation.

Information useful in understanding changes in the total pension liability, plan net position, and net pension liability is provided in the Required Supplementary Information section of a government entity's CAFR. Relevant information for assessing the fiscal sustainability of plans includes differences between actual and expected outcomes, cash contributions by employers and employees, benefit payments, investment returns, and changes in key ratios. Because the method for computing and disclosing this information is standardized, comparisons can be made across plans and government entities.

The Schedule of Employer Contributions, also in the Required Supplementary Information section of the CAFR, compares actual employer contributions to actuarially or statutorily determined amounts. Further investigation is needed if a plan's funding policy is not actuarially-based and/or actual contributions repeatedly fall short of the contributions policy-makers have committed to make.

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# Examples of Policymakers' Use of the New Pension Plan Disclosures

### Resisting Pressure to Underfund

The amount of annual contributions needed to ensure retirement benefits can be paid when due can be reasonably estimated using different actuarial approaches. The challenge for policy-makers is to resist the pressure to pay for other services or projects by contributing less than the actuarially determined amount to the pension fund. It is important to remember that the effect of current period underfunding is magnified by the foregone future earnings on the unfunded amount. The situation is roughly analogous to an individual who begins saving for retirement at age 55 or later rather than at age 30. Underfunding pension plans results in the cost for current year services being shifted to future taxpayers.

### Evalutating Requests for Benefit Increases

Stagnant wages, economic uncertainty, and increased life expectancy cause workers to worry more about the security of their retirement income and in some cases prompt them to call for plan amendments to increase their retirement benefits. The prospect of complying with workers' requests today and then only slowly recognizing the cost of the benefit enhancement over the next 20-30 years proved to be an attractive option that has resulted in many plans being significantly underfunded. Under the new employer pension accounting standards, government employers will immediately recognize the effect of benefit enhancements, which will make the financial impact of the changes visible to all who carefully read the CAFR.

It is worth noting that cost-of-living benefit increases, which appear rather modest each year, can result in substantial additional liabilities due to the effect of compounding over the long-term.

### Monitoring the Expected Long-term Rate of Return and the Riskiness of Plan Investments

The expected rate of return on trust fund investments is a key input used in computing the net pension liability. It needs to be closely monitored. The assumption should be based on the types and mix of current and expected pension plan investments over the long-term. Funds that are and will be invested more heavily in riskier investments (e.g., investments in hedge funds) will have higher expected returns and lower net pension liabilities. Complete information about investment categories (e.g., equity, debt, real estate, alternative) is disclosed in the Investment Section of the plan's CAFR.

In reviewing this information, it is important to remember that higher returns are earned by accepting more risk, and that riskier investments are more likely to suffer losses during economic downturns. The percentage of the pension fund invested in riskier investments or investments made to spur local economic development needs to be carefully monitored to make sure the pension fund is not taking on undue risk.

Many economists assert that, since government pension benefit payments are virtually certain to be paid because of legal guarantees, pension liabilities should be estimated using a risk-free discount rate rather than basing the rate on a higher expected long-term rate of return. Using a lower rate could significantly increase the reported net pension liability.

In any given year, the expected and actual rate of return on trust fund investments may differ significantly. Over a longer term investment market cycle of 5 or more years, however, the cumulative differences between the expected and actual rates of return should be close to zero. The reasonableness of the assumed expected rate of return on plan investments should be discussed annually with the plan's actuary.

### Concluding Suggestions for Clear Communication

Pension plans and some state and local governments are now issuing FYE 2014 CAFRs that include new and different pension disclosures. News articles and blogs touting the wide-spread underfunding of government pension plans are likely to soon follow, and may result in policy-makers facing challenging questions from concerned plan participants, advocacy groups and taxpayers. Now, before the questions begin, is the time to communicate three simple facts:

1. Actual pension obligations have not changed because of the new accounting standards; only the way they are measured and reported has changed.
2. Many pension plans will appear to be less well funded. This does not mean plan participants' benefits are less secure than they were when the amounts and ratios were computed differently. What it does mean is that, for the first time, policy-makers and taxpayers can validly compare funding ratios across plans, government entities, and time.
3. The GASB accounting and reporting changes do not require changes in plan funding. Funding decisions are made by policy-makers not by accountants or accounting standards.

Proactive communication to help taxpayers better understand the new reported pension information should mitigate some concerns and minimize the spread of misinformation. Helpful articles, summaries, fact sheets, videos, and implementation

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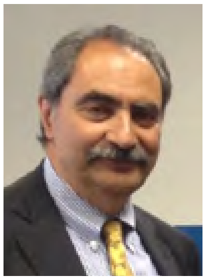
with Dr. Costis Toregas, The George Washington University

# Defining the sustainable local government: Indicators, metrics and the role of the administrator



There is a big increase in the interest that global organizations such as the World Bank and the United Nations are placing on the "sub national" scale- in other words primarily counties and cities. It is clear that if we are to move on some of the big problems that confront humanity- from hunger to poverty, housing and health- it can only be done when we engage our governance structures at the level closest to the people. And that would be the local government one. And in order to ensure that this interest in fact translates into beneficial change, administrators must make sure they have a seat at the table and a strong voice in shaping the articulation of the issues.

A big buzz word in the current discussions regarding cities and counties is "Sustainable" or "Resilient". While different, they both tend to define a similar future for our residents: to live in an environment that preserves resource for future generations, that can survive the onslaught of attacks from natural and man-made causes and can preserve the essential elements of pleasant, safe and productive life for its residents. In a way, it defines an ideal city in which to live, work and enjoy the benefits of life.

The search for an ideal city is not a new one. Costantinos Doxiadis, the wonderful planner of the 60s in his small treatise "Between Dystopia and Utopia" summarized efforts through the last 20 centuries to define such an ideal place "… J.V. Andrae proposed Christianopolis, Etienne Cabet his Icaria, Edward Bellamy his America, Le Corbusier his Ville Radieuse, Frank Lloyd Wright his Broadacres City, and Aldous Huxley his Island…" At different times in history, we are drawn to imagine an ideal place that is in balance with nature and our own dreams. And so it is today, with our efforts to build a sustainable or resilient city.

In order to join the debate, however, we have to be prepared to identify the indicators and underlying metrics that will be our measuring stick and measurements telling us that we have found the right ingredients and the right strategies. And in this arena, there is a cacophony of voices, each with their own idea of how to define "sustainable". The latest entry includes the metrics promoted through the International Organization for Standards (ISO) standard #37120. When I flipped through the pages of the standard, I found old, tattered ratios such as "policemen per thousand population" which I thought the public administration community had discarded 30 years ago, and other similar input ratios in order to derive a set of measurable metrics that define a sustainable city. While perhaps easy to collect, numbers of employees and scale of investments made in any program cannot reliable be an indicator of performance or outcome, and could produce unstable results. And yet when the time comes for defining and measuring indicators, data availability can be a very attractive argument, and unlike outcomes, inputs <u>can</u> be easily measured …

This concern is foreshadowed by a report emanating from the Bellagio Conference in 2012 titled "Tomorrow's city today: Ecocity Indicators, standards and frameworks". Edited by Simon Joss of the University of Westminster, one of the key recommendations is that "… indicators and frameworks should be designed, implemented and engaged within the context of local policy, practice and culture. Equally, they should be informed by local environmental and economic conditions." A call for engagement by local administrators!

So how can we make sure that definitions are robust? How can there be a universally agreed set of indicators that can reflect the multiple cultures around the world as we seek the ideal local government structure and profile? An effort to define an answer through an open debate of local stakeholders is the upcoming Ecocity World Summit 2015, where a workshop environment is being developed to debate the multiple efforts to define a sustainable community. The outcome will help shape a global outline of a set of indicators and metrics that can help all actors, reflect verifiable reality on the ground and have foundations rooted in the best we can offer in terms of theory and strategy.

I urge you to become involved in this debate in one way or another, and to let your voice and those of colleagues in the county administration movement be heard. A lot rides on getting the definitions right before launching expensive data efforts that may lead to confusion and fail to deliver the desired result: a clear path to sustainable and resilient communities. ■

by Bob Schultze, President and CEO, ICMA-RC
and John Saeli, Vice President, Market Development and Government Affairs, ICMA-RC

# • Long Awaited Re-Proposal of Fiduciary Regulation Released by Obama Administration
# • Congressional Tax Reform Activity and President's Budget Proposal May Lead to Changes that Affect Public Retirement Plans

**DOL Releases Proposal of Fiduciary Regulation for Second Time.** The Department of Labor ("DOL") in April released a re-proposal of amended rules on what activities constitute fiduciary investment advice by providers of private sector 401(k) plans as well as all Individual Retirement Accounts ("IRAs"). This second attempt at fiduciary regulation has the support of the President and significant Congressional opposition. A prior proposal released in 2010 was withdrawn in 2011 in the face of substantial protest from the financial services industry.

While provisions of the new regulation will not directly affect non-ERISA public defined contribution and deferred compensation plans (except as stipulated under analogous State law), they may have the effect of reducing rollouts from those plans to IRAs after termination of employment. The proposed regulation would expand the types of activities that will result in financial service providers being deemed investment advice fiduciaries with respect to an ERISA retirement plan or an IRA, including the rollover of assets from plans to IRAs. This will require more brokers to serve their clients in a fiduciary capacity, which means that advice given must be in the best interest of investors, rather than at the current lower standard that recommendations be suitable for the investor.

The DOL has requested comments within 75 days of publication in the Federal Register and plans to conduct a public hearing within 30 days of the close of the comment period. There will be an additional opportunity to comment after the hearing. Notably, the DOL has proposed that the final rule, which is likely to be released in 2016, be "effective" 60 days after a final regulation is released, but not "applicable" until eight months after finalization.

**Congressional Tax Reform Efforts.** With new leadership at the helm of Congress's tax writing committees (the House Ways and Means Committee and the Senate Finance Committee), work continues toward enactment of the nation's first broad-based tax reform since 1986. Tax reform efforts are driven by interest in reducing tax rates and simplifying the tax code by reducing tax deductions and expenditures, as well as by anticipated future pressure on the Federal budget as entitlement spending increases. While there has been some interest at the White House and in Congress to consider corporate tax reform in 2015 and broader changes to the Internal Revenue Code ("Code") later, the Senate Finance Committee has convened five bipartisan working groups to issue an "in-depth analysis of options and potential legislative solutions" by the end of May. The findings of the Savings and Investments Working Group may provide further information on the impact tax reform could have on public retirement plans. The pace of activity and proximity of the next presidential election suggest that broad tax reform likely will not be enacted until after the presidential election.

**President's Proposed Budget for Fiscal Year 2016 ("FY16").** President Obama's FY16 budget proposal continues to project Administration themes of expanding coverage provided by retirement plans and simultaneously reducing retirement incentives for those with higher incomes. While the budget proposal is primarily a messaging document to Congress, elements of it may be incorporated in tax reform discussions or to raise revenue to offset spending increases/tax cuts or to reduce the deficit.

Administration budgets typically include both new and repeat proposals. The following are key new retirement provisions in the FY 16 budget proposal:

- *Facilitate annuity portability.* The Administration proposed to enhance portability of annuity products within retirement plans by permitting retirement plan participants to make a distribution to an IRA or other retirement plan as a direct rollover when the plan chooses to remove an annuity investment option from the plan. The proposal is intended to encourage availability of lifetime annuity products within defined contribution plans by enhancing their portability.
- *Promote state-level arrangements for private sector workers.* The budget request included $6.5 million for the DOL to help states

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# FROM YOUR NACO REPRESENTATIVE

**by Gene Smith, NACA Past President, County Manager, Dunn County, Wisconsin**

The NACo Board of Directors was exceptionally busy at the Legislative conference held at the end of February in Washington D.C. A focus was on the development of our legislative agenda with interim policy resolutions being brought forward from each of the standing committees. To give you an idea of the breadth of the subject matter I am highlighting just one proposal from each of the committee.

From:

- **Community and Economic Development:** Supporting Reauthorization for the Dept. of Commerce Economic Development Administration
- **Environment, Energy and Land Use:** On allowing publicly owned treatment works to operate as designed
- **Finance and Governmental Affairs:** On federal voting system standards
- **Health:** On changes to HIPAA
- **Justice and Public Safety:** On funding to combat child sex trafficking and to assist its victims
- **Public Lands:** Supporting revised wildfire disaster funding
- **Transportation:** On equitable funding and expenditures of the Highway Trust Fund

I would think it to be self-evident how important policy positions on topics such as these are to the boots on the ground efforts of counties throughout our country. What I think is less evident is the importance that NACA members can play in shaping these policy positions by becoming actively involved in the standing committee process of NACo.

I would not advocate our professional managers usurping the policy making authority of our elected officials, but I suggest that there is as strong a role at NACo, as we do at home, to provide policy makers with valid data upon which to base their decision.

On a different note, please be aware of the research project concerning county administration being undertaken by the staff at NACo. If called upon to assist please find the time to help them. If you want to help, want to know specifics, or are just curious, contact Emilia Istrate or Cecelia Mills at NACo.

Hope to see you at the upcoming NACo Annual Conference in Mecklenburg County, NC. ■

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*("Clear Communication" from page 4)*

guidance that can be used to better understand and communicate the significance of recent government pension accounting and reporting changes is available in the GASB's *Pension Toolkit* downloadable free of charge at www.gasb.org.

Now is the best time to start communicating. Also, be aware that the GASB is now actively considering requiring governments to also recognize and report retiree health care liabilities following an approach similar to the new pension reporting standards. If GASB does that, potentially significant additional liabilities will be included in government financial statements.

**Mary Stone, Ph.D., CPA**

*Mary Stone, Ph.D., CPA, is the Hugh Culverhouse Chair of Accountancy at the University of Alabama. She is a member of the American Institute of Certified Public Accountants, the Alabama Society of CPAs, the Financial Executives Institute, and the American Accounting Association. She is past president of the American Accounting Association and Beta Alpha Psi, and a former member of the Financial Accounting Standards Advisory Council, and the Council and Accounting Standards Executive Committee of the AICPA. She has published more than 40 articles, a number of which deal with pension and government accounting issues.*

**Robert H. Attmore, CPA**

*Robert H. Attmore, CPA, previously served as the Chairman of the Governmental Accounting Standards Board, New York State Deputy Comptroller, President of the National State Auditors Association, Trustee of the Academy for Government Accountability, and in leadership roles of various professional associations. He is widely recognized as an expert in government finance, accounting and management issues. Currently he serves as a Senior Fellow of the Governing Institute and a member of the U.S. Government Accountability Office's Audit Advisory Committee.* ■

# From Washington: An Update on ICMA's Public Policy Program

**by Amber Snowden, Communications and Project Manager, ICMA and Center for State and Local Government Excellence**

### Public Finance

As the Senate Finance Committee begins work on federal tax reform, ICMA, the National Association of Counties, National League of Cities, U.S. Conference of Mayors, and Government Finance Officers' Association submitted a detailed letter to the leadership to outline local government priorities:

- Maintain the federal tax exemption for municipal bonds;
- Preserve state and local authority to set tax policy and the federal deduction of state and local taxes;
- Encourage the collection of taxes owed to state and local governments by supporting the Marketplace Fairness Act of 2015; and
- Oppose federal preferential tax initiatives that would harm state and local governments, including legislation that would preempt local and state authority to tax wireless telecommunications, rental car industries, and online travel companies.

ICMA and its fellow state and local associations (often referred to as the "Big 7"), also have signed on to three "Dear Colleague" letters (one each to the House, Senate, and President Obama) urging them to maintain the current tax-exempt status of municipal bonds. The tax exemption has enabled state and local governments to efficiently use municipal bonds as the primary tool to finance public capital improvements and infrastructure construction. Infrastructure projects are engines of job creation and economic growth in local communities

### Transportation

The nation's current surface transportation funding authorization expires on May 31, giving Congress a deadline to either come together on a long-term surface transportation funding solution, enact a short-term fix to keep funding at "status quo" levels, or let funding lapse altogether.

A long-term solution to finance the nation's surface transportation program remains a top priority for the Big 7 organizations, including ICMA, and the state and local governments and officials they represent for these reasons:

- Funding for the Highway Trust Fund has been eroding as federal motor fuel tax rates have not increased since 1993. The 18.4 cent per gallon tax on gasoline enacted in 1993 is worth approximately 11.5 cents today. As vehicles have become more fuel efficient, gasoline tax revenue has continued to slide.
- Over $100 billion in additional revenues would be required to maintain current spending levels plus inflation through 2022, according to a March 2012 report by the Congressional Budget Office.
- Congress has transferred more than $34 billion in general fund revenues into the Highway Trust Fund from fiscal year 2008 to 2010, and in 2012, appropriated an additional $18.8 billion in general revenues for fiscal years 2013 and 2014. This approach is not sustainable given competing demands and the federal government's growing fiscal challenges.

ICMA and five of our allied organizations held a major transportation event on May 12 to educate Congress about the importance of finding a sustainable, long-term funding solution for the nation's surface transportation system.

### U.S. Supreme Court

The State and Local Legal Center (SLLC) files *amicus curiae* briefs in the U.S. Supreme Court on behalf of ICMA and the Big 7 in cases which affect state and local governments. This term, SLLC has filed briefs in cases related to sign ordinances, excessive force, ADA accommodation during arrests, and taxation of Internet sales, among others. For more information on SLLC's advocacy and the cases in which amicus briefs have been filed, visit the State and Local Legal Center website. You can also view the PowerPoint from SLLC's recent Mid-Term webinar, which explains the cases in which SLLC has filed briefs in greater detail. ■

# An Update from the Center for State and Local Government Excellence: Launch of Public Plans Data

On April 23, the Center for State and Local Government Excellence (SLGE), in collaboration with the Center for Retirement Research at Boston College (CRR) and the National Association of State Retirement Administrators, launched the enhanced PublicPlansData.org (PPD). PPD is a comprehensive database of public retirement plan data, including funded ratios, benefits, investment income, plan membership, and plan provisions.

PPD provides policymakers, researchers, and interested citizens a comprehensive view of public sector retirement plans. Users can access Comprehensive Annual Financial Reports (CAFRs) and actuarial valuations (AVs) for every plan included in the database. In addition, the interface allows users to connect directly to the PPD database and receive updates as they are made.

**Retirement Summit**

The Center will host a free Retirement Security Summit on June 9 at the National Press Club in Washington, D.C. This summit will explore pension and health benefit changes, retirement income trends, the implications of shifting demographics, and the evolving social contract with employees. Learn more about the summit and register to attend at http://goo.gl/GZCUWY

**New Center Research**

How Will Longer Lifespans Affect State and Local Pension Funding? (http://goo.gl/rvVqCi) examines the impact that incorporating longevity improvements into their costs estimates would have on the funded status of state and local defined benefit plans.

Success Strategies for Well-Funded Pension Plans (http://goo.gl/hHT6pm) examines the public pension systems in four states with a long tradition of being well-funded to determine what they have in common. ■

# The New Public Health!

**by Bob McEvoy, Rockefeller College of Public Affairs and Policy, SUNY; Managing Editor**

This is a sterling example of county government bravely stepping forward in the absence of action by others to protect our children from cancer and other diseases. Congratulations to County Executive Dan McCoy and the Albany County Legislature for leading the way.

### LOCAL LAW NO. "J" FOR 2014: A Local Law to Protect Infants and Children from Harmful Health Effects of Unnecessary Exposure to Toxic Chemicals

Introduced: 9/8/14, by Messrs. Beston, Commisso, Feeney, Higgins, Mss. Maffia-Tobler, Lockart, Chapman, Messrs. Clay, Ethier, Bullock, Clenahan, Ms. Connolly, Messrs. Corcoran, Cotrofeld, Dawson, Domalewicz, Jacobson, Joyce, Ms. Kinsch, Mr. Mackey, Mr. Mayo, Mss. McLean Lane, McKnight, Messrs. Morse, Nichols, O'Brien, Rahm, Reilly, Simpson and Ward:

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ALBANY, as follows:

**Section 1. Legislative Intent.**

The Legislature hereby finds and determines that there are chemicals of high concern for the environment and human health, as have been determined by many authoritative government bodies, including the state of Maine Article 38 MRSA Chapter 16-D, *Toxic Chemicals in Children's Products*, as of September 1, 2011.

The Legislature finds that within this list of chemicals of high concern, several are known to be toxic and carcinogenic, including benzene, lead, mercury, antimony, arsenic, cadmium, and cobalt.

This Legislature finds and determines that many common children's products contain these toxic chemicals and known carcinogens.

The Legislature finds that exposure to benzene can cause harmful effects to the blood and a decrease in red blood cells, and can cause cancer in humans.

The Legislature finds that lead can contaminate drinking water supplies and cause brain damage, hyperactivity, anemia, liver and kidney damage, developmental delays, lowered IQ, poor impulse control, and even death.

The Legislature finds that mercury can contaminate fish and other wildlife and cause damage to brain development, impacts on cognitive thinking, a decrease in fine motor and visual special skills, and muscle weakness.

The Legislature finds that antimony can cause respiratory and cardiovascular damage, skin disorders, and gastrointestinal disorders.

The Legislature finds that arsenic can cause skin lesions, cancer, developmental delays, neurotoxicity, diabetes, cardiovascular disease, and lung cancer.

The Legislature finds that cobalt, while an essential element as a constituent of vitamin B12, can cause cardiomyopathy and gastrointestinal effects from chronic oral exposure.

*(continued on page 10)*

*("The New Public Health" from page 9)*

The Legislature finds that cadmium can result in kidney disease, bronchiolitis, emphysema, and damage to the liver, lungs, bone, immune system, blood, and nervous system.

This Legislature further finds and determines that several states, localities and the federal government are considering a ban on these seven chemicals in children's products.

This Legislature finds that, in the absence of such Federal and New York State enacted laws, Albany County is committed to protecting the environment and the public health and welfare of our County's infants and children whose growing bodies are vulnerable to the health hazards caused by these seven chemicals.

Therefore, the purpose of this local law is to protect infants and young children from their harmful health effects.

**Section 2. Title.**
This Local Law shall be known as "The Toxic Free Toys Act."

**Section 3. Definitions.**
As used in this law, the following terms shall have the meanings indicated:

A. "Children's Apparel" means any item of clothing that consists of fabric or related material intended or promoted for use in children's clothing.

B. "Children's Product" means any product primarily intended for, made for, or marketed for use by children. Children's product does not mean batteries, consumer electronics or electronic components, paper products, or a drug, biologic, medical device, food, or food additive regulated by the US Food and Drug Administration.

C. "Children" means a person or persons aged twelve and under.

D. "Person" shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity of business of any kind.

**Section 4. Prohibitions.**
No person shall sell or offer for sale children's products or children's apparel that contain benzene, lead, mercury, antimony, arsenic, cadmium, and cobalt within the County of Albany. This shall not apply to used children's products that are sold or distributed for free at secondhand stores, yard sales, on the internet or donated to charities. This shall also not apply to protective sporting equipment designed to prevent injury, including but not limited to helmets, athletic supporters, knee pads or elbow pads.

**Section 5. Enforcement.**
This law shall be enforced by the Albany County Department of Health in accordance with the provisions of the Albany County Charter and Code.

**Section 6. Authority to Promulgate Rules and Regulations.**
The Commissioner of the Albany County Department of Health ("Commissioner") is hereby authorized and empowered to promulgate such rules and regulations as he or she deems necessary to implement this law. The Commissioner may exempt a children's product from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product could pose an unreasonable risk to public health, safety or welfare.

**Section 7. Penalties.**
Any person who knowingly violates the provisions of this law [or reasonably should know that he/she is in violation of the provisions of this law] shall be subject to an initial civil penalty of five hundred dollars ($500) per violation of the law and a [subsequent] penalty of one thousand dollars ($1,000) per each subsequent violation.

**Section 8. Applicability.**
This law shall apply to any and all actions occurring on or after the effective date of this law.

**Section 9. Severability.**
If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 10. State Environmental Quality Review Act compliance.**
This County Legislature determines that the foregoing action constitutes a "Type II action" as said term is defined in the State Environmental Quality Review Act ("SEQRA"), and that no further action with respect to same is required under SEQRA.

**Section 11. Effective Date.**
This law shall take effect one year following its filing in the Office of the New York State Secretary of State.

*Referred to Health Committee. 9/8/14*
*Favorable recommendation – Health Committee. 12/8/14*
*On roll call vote the following voted in favor: Messrs. Beston, Bullock, Ms. Chapman, Messrs. Clay, Clenahan, Clouse, Commisso, Ms. Connolly, Messrs. Corcoran, Cotrofeld, Crouse, Dawson, Domalewicz, Ethier, Feeney, Higgins, Hogan, Jacobson, Joyce, Mss. Kinsch, Lockart, Mr. Mackey, Mss. Maffia-Tobler, McKnight, McLean Lane, Messrs. Morse, Nichols, O'Brien, Rahm, Reilly, Simpson, Stevens, Tunny and Ward – 34. Those opposed: Mss. Benedict, Busch, Messrs. Carman and Mendick – 4. Local Law was adopted. 12/8/14*

("Capitol Review" from page 6)

pilot and evaluate State-based 401(k)-type programs or automatic enrollment IRAs for private sector workers without a workplace retirement plan. It also requested authority to waive provisions of federal regulations that govern employee benefit plans that may have slowed state initiatives.

Proposals from earlier budget requests include:

- *Tax expenditure limit.* The budget proposal seeks to limit the tax rate at which upper income taxpayers can use itemized deductions and other tax preferences to reduce tax liability – such as pre-tax employee contributions to retirement plans and IRAs—to a maximum of 28 percent.
- *Retirement plan contribution and accrual cap.* The administration proposes to prohibit additional retirement plan contributions/accruals in years in which an individual's aggregate IRA and employer based defined contribution plan account balances and defined benefit plan accruals exceed a fixed level. The cap would be based on the actuarial present value at which an individual could purchase an annuity with an annual payment equal to the current maximum benefit permitted under a defined benefit plan (currently $210,000 per year). For a participant age 62, the threshold would be approximately $3.4 million in 2015.
- *Limit "Stretch IRAs".* The administration seeks to require that non-spouse, non-dependent beneficiaries of deceased IRA and retirement plan participants receive the proceeds of plan assets within five years of the death of the participant/owner. Under current law, payments can be "stretched" over the beneficiary's life or life expectancy. Congress has shown interest in passing a similar provision.
- *Modify Rules for Required Minimum Distributions ("RMDs").* The administration's budget proposal seeks to (1) impose RMDs on Roth IRAs during the lifetime of the owner, (2) prohibit individuals from making additional contributions to Roth IRAs after they reach age 70½, and (3) provide an exemption from RMDs when the aggregate value of the owner's accumulations in IRAs and other tax favored arrangements (including Roth IRAs) does not exceed $100,000 as of a "measurement date."

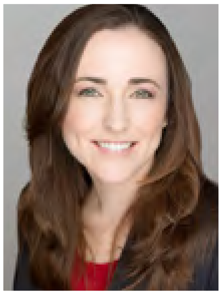
**IRS Alters Position on Deferred Retirement Option Plans ("DROPs").** An Internal Revenue Service ("IRS") memorandum in December 2014 indicates a potentially new interpretation of the rules that apply to DROPs that would in many cases permit initial and subsequent annual contributions to be subject to Defined Benefit ("DB") Plan limits, which are considerably higher than Defined Contribution ("DC") Plan limits. Under a typical DROP arrangement, a DB plan participant, who is eligible to retire and immediately receive retirement payments under the DB plan, continues to work and makes an election for a lump sum equal to the amount the participant would have received as a DB retirement payment to be credited to a DROP account. The IRS has provided little official guidance regarding DROP arrangements. While the new memorandum is not considered binding precedent, it provides guidance from the IRS national office to all IRS employees.

One longstanding question is whether DROP accounts should be tested against the Code section 415(b) benefit limit for DB Plans or the much lower Code section 415(c) contribution limit for DC Plans. The memorandum clarifies to IRS staff that the initial funding of the DROP account will always be subject to the higher 415(b) limit. The memorandum also states that additional employee and employer contributions to the DROP account will not be subject to the lower 415(c) limit unless the plan meets all three of the following criteria: (1) the DROP consists of segregated accounts for each participant; (2) earnings on amounts in the DROP are based solely on actual investment earnings (i.e., the DROP does not provide for a fixed or guaranteed rate of return on funds in the DROP); and (3) the DROP does not provide for cessation of the accrual of earnings in the DROP at any time. Importantly, the memorandum states that the second criteria is not considered satisfied if the plan offers participants the choice of a fixed return investment or an investment with a minimum and/or maximum return.

**IRS/Treasury Issue Notice Regarding Charter School Participation in Governmental Plans.** The Treasury Department and IRS are reviewing the definition of entities that may sponsor or participate in a governmental plan under Code section 414(d). The agencies released an Advance Notice of Proposed Rulemaking in 2011, which received widespread and vocal opposition from charter schools as they appeared likely to become ineligible to sponsor or participate in governmental plans. In January, Treasury and the IRS released Notice 2015–07 to address many of the concerns of public charter schools by stating their intent to establish criteria that would allow many public charter schools to participate in state plans. This will likely reduce opposition experienced by the agencies and clear the way for release a comprehensive proposed regulation later this year (although the timing could slip into 2016). ■

# Training and Professional Development for County Administrators, Managers, and Deputies

**by Amanda Relyea, ICMA, Director of Professional Development**



Who has the time? It's a valid question, and it is a query that many of us struggle to answer in a world full of information and meeting overload, ever-increasing performance expectations, and improved technology that is supposed to bring us relief but more often "frees up" time for additional to-do's.

The truth is that, although we may not have the time readily available, we have to make the time for professional development and learning. Tom Lundy, County Manager in Catawba County, North Carolina, says, "You have to be intentional about things you value. This holds true for professional development. You can learn in a haphazard, hit-and-miss way but, to be helpful, learning needs to be focused, and time needs to be carved out intentionally."

It is crucial to remain up to date on the latest trends, ideas, and best practices in the profession, and it is also necessary to connect with experts and peers who can provide a fresh perspective on your county's challenges and opportunities. Training and professional development is so important that it is referenced in the guideline for Tenet 8 of the ICMA Code of Ethics: Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

Many professional development options exist for crunched schedules, including live events within driving distance, virtual conferences, live or on-demand webinars and other online learning programs and e-courses, and online and onsite discussion groups. These are offered by national associations and organizations, state associations, and regional or local administrators' and managers' groups.

It is helpful to plan ahead so that you are participating in training that you need and that is beneficial to your organization. This is better than the take-whatever-comes-along approach that so many of us—including myself!—fall into sometimes.

One good way to plan ahead is to decide in advance what type of training or professional development you are looking for and then sit down around budget time to peruse what is available from your professional associations and other organizations. Then you can plan for the year and see what matches your needs, schedule, and budget. Not that you can't deviate from your plan and attend something you hadn't thought of or that looks interesting, but it is good to start with a plan to ensure that you address your priorities. That way, if your professional organizations or associations are not offering what you need, you can suggest the topic to them and find a way to address it in the meantime.

Time may be the biggest concern for most of us, but cost is arguably a close second. Lundy says, "Professional development can be costly, but doesn't have to be. I use articles and online newsletters to lead me to opportunities for professional development. The shorter articles are obviously easier to work into a busy schedule, but it rises to the level of professional development when I find a book or other opportunity that more deeply examines the topic."

Fortunately, many options exist for crunched budgets, including live events within driving distance, book study, as Lundy mentioned, and online training and discussion groups. Live and on-demand webinars and other online programs are especially affordable. They are offered by a variety of different organizations and range from complimentary to low cost to high cost, depending on sponsorship availability, promotion or marketing orientation versus skill-building orientation, length, and so on.

Complimentary programs usually range from promotion-oriented to skill-building, and paid programs are almost always knowledge- or skill-building. For example, ICMA currently offers some webinars for free and some for only $149 per participating entity (per site, not per person). These provide opportunities for building skills and gaining knowledge about emerging trends and critical issues in local government.

So, who has the time and money? We all do, if we make it happen. According to Lundy, "Regardless of how we learn, it's important to widen our understanding and sharpen our skills through professional development. The world around is and the communities we serve are constantly changing, and we need to keep growing in our understanding and ideas to be better leaders." ■