MEMORANDUM
PORTLAND WATER DISTRICT

TO: Board of Trustees

FROM: Carrie Walker

DATE: January 4, 2022

RE: **Public Hearing and Workshop – Monday, January 10, 2022**

There will be a Public Hearing on a proposed water rate increase and a Workshop Meeting of the Board of Trustees of the Portland Water District on Monday, January 10, 2022. The meeting will begin at 6:30 p.m. in the Nixon Training Center at the general offices of the District, 225 Douglass Street, Portland, Maine. The Public Hearing will be followed by a Workshop of the Board of Trustees. The Public Hearing and Workshop will be preceded by meetings of the following Board committees:

Committee	Room / Location	Time
Water Bottle Filling Station	General Manager's Conference Room	5:15 p.m.
Administration & Finance	Third Floor Training Room	5:30 p.m.
Operations	Nixon Training Center	5:30 p.m.
Planning	EOC 2nd Floor	5:30 p.m.

SPECIAL MEETING

Public Hearing to receive public input on the proposed average 3.7% increase in water rates effective March 1, 2022.

AGENDA – WORKSHOP

1. **Other Business.**

2. **Executive Session**.
   Pursuant to 1 M.R.S. §405(6)(A) personnel, the Board will go into Executive Session to conduct the General Manager's annual performance review.

3. **Adjourn.**

MEMORANDUM
PORTLAND WATER DISTRICT

TO: Administration and Finance Committee / Board of Trustees

FROM: David Kane, Director of Administration
Mary Demers, Director of Employee Services

DATE: December 30, 2021

RE: **Administration and Finance Committee Meeting – January 10, 2022**

A meeting of the Administration and Finance Committee of the Portland Water District Board of Trustees will be held on Monday, January 10, 2022. The meeting will begin at 5:30 p.m. in the Third Floor Training Room at 225 Douglass Street, Portland, Maine.

AGENDA

1. **Net Billing Credit Program Update**
   In January 2020, the Board authorized bill credit agreement contracts with renewable energy providers. The Committee will be provided a status report on those contracts.

2. **Defined Benefit Plans – COLA Policy**
   At the December 2021 committee meeting, the Committee approved a cost-of-living increase for current pensioners and requested additional information on what other entities provide for annual pension increases. (See attached memo)

3. **Annual Committee Workplan Review**
   The Committee will review the annual Administration and Finance Committee Workplan. (See attached workplan)

4. **Other Business**

Portland Water District
From Sebago Lake To Casco Bay

ADMINISTRATION AND FINANCE COMMITTEE / AGENDA ITEM SUMMARY

Agenda Item:	2
Date of Meeting:	January 10, 2022
Subject:	Defined Benefit Pension Plan – COLA Adjustment
Presented By:	David Kane, Executive Director of Administration

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BACKGROUND ANALYSIS

At the December 6, 2021 Administration and Finance Committee meeting, the Committee considered granting current pensioners a cost of living increase. The increase allowed under the plan is stated in the plan document and listed below.

> 10.02 Annual Adjustment. The benefits payable to former Participants, surviving Spouses and survivor annuitants may, in the discretion of the Board of Trustees, as of January 1, 1990, and each year thereafter, be increased by the following amounts to partially reflect increases in the cost of living during each such year: the lesser of (i) one-half (2) of the percentage increase in the current cost of living index for such year over the current cost of living index for the immediately preceding year, or (ii) five percent (5%).
>
> For purposes of this Section 10.02, "current cost of living index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the United States Department of Labor for the month of October.

The Committee recommended the maximum allowed increase, 50% of CPI, but requested additional information on what other plans provided for annual adjustment.

Most private sector plans do not have an annual adjustment. Public sector plans typically do include adjustments. The two attached documents provide information on public plans (see Attachment 2-A NASRA Issue Brief and Attachment 2-B GRS Insight). The Committee will review and discuss those articles.

ATTACHMENT(S)

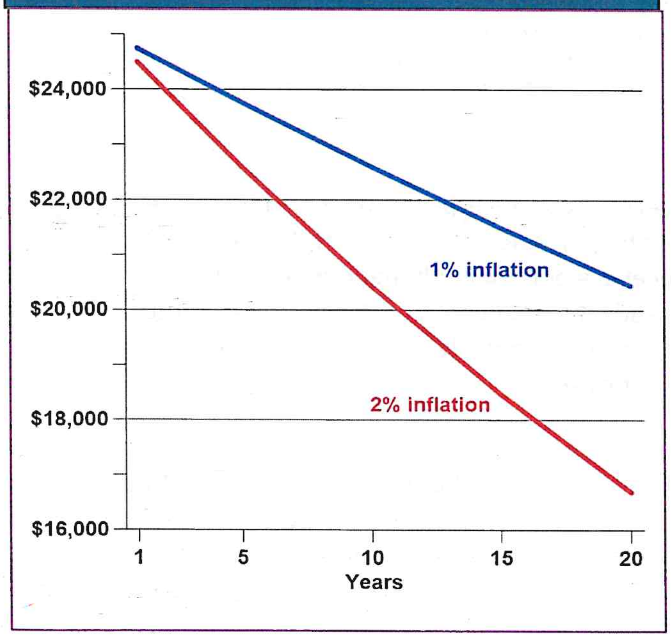
Attachment 2-A NASRA Issue Brief: Cost-of-Living Adjustment
Attachment 2-B GRS Insight – Postemployment Cost-of-Living Adjustment: Concepts and Recent Trends

NASRA Issue Brief:
Cost-of-Living Adjustments

June 2021

Periodic cost-of-living adjustments (COLAs) in some form are provided on most state and local government pensions. The purpose of a COLA is to wholly or partly offset the effect of inflation on retirement income. Considerable variation exists in the way COLAs are designed, and in many cases they are determined or affected by other factors, such as the actual rate of inflation or the financial condition of the plan. COLAs add both value and cost to a pension benefit. Public pension COLAs have received increased attention in recent years as many states look to reduce the cost of benefits amid challenging fiscal conditions and the current low-inflationary environment. This brief presents a discussion about the purpose of COLAs, the different types of COLAs provided by government pension plans, and an overview of recent state changes to COLA provisions.

Figure 1: Impact of 20 years of inflation on purchasing power of $25,000



COLA Purpose

A COLA is provided to offset or reduce the effects of inflation, which, as illustrated in Figure 1, erodes the purchasing power[1] of retirement income. Using two hypothetical inflation rates, after 20 years, the real (inflation-adjusted) pension benefit in this example of $25,000 falls to $20,488 (82 percent of its original value) or $16,690 (67 percent of its original value), depending upon the actual rate of inflation.

Such depreciation can affect the sufficiency of retirement benefits, particularly for those who are unable to supplement their income by working, due to disability or advanced age. As Social Security beneficiaries receive an annual COLA to maintain recipients' purchasing power, tied to a measure of inflation,[2] many state and local governments also provide an adjustment to their retirees' pension benefit that is intended to offset the effects of inflation. This adjustment is particularly important for those public employees – including nearly half of public school teachers and most public safety workers – who do not participate in Social Security. Unlike Social Security, however, state and local retirement systems typically pre-fund the cost of a COLA over the working life of an employee, to be distributed annually over the course of his or her retired lifetime.

Common COLA Types and Features

The way in which public pension COLAs are calculated and approved varies considerably. Appendix A presents a listing of COLA provisions for many state retirement plans, illustrating the variety that exists in COLA plan designs. In general, COLA types and features are differentiated in the following ways:

Automatic vs. Ad hoc

An overarching distinction among COLAs is whether they are provided automatically or on an ad hoc basis. An ad hoc COLA requires a governing body to actively approve a postretirement benefit increase. By contrast, an automatic COLA

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[1] Purchasing power refers to the effect of inflation on the value of currency over time, calculated for the purpose of determining the amount of goods or services a unit of currency can buy at different points in time

[2] Social Security Administration, Latest Cost-of-Living Adjustment, https://www.ssa.gov/OACT/COLA/latestCOLA.html

occurs without action, and is typically predetermined by a set rate or formula. In some cases, ad hoc COLAs are contingent on other factors, such as a maximum unfunded liability amortization period.

Simple vs. Compound

Another distinction between COLA types is whether the increase is applied in a simple or compound manner. Under a simple COLA arrangement, each year's benefit increase is calculated based upon the employee's original benefit at the time of his or her retirement. Under a compound COLA arrangement, the annual benefit increase is calculated based upon the original benefit as well as any prior benefit increases. Some COLAs contain both features, i.e., they may be "simple" until the retiree reaches a certain age or year retired, at which point COLA benefits are calculated using a compound method.

Inflation-based

Consistent with the original purpose for providing a COLA, many state and local governments provide a post-retirement COLA based on a consumer price index (CPI), which is a measure of inflation. Most provisions like this restrict the size of the adjustment, such as by "one-half of the CPI" and/or "not to exceed three percent." The most recognized CPI measures are calculated and published by the U.S. Bureau of Labor Statistics (BLS), and the CPI measures used by most public pension plans are either the CPI-U (based on all urban consumers) or the CPI-W (urban wage earners and clerical workers). Some states use state- or region-specific inflation measures to determine the amount of the COLA.

Table 1: Select public plans by COLA type

	Linked to inflation	Linked to investment or funding condition	Fixed percentage or other factor	Total
Automatic	47	14	11	72
Ad-hoc	5	0	23	28
Total	52	14	34	100

Note: COLAs for some employees of local governments who participate in statewide systems are discretionary based on the decision of individual local government. See Appendix A for more details.

Performance-based

Some public pension plans tie their COLA to the plan's funding level or investment performance. In one statewide system, for example, the COLA falls within a percentage range specified in statute and is tied to CPI, based on the funding level of the plan. Annuitants with another state system receive a permanent benefit increase tied to their length of service, when the fund's actuarial investment return exceeds the assumed rate of investment return. Depending on the method of calculation, a performance-based COLA can potentially result in a COLA that is higher than inflation or that offsets only a portion of the loss of purchasing power.

Delayed-onset or Minimum Age

Another characteristic contained in some automatic COLAs is to delay its onset, either by a given number of years or until attainment of a designated age. A COLA with this feature may also take on any of the characteristics stated above and will become available to a retiree once he or she meets the designated waiting period or age requirement.

Limited Benefit Basis

Some retirement systems award a COLA calculated on a portion of a retiree's annual benefit, rather than the entire amount. For example, one system provides a COLA of up to three percent applied to only the first $13,000 of benefits. In such cases, the COLA can also be tied to an external indicator, such as CPI, and other factors, such as delayed onset, may also be in place.

Self-funded Annuity Option

Some state retirement plans offer post-retirement benefit increases through an elective process known as a self-funded annuity account. Under this design, a member effectively self-funds his or her COLA by choosing to receive a lower monthly benefit in exchange for a fixed rate COLA to be paid annually upon retirement.

Reserve Account

Other public retirement systems pay COLAs from a pre-funded reserve account. This is a variation on the COLA tied to investment performance, since the reserve account is funded with excess investment earnings. Under this scenario, a COLA is provided from the funds set aside in the reserve account. Sometimes a stipulation is attached that the fund itself must reach a certain size for any COLA to be granted in a given year.

COLA Costs

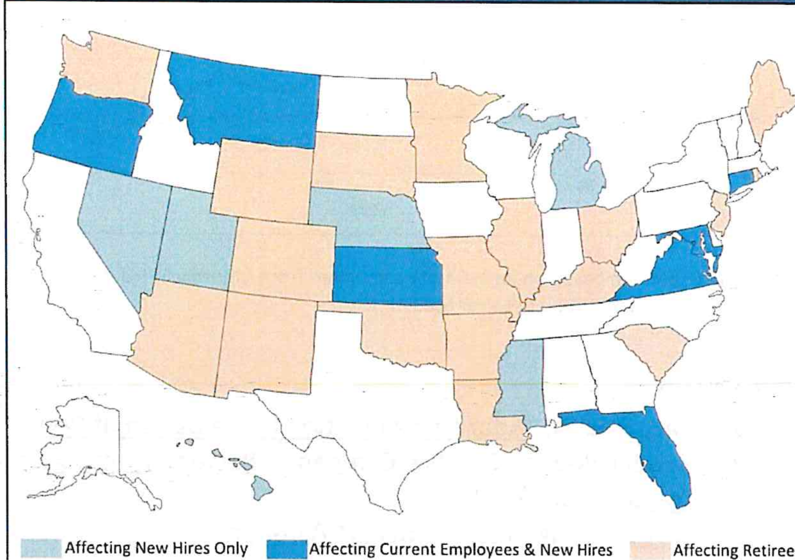
The cost of a COLA predictably depends on the characteristics of the COLA benefit. Such factors as its size; the portion of the benefit to which the COLA applies; whether or not the COLA is paid annually or irregularly; whether the adjustment is simple or compounded, and other features, all affect its cost. It has been estimated that an automatic COLA of one-half of an assumed CPI of three percent, compounded, will add 11 percent to the cost of the retirement benefit. An automatic COLA of three percent, compounded, is estimated to add 26 percent to the cost of the benefit.[3]

The Governmental Accounting Standards Board (GASB) requires public pension plans to disclose assumptions regarding COLAs, including whether the COLA is automatic or ad hoc, and to include the cost of COLAs in projections of pension benefit payments. GASB considers an ad hoc COLA to be "substantively automatic" when a historical pattern exists of granting ad hoc COLAs or when there is consistency in the amount of changes to a benefit relative to an inflation index.[4]

Recent Changes to COLAs

As part of efforts to contain costs and to ensure the sustainability of public pension plans, and in response to the recent period of historically low inflation, many states have made changes to COLA provisions by adjusting one or more of the COLA design elements mentioned above[5] (see Figure 2). As described in Appendix A, since 2009, 18 states have changed COLAs affecting current retirees, seven states have addressed current employees' benefits, and six states have changed the COLA structure only for future employees. The legality of these modifications in several states has been challenged in court, as noted in Appendix A.

Figure 2: State retirement systems undergoing COLA legislative changes, 2009-2021



In most cases, changes to COLA provisions require an act of the legislature and approval of the governor. However, in some cases retirement boards have been vested with the authority to enact COLA reforms; this authority has been exercised in three states – Maine, Missouri, and Ohio – since 2016. As noted above, most COLA changes affecting current retirees were subjected to legal challenge. Legal rulings issued in recent years upheld COLA reductions passed in New Jersey, and several other states, and fully or partially rejected COLA reductions passed in Illinois, Montana, and Oregon. A 2015 legal settlement pronounced material changes to COLA provisions for public employees in Rhode Island.

Impact of Inflation on COLA Changes

The impact of changes to COLA provisions for retirees and pension plans is largely determined by actual measured levels of price inflation. Since 2015, the average of the prior ten years' increase in CPI-U has been at or below 2 percent. This represents a significant decline from prior periods of inflation (see Figure 3). At present levels, inflation remains lower than the automatic COLA caps for most public pension plans that have a cap, even in cases where the cap was recently lowered. If inflation remains low, retirees will not be seriously impacted by these changes. However, if inflation rises to levels observed in prior years, some retirees will experience a decline in the purchasing power of their retirement benefit.

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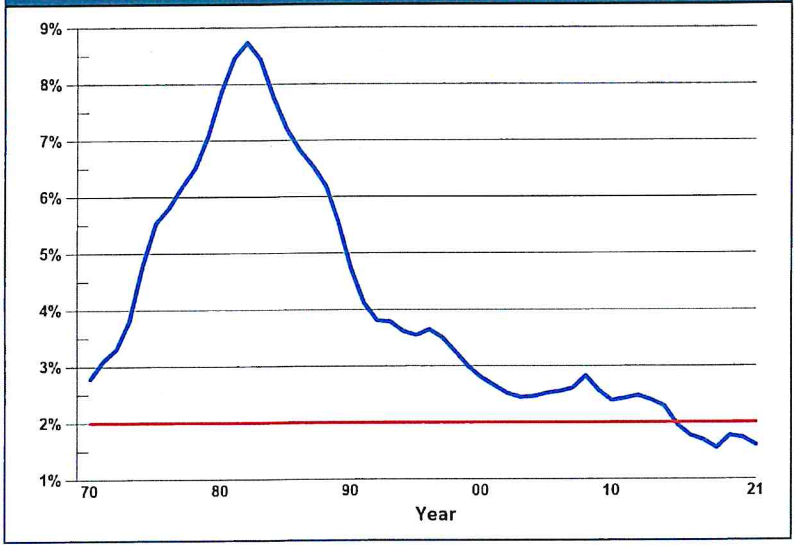
[3] Gabriel, Roeder, Smith & Company, "Postemployment Cost-of-Living Adjustments: Concepts and Recent Trends," April 2011
[4] Governmental Accounting Standards Board Statement No. 67, Financial Reporting for Pension Plans
[5] National Conference of State Legislatures

Actuaries typically make assumptions about COLA increases, based on the plan's COLA provisions. Such assumptions include a rate of inflation, if inflation is a factor in the plan's determination of COLA increases. All else equal, a reduction in a plan's COLA assumption will cause a decline in the plan's liabilities and cost.

Figure 3: Ten-year rolling average change in CPI-U, 1950-2020



Note: 2020 inflation based on an estimate calculated from monthly CPI-U data published by the US Bureau of Labor Statistics.

Conclusion

The effects of a COLA can be consequential both in protecting purchasing power and in adding costs to a plan. As states consider measures to ensure the sustainability of their pension plans, for those currently retired, for those still employed, and for future generations of workers, policymakers are reexamining all aspects of benefit design and financing, including the way COLAs are determined and funded. Just as high periods of inflation in the past placed pressure on states to add or adjust COLAs upward, the recent low rates of inflation, combined with rising pension plan costs, have spurred action to reconsider COLA levels. Some states have included provisions that would enable COLAs to increase should inflation grow or should funding status or fiscal conditions improve.

See also

1. Gary Findlay, "Addressing Inflation in the Design of Defined Benefit Pension Plans"
2. Gabriel, Roeder, Smith & Company, "Postemployment Cost-of-Living Adjustments: Concepts and Recent Trends," April 2011
3. Cost-of-Living Adjustments @NASRA.org

Contact

Keith Brainard, Research Director, keith@nasra.org I Alex Brown, Research Manager, alex@nasra.org
National Association of State Retirement Administrators, www.nasra.org

Appendix A: COLA Provisions by State-Level Plan and Recent Changes

Plan	COLA Provision	2009-2021 Changes
Alaska PERS	Automatic, lesser of 75% of CPI or 9%, simple, for those age 65 and above; lesser of 50% of CPI or 6% for those age 60 or having received benefits for at least 5 years; An additional in-state COLA is provided to beneficiaries who reside in Alaska. Members are eligible if they entered the PERS before 7/1/86 or entered after 6/30/86 and have attained at least age 65. The Alaska COLA is equal to the greater of 10% of their base benefits or $50.	
Alaska Teachers	Automatic, lesser of 75% of CPI or 9%, simple, for those age 65 and above; lesser of 50% of CPI or 6% for those age 60 or having received benefits for at least 5 years; An additional in-state COLA is provided to beneficiaries who reside in Alaska. Members are eligible if they entered the TRS before 7/1/86 or entered after 6/30/86 and have attained at least age 65. The Alaska COLA is equal to the greater of 10% of their base benefits or $50.	
Alabama ERS	Ad hoc as approved by the legislature.	
Alabama Teachers	Ad hoc as approved by the legislature.	
Arkansas PERS	Automatic 3% compounded for those hired before 7/1/22; for those hired after 6/30/22, lesser of 3% or CPI-U.	2021 legislation amended the COLA for those hired after 6/30/22 (added here 9/28/21)
Arkansas State Highway Employees	Automatic, lesser of 3% or CPI, compounded.	Prior to legislation approved in 2017, an annual automatic COLA of 3% was granted.
Arkansas Teachers	Automatic 3% simple; compounded on an ad hoc basis as determined by the Board.	2017 legislation gives the TRS board the authority to reverse a compound COLA granted in 2009 if necessary to maintain the actuarial soundness of the system.
Arizona Public Safety Personnel	Automatic, based on CPI for the Phoenix region, up to 2.0%. For new hires on or after 7/1/17, the cap is lowered to 1.5% if the system falls below 90% funded; 1.0% if below 80% funded; and the COLA is eliminated if below 70% funded.	Legislation approved in February 2016 replaces the Permanent Benefit Increase (PBI) with a traditional COLA for current and future retirees that is tied to CPI. For new hires on or after 7/1/17, the COLA is restricted or eliminated when the plan falls below 90% funded. The changes were affirmed by an amendment to the Arizona Constitution via voter referendum in May 2016.
Arizona SRS	For participants hired before 9/13/13, up to 4.0% annually, contingent on earnings associated with an actuarial investment return above 8%. For those hired thereafter, ad hoc as approved by the legislature.	2013 legislation eliminated the permanent benefit increase for members hired on or after 9/13/13.
California PERS	Automatic after two calendar years of receiving benefits and the lesser of CPI for the prior year or the employer elected COLA. Typically State retirees receive a 2% provision, while Public	

Plan	COLA Provision	2009-2021 Changes
	Agencies and Schools may have 2%, 3%, 4% or 5% COLA provisions.	
California Teachers	Automatic 2% simple, plus adjustments designed to maintain retirees' purchasing power up to 85% of their original benefit, made through a "supplemental benefits maintenance account" financed with a state contribution of about 2.5% of total creditable compensation.	Members who performed creditable service on or after 1/1/14 will have their existing improvement factor guaranteed in exchange for contribution increases. The improvement factor cannot be reduced for these members. For members who retired prior to 1/1/14, the Legislature will continue to reserve the right to reduce the improvement factor, a right that has never been exercised.
University of California	Automatic, equal to the full increase in CPI up to 2%, plus 75% of the increase in CPI over 4%. The maximum COLA provided is 6%.	
Colorado Affiliated Local	Based on election of individual participating employers.	
Colorado Fire & Police Statewide	Ad hoc as approved by board.	
Colorado Local Government, School, and State	For active employees and retirees who did not receive a COLA as of 5/01/18, COLAs are paid after three years of retirement. The COLA cap, currently 1.50%, may be changed through the provisions of an auto-adjust mechanism which is triggered dependent upon the ratio of total contributions made to the determination of total required contributions (based on a layered, 30-year amortization approach). If this ratio falls below 98% or above 120%, the COLA cap may be reduced or increased by up to 0.25% in any year, but cannot fall below 0.50% or exceed 2.0%. COLA provisions vary by date of hire; Those hired before 1/1/07, have an automatic increase equal to the COLA cap. Those hired on or after 1/1/07, are awarded the lesser of the effective COLA Cap and the average of the monthly CPI-W amounts for the prior calendar year; provided the cost of the COLA does not exceed 10% of each division's annual increase reserve.	2018 legislation suspended the COLA for two years, increased the waiting period for new hires to receive a COLA from one year to three, and thereafter reduced the automatic COLA cap from 2.0% to 1.5%, and tied payment of future COLAs to the length of the plan's amortization period. 2010 legislation reduced the COLA from automatic 3.5%. The law was challenged, and upheld by the CO Supreme Court in 2014.
Connecticut SERS	Minimum of 2.0% up to a maximum 7.5% calculated based on the following formula: 60% of the annual increase in the CPI-W up to 6.0% and 75% of the annual increase in the CPI-W over 6.0%. For employees who retire after 6/30/22, the minimum COLA is reduced to the actual change in CPI-W, if the change is <2.0%. The previous formula applies if the change in CPI-W is >2.0%.	A 2011 agreement between the state and public-sector unions reduced the minimum COLA for employees who retire after 10/1/11. A 2017 agreement made further changes for employees who retire after 6/30/22.
Connecticut Teachers	For those hired on or after 7/1/07, COLA equal to Social Security COLA, with a maximum of 1.0% if investment return is <6.9%; a maximum of 3.0% if return is 6.9%-9.9%; and limited to 5.0% if return is >9.9%. For those who retired before 9/92, automatic, based on CPI, with 3% minimum and 5% maximum, compounded; for those who retired after 9/92, COLA is equal to the Social Security COLA, with a maximum of 1.5% if investment return is <6.9% and a maximum of 6.0% if returns are at least 6.9%.	Legislation approved in 2021 adjusted COLA thresholds from 8.5% to new investment return assumption of 6.9% (added here 9/28/21).

Plan	COLA Provision	2009-2021 Changes
DC Police & Fire	Automatic based on CPI, up to 3%, compounded, for members hired on or after 11/10/96. Automatic, based on CPI, compounded (uncapped) for members hired before 11/10/96.	
DC Teachers	Automatic based on CPI, up to 3%, compounded, for members hired on or after 11/1/96. Automatic, based on CPI, compounded (uncapped) for members hired before 11/1/96.	
Delaware State Employees	Ad hoc as approved by the general assembly.	
Florida RS	Automatic 3%, compounded.	2011 legislation terminated the automatic 3% compounded COLA for all service credits earned after 7/1/11.
Georgia ERS	Ad hoc as approved by the ERS board.	
Georgia Teachers	Automatic 1.5% every 6 months as long as CPI increases, compounded.	
Hawaii ERS	Automatic, 1.5% simple, for those hired on or after 7/1/12; 2.5% simple for those hired before 7/1/12.	The automatic COLA was reduced from 2.5% to 1.5%, simple, for those who become members of the system after 6/30/2012.
Iowa Municipal Fire & Police	Automatic, 1.5% compounded. An additional fixed COLA is provided based on length of retirement. For members retired fewer than 5 years, an additional $15 is applied. For members retired 5-10 years, $20. For members retired 10-15 years, $25. For members retired 15-20 years, $30. For members retired more than 20 years, $35. No COLA is provided to members who terminate prior to becoming eligible for retirement.	
Iowa PERS	No COLA-type payments for members retiring after 6/30/90. Those who retired prior to 7/1/90 are eligible for a "thirteenth check" that may be adjusted annually by the lesser of CPI or 3%.	
Idaho PERS	Automatic 1% compounded (as long as CPI rises at least 1%), plus discretionary COLA if the CPI is greater than 1%. Total COLA (mandatory plus discretionary) cannot exceed 6%. The Board also has the discretion to award a retroactive COLA to make up for prior years when the full CPI was not awarded.	
Illinois Municipal	Automatic 3%, simple, for those hired before 1/1/11; for those hired after 12/31/10, lesser of 3% or half of CPI, simple, upon attainment of the later of age 67 or one year after retirement.	2010 legislation reduced the COLA for new hires on or after 1/1/11 from automatic 3%, simple.
Illinois State Employees, Teachers, and State Universities	Those hired before 1/1/11 receive an automatic COLA of 3%, compounded, upon attainment of the latter of age 61 or one year after retirement. Those hired after 12/31/10 receive a COLA of the lesser of 3% or one-half of the CPI, not compounded, upon attainment of the later of age 67 or one year after retirement.	2018 legislation directs the system to offer, from 1/1/19 until 6/30/21, a COLA buyout for retiring members hired before 1/1/11. These members may elect to forfeit their rights to the current 3% annual compound COLA in exchange for a 1.5% simple COLA and a lump sum payment equal to 70% of the difference between the estimated

Plan	COLA Provision	2009-2021 Changes
		present value of the 3% COLA and the estimated present value of the 1.5% COLA. 2010 legislation reduced the COLA for new hires from automatic, 3% compounded. 2013 legislation reduced the COLA formula for current workers and new hires. The law was challenged and rejected by the IL Supreme Court in 2015.
Indiana PERF	Ad hoc as approved by the legislature.	
Indiana Teachers	Ad hoc as approved by the legislature.	
Kansas PERS	Ad hoc as approved by the legislature; the cash balance for employees hired after 12/31/14 provides for an optional self-funded COLA as an annuity payment option at retirement.	2012 legislation removed automatic 2% COLA originally provided for those hired after 6/30/09; also created optional self-funded COLA in cash balance plan for new hires after 12/31/14.[4]
Kentucky County	Automatic, tied to CPI, not to exceed 1.5% after 12 months of retirement, compounded. Because of legislation described in the right-hand column, payment of COLA is unlikely in the foreseeable future.	2011 legislation suspended retiree COLAs for 2012 and 2013; 2013 legislation mandates that a COLA be granted only if the system is over 100% funded or if the legislature prefunds the COLA. A challenge to the 2013 law was dismissed in 2014.
Kentucky ERS	Automatic, tied to CPI, not to exceed 1.5% after 12 months of retirement, compounded. Because of legislation described in the right-hand column, payment of COLA is unlikely in the foreseeable future.	2011 legislation suspended retiree COLAs for 2012 and 2013; 2013 legislation mandates that a COLA be granted only if the system is over 100% funded or if the legislature prefunds the COLA. A challenge to the 2013 law was dismissed in 2014.
Kentucky Teachers	Automatic 1.5% compounded.	
Louisiana SERS	Subject to approval by the legislature and contingent upon funding available in COLA account consisting of excess investment returns; COLA amount is based on plan funded percentage and investment returns; COLA amount ranges from the lesser of 1.5% or CPI-U (55% funded) to the lesser of 3.0% or CPI-U (80% funded), if certain actuarial rates of return are met; COLA applies only to first $60,000 of benefit, indexed to CPI; minimum COLA eligibility at age 60, if retired at least one year; COLAs may be granted only every other year until system is at least 85% funded; participants may elect retirement option providing an actuarially reduced benefit with auto annual 2.5% COLA beginning at age 55.	2014 legislation tied the amount of future COLAs to the plan's funded status, limited COLAs to every other year if funds are available, and capped deposits into the accounts from which COLAs are funded.
Louisiana Teachers	Subject to approval by the legislature and contingent upon funding available in COLA account consisting of excess investment returns; COLA amount is based on plan funded percentage and	2014 legislation tied the amount of future COLAs to the plan's funded status, limited COLAs to every other year if funds are

[4] Legislation creating Kansas PERS Tier 3 passed in 2012 eliminated the Tier 2 COLA. The only employees eligible to receive the Tier 2 COLA are those who were retired and returned to work on or after 6/30/09 and who will retire before 7/1/12.

Plan	COLA Provision	2009-2021 Changes
	investment returns; COLA amount ranges from the lesser of 1.5% or CPI-U (55% funded) to the lesser of 3.0% or CPI-U (80% funded), if certain actuarial rates of return are met; COLA applies only to first $60,000 of benefit, indexed to CPI; minimum COLA eligibility at age 60, if retired at least one year; COLAs may only be granted every other year until system is at least 85% funded; participants may elect retirement option providing an actuarially reduced benefit with auto annual 2.5% COLA beginning at age 55.	available, and capped deposits into the accounts from which COLAs are funded.
Massachusetts SERS	Ad hoc, typically based on CPI up to 3% applied to first $13,000 of benefit, subject to legislative approval and enactment. Must be retired one full fiscal year before being eligible for COLA.	Effective 2011, increased benefit to which COLA applies from first $12,000 of benefit to $13,000.
Massachusetts Teachers	Ad hoc, typically based on CPI up to 3% applied to first $13,000 of benefit, subject to legislative approval and enactment. Must be retired one full fiscal year before being eligible for COLA.	Effective 2011, increased benefit to which COLA applies from first $12,000 of benefit to $13,000.
Maryland PERS and Teachers	For service earned after 6/30/11, automatic based on CPI, capped at 2.5% or the increase in CPI if the recent calendar year market value rate of return was greater than or equal to the assumed actuarial investment return of 7.40%. If that threshold is not met, COLA is the lesser of 1.0% or the increase in CPI. COLA on service prior to 7/1/2011 is automatic based on CPI, capped at 3.0%.	For service earned after 6/30/2011, COLA was lowered from CPI up to 3%, compounded, to CPI capped at 2.5%, or 1%, depending on investment return.
Maine Local	Based on individual employer election. If provided, based on CPI up to 2.5%. Those who retire on or after 9/1/2019 qualify for a COLA after 24 months of retirement, and may have their COLA reduced or frozen if the plan's costs exceed established member and employer contribution rate caps of 9.0% and 12.5%, respectively.	In 2018 the board approved a reduction to the maximum COLA from 3.0% to 2.5% for current retirees, and extended the COLA waiting period from 12 to 24 months, and provided for the possible reduction or freezing of future COLA if the plan's cost exceed established member and employer contribution rate caps. Effective 7/1/2014, the COLA of CPI up to 4% compounded, was reduced to up to 3%. Members who retire on or after 9/1/2015 qualify for a COLA after twelve months of retirement rather than 6 months, as previously in effect.
Maine State and Teacher	COLA is based on the CPI up to 3% applicable to the first $20,000 of benefit, indexed for inflation beginning in 2011.	Effective 7/1/2011, the COLA of CPI up to 4% compounded, was suspended for three years, after which the cap and portion of the benefit to which the COLA applies was reduced. A legal challenge to the law was dismissed in 2014. 2015 legislation provided a minimum COLA of 2.55% for FY 16 and FY 17. Beginning in FY 18 the CPI-based COLA was reinstated.
Michigan Municipal	Employers may elect to provide a COLA, on a one-time basis or as an automatic adjustment.	
Michigan Public Schools	Automatic 3% simple; those hired after 6/30/10 are not eligible for a COLA.	Employees hired after 6/30/10 participate in a hybrid plan that does not provide a COLA.

Plan	COLA Provision	2009-2021 Changes
Michigan SERS	Automatic 3% simple up to $300 annually.	
Minnesota PERF	Automatic, compounded, equal to 50% of inflation with a floor of at least 1.0% if inflation is 2.0% or lower, and a cap of 1.5% if inflation is higher than 3.0%.	2018 legislation replaced the previous COLA, which was tied to the plan's funding level, with an inflation-based COLA. 2010 legislation reduced auto-COLA from 2.5%. The law was challenged and upheld in a final ruling issued in 2011.
Minnesota State Employees	Automatic, 1.0% compounded, increasing to 1.5% on 1/1/24.	2018 legislation replaced the previous COLA, which was tied to the plan's funding level, with a fixed percentage COLA. 2010 legislation reduced auto-COLA from 2.5%. The law was challenged and upheld in a final ruling issued in 2011.
Minnesota Teachers	Automatic, 1.0% compounded from FY 19-23, increasing by 0.1% from FY 24-28 to 1.5%.	2018 legislation replaced the previous COLA, which was tied to the plan's funding level, with a fixed percentage COLA. 2010 legislation reduced auto-COLA from 2.5%. The law was challenged and upheld in a final ruling issued in 2011.
Missouri DOT and Highway Patrol	80% of CPI up to 5% compounded; those hired before 8/28/97 receive a min. of 4% and a max. of 5% compounded, up to 65% of original benefit, and then 80% of CPI up to 5% thereafter.	
Missouri Local	Contingent upon investment return, with a max of the lower of 4% or cumulative CPI since retirement.	
Missouri Teachers and PEERS	When the Consumer Price Index for Urban Consumers (CPI-U) for the previous fiscal year is between 0% and 2%, no COLA is provided when the CPI-U is cumulatively below 2%. A 2% COLA is provided when the cumulative CPI-U reaches 2% or more. The cumulative calculation resets after a COLA is provided. A COLA of 2% is paid when the change in CPI-U is between 2% and 5%; and a COLA of 5% is paid when the CPI is 5% or greater, subject to a lifetime cap of 80%.	In 2016 the Board changed the auto, compounded COLA from compounded at 2% if CPI-U is between 0% and 5%; 5% if CPI-U is 5% or higher, and no COLA is given if CPI-U is less than 0%; subject to a lifetime cap. In 2017 the Board again changed the COLA policy to add a cumulative calculation to the formula.
Missouri State Employees	80% of CPI up to 5% compounded; those hired before 8/28/97 receive a min. of 4% and a max of 5% compounded, up to 65% of original benefit, and then 80% of CPI up to 5% thereafter.	Per 2017 legislation, the COLA for members hired on or after 1/1/11 who terminate employment before becoming eligible for retirement is delayed until the second anniversary of the member's annuity start date.
Mississippi PERS	Automatic, 3% simple, until age 60, then compounded thereafter, for those hired on or after 7/1/11; Automatic, 3% simple, until age 55, then compounded thereafter, for those hired before 7/1/11.	2011 legislation increased the age at which COLA compounding begins from 55 to 60.
Montana PERS	Automatic, ranging from 0 to 1.5% compounded, depending on the plan's funded status, beginning 12 months after onset of	2011 legislation reduced the automatic guaranteed annual benefit adjustment

Plan	COLA Provision	2009-2021 Changes
	annuity, for those hired on or after 7/1/13; 1.5% for those hired between 7/1/07 and 6/30/13; 3.0% compounded for those hired before 7/1/07.	(GABA) for retired, active and newly hired members from 1.5% compounded and tied its provision to PERS' funding ratio. The law was challenged in court, and a 2015 ruling reversed the changes for retired and active members and upheld for new hires.
Montana Teachers	Automatic, ranging from 0.5% to a maximum of 1.5%, compounded, depending on the plan's funded status, beginning 36 months after onset of annuity, for those hired on or after 7/1/13; 1.5% for those hired before 7/1/13. Automatic 1.5% compounded beginning 3 years after onset of annuity.	2011 legislation reduced the automatic guaranteed annual benefit adjustment (GABA) for retired, active and newly hired members from 1.5% compounded and tied its provision to TRS' funding ratio. The law was challenged in court, and a 2015 ruling reversed the changes for retired and active members and upheld for new hires.
North Carolina Local Government	Ad hoc as approved by the Board, with certain limitations. The Board may grant COLAs up to a maximum of 4%, provided that the COLA does not exceed the year-over-year increase in the CPI and that the cost of the increase is paid for with investment gains. COLAs in excess of these provisions must be approved by the legislature.	
North Carolina Teachers and State Employees	Ad hoc as approved by the legislature.	
North Dakota PERS	Ad hoc as approved by the legislature.	
North Dakota Teachers	Ad hoc as approved by the legislature.	
Nebraska Schools	Based on CPI, up to 1% compounded for employees hired on or after 7/1/13; Based on CPI, up to 2.5%, compounded for other members.	2013 legislation created a new tier for those hired on or after 7/1/13. This tier features a reduced maximum COLA.
Nebraska State and County Cash Balance	Participants may elect at retirement to convert their cash balance account to a monthly annuity with a built-in annual COLA of 2.5%.	
New Hampshire Retirement System	Ad hoc as approved by the legislature.	Retirees who had been retired five years and longer as of 7/1/19 were granted an ad hoc COLA effective 7/1/20 of 1.5 percent, applied to the first $50,000 in annual benefit.
New Jersey PERS, Police & Fire, and Teachers	COLA suspended until the plan funding level reaches 80%, after which a panel will assess the prudence of paying a COLA.	2011 legislation suspended the automatic COLA that was based on 60% of CPI. The law was challenged, and upheld in a final ruling issued in 2016.

Plan	COLA Provision	2009-2021 Changes
New Mexico PERA	2.0%, simple, through FY 23. Effective FY 24, the annual COLA is determined by the difference between the fund's smoothed investment return and an actuarially determined COLA hurdle rate (i.e., the investment return required to fund a COLA of greater than 0.5%), with a minimum of 0.5% and a maximum of 3.0% if the system is less than 100% funded, or 5.0% if the system is funded at 100% or greater. An annual COLA of 2.5% will be provided to those who retire with at least 25 years of service and an annual pension benefit below $25,000, retirees who have attained at least 75 years of age as of 7/1/20, and disability retirees.	2020 legislation repealed the compounding element of the COLA for the period FY 2021 through FY 2023, and effective FY 2024, implemented a shared-risk COLA based on the system's funding ratio and smoothed investment rate of return. 2013 legislation reduced the automatic compounded COLA from 3% to 2%.
New Mexico Teachers	COLA is based on the change in CPI. If the change in CPI is less than 2.0%, the COLA is equal to the change in CPI. If the change in CPI is greater than 2.0%, the COLA is equal to one-half of the change in CPI, but not less than 2.0% nor more than 4.0%. In 2013, COLAs for all current and future retirees were reduced until ERB is 100% funded. When the funded ratio is 90% of less, the COLA for retirees whose annuity is at or below the median retirement benefit and who have 25 or more years of service credit at retirement will be reduced by 10%. For all other retirees, the reduction is 20%. When the funded ratio exceeds 90% and is less than 100%, the COLA for retirees who have 25 or more years of service credit at retirement and whose annuity is at or below the median retirement benefit will be reduced by 5%. For all other retirees, the reduction is 10%.	2013 legislation reduced the COLA depending on retiree length of service and size of benefit. All COLA reductions cease upon ERB's attainment of a 100% funding level. The law was challenged and upheld by the NM Supreme Court in 2013.
Nevada Police Officer and Firefighter and Regular Employees	After 3 years of receiving benefits, automatic COLA of 2% annually, rising gradually to 5% annually, compounded, after 14 years of benefits; the compounded COLA is capped by the lifetime CPI for the period of retirement, i.e., it may not exceed inflation.	2015 legislation reduced the COLA for employees hired on or after 7/1/15. Newly hired workers will receive a COLA of 2% after 3 years of receiving benefits, 2.5% after 6 years, and the lesser of 3% or the preceding year's increase in CPI after 9 years and thereafter.
New York State Teachers	Automatic, based on one-half of the increase in the annual CPI, applied to first $18,000 of annual pension, compounded; must be 62 and retired for 5 years, or 55 and retired for 10 years, to receive COLA; COLA is a minimum of 1% and a maximum of 3%.	
New York State & Local ERS and Police & Fire	Automatic, based on one-half of the increase in the annual CPI, applied to first $18,000 of annual pension, compounded: must be 62 and retired for 5 years, or 55 and retired for 10 years, to receive COLA; COLA is a minimum of 1% and a maximum of 3%.	
Ohio PERS	For those who retired on or before 1/1/13, automatic, 3%, simple. Retirees receive a COLA beginning 12 months after their effective date of retirement. Beginning in 2019, the COLA for those who retired on or after 2/1/13 is based on CPI with a cap of	2012 legislation tied COLA to CPI, up to 3% for all active members. Legislation includes a five-year transition period. Members retiring within the first five years after 1/7/13 are eligible for a simple 3% COLA until 12/31/18.

Plan	COLA Provision	2009-2021 Changes
	3.0%, simple. The first COLA is paid 12 months after their effective date of retirement.	OPERS currently is pursuing legislation that would suspend the COLA for all retirees in 2022 and 2023 and extend the COLA waiting period from 12 to 24 months for future retirees beginning in 2022. Changes are subject to approval by the Ohio Legislature.
Ohio Police & Fire	Lesser of 3% or the CPI, automatic, simple; COLA delayed until age 55 for all members except survivors and those receiving permanent disability benefits.	Per 2012 legislation, COLA reduced and tied to CPI; onset delayed for nearly all members.
Ohio School Employees	As of 1/1/18, COLA no longer statutorily guaranteed, but is discretionary, based on board approval. If the board chooses to provide a COLA, the COLA is tied to the change in CPI-W and is capped at 2.5%, though the board may approve a COLA above 2.5% if the board's actuary is in agreement. Board may also lower COLA below CPI-W upon actuary's recommendation. COLA onset for new benefit recipients is delayed until 4th benefit anniversary.	Per legislation effective September 2017, the automatic, 3% simple retiree COLA was replaced with a discretionary COLA tied to CPI-W. As a result of this authority, the board suspended COLAs for three years (from 1/1/18 until 1/1/21). Per March 2018 legislation, board determines COLA onset for new benefit recipients.
Ohio Teachers	The COLA is currently 0%. By a vote of the STRS Ohio board in April 2017 in order to preserve the fiscal integrity of the pension fund, a reduction from 2% to 0% went into effect 7/1/17. Pursuant to that board vote, not later than the next quinquennial actuarial experience review, the board will evaluate whether an upward adjustment to the COLA is payable without materially impacting the fiscal integrity of the retirement system.	Per 2012 legislation, members who retire on or after 8/1/13 qualify for a 2% simple COLA beginning on the fifth anniversary of their retirement. In 2017, the STRS board voted to reduce the COLA to 0% to keep the system's funding period to no more than 30 years and maintain the fiscal integrity of the system.
Oklahoma PERS	Ad hoc as approved by the legislature; subject to required funding.	2020 legislation approved the first retiree COLA since 2008, which was exempted from the 2011 funding requirement. The Legislature approved a provision in 2011 requiring future COLAs to be funded. Prior to this legislative action, a 2% COLA had regularly been approved.
Oklahoma Teachers	Ad hoc as approved by the legislature; subject to required funding.	2020 legislation approved the first retiree COLA since 2008, which was exempted from the 2011 funding requirement. The Legislature approved a provision in 2011 requiring future COLAs to be funded. Prior to this legislative action, a 2% COLA had regularly been approved.
Oregon PERS	Automatic, based on CPI, up to 2.0%, compounded, for benefits earned as of 10/1/13 or earlier. Automatic, based on CPI up to 1.25% on the first $60,000 in benefits and 0.15% on amounts above $60,000 for benefits earned after 10/1/13.	2013 legislation lowered the maximum COLA applied to future benefit accruals for retired members as well as current employees and new hires from 2% to 1.25% on the first $60,000 in benefits, and 0.15% on amounts above $60,000. The law also provided for supplementary COLA payments depending on benefit levels over six years The law was

Plan	COLA Provision	2009-2021 Changes
		challenged and partially rejected as an unconstitutional adjustment to COLA as it pertains to benefits earned prior to the law's effective date. The court also invalidated the supplementary payments.
Pennsylvania School Employees	Ad hoc as approved by the general assembly.	
Pennsylvania State ERS	Ad hoc as approved by the general assembly.	
Rhode Island ERS	Effective 7/1/15, annual COLA is comprised of the sum of two elements; 1) 50% of the 5-year average investment return of the retirement system, less 5.5%, with a floor of 0% and a cap of 4%., and 2) the lesser of 3% or the increase in CPI for the previous year. The COLA produced by the sum of these elements is subject to a floor of 0% and a cap of 3.5% and is applied to the first $25,855 of retirement benefit; such amount is indexed annually in the same percentage as determined above. The COLA commences upon the later of the third anniversary of the date of retirement or the date on which the retiree reaches his or her Social Security retirement age, whichever is later. A COLA is granted annually if the plan is at least 80% funded. If the plan funding is below 80%, the COLA is granted every four years until 80% funding is reached.	For members not eligible to retire as of 9/30/09, the law changed the COLA for all members from 3% compounded annually to the COLA provided under a 2005 reform, applicable to non-vested members, which is the lower of either the CPI or 3% and requires a full 3-year anniversary from the date of retirement for receipt of the COLA. The Rhode Island Legislature again in 2011 revised the COLA provisions, effective 7/1/12. A challenge to the law was settled in mediation in 2015.
Rhode Island Municipal	Effective 7/1/15, annual COLA is comprised of the sum of two elements; 1) 50% of the 5-year average investment return of the retirement system, less 5.5%, with a floor of 0% and a cap of 4%., and 2) the lesser of 3% or the increase in CPI for the previous year. The COLA produced by the sum of these elements is subject to a floor of 0% and a cap of 3.5%, and is applied to the first $25,855 of retirement benefit, with such amount indexed annually in the same percentage as determined above. The COLA commences upon the third anniversary of the date of retirement or the date on which the retiree reaches his or her Social Security retirement age, whichever is later. A COLA is granted annually as long as the plan is at least 80% funded. If the plan funding is below 80% the COLA is granted every four years until 80% funding is reached.	The Rhode Island Legislature in 2011 revised COLA provisions from automatic 3% non-compounded, effective 7/1/12. A challenge to the law was settled in mediation in 2015.
South Carolina Police	Automatic, based on CPI up to 1% annually, subject to an annual cap of $500.	Per 2012 legislation, COLA is subject to an annual cap.
South Carolina RS	Automatic, 1% annually, subject to an annual cap of $500.	Per 2012 legislation, COLA is subject to an annual cap.
South Dakota RS	If the system is fully funded or greater, COLA is equal to CPI-W with a minimum of 0.0% and a maximum of 3.5%. If the system is less than fully funded, COLA is equal to CPI-W with a minimum of 0.0% and a maximum equal to a "restricted COLA maximum"	2021 legislation reduced the minimum COLA payable from 0.5% to 0.0%. 2017 legislation modified the COLA formula, effective 7/1/18, to equal CPI-W with a

Plan	COLA Provision	2009-2021 Changes
	which is to be calculated at a level necessary to restore the system to full funding.	minimum of 0.5%, and a maximum depending on the system's funded status.
TN Political Subdivisions	Participating employers may choose from 1 of 2 options: a) no COLA; b) automatic based on CPI, up to 3%, compounded.	
TN State and Teachers	Automatic based on CPI, up to 3% compounded.	2013 legislation provides for the potential reduction or suspension of the COLA if employer cost or unfunded liability thresholds are exceeded.
Texas County & District	Ad hoc, approved by individual employers. Employers can choose no COLA, a flat % COLA (limited based on CPI), or a CPI-based COLA (10% - 100% of CPI), compounded.	
Texas ERS and LECOS	Ad hoc as approved by the legislature; per state law, plan's amortization period must be less than 31 years for legislature to approve a COLA.	
Texas Municipal	Based on individual employer election; employers may choose no COLA or one based on 30%, 50%, or 70% of CPI, compounded.	
Texas Teachers	Ad hoc, as approved by the legislature; per state law, plan's amortization period must be less than 31 years for legislature to approve a COLA.	
Utah Noncontributory	For those hired before 7/1/11, automatic based on CPI up to 4.0%, simple; for those hired after 6/30/11, based on CPI up to 2.5%, simple.	Legislature reduced maximum COLA for those hired after 6/30/11 from 4% to 2.5%.
Virginia Retirement System	Automatic based on CPI for the first 3%, and one-half of the next 4% of CPI, with an annual cap of 5%, compounded; effective 1/1/13, COLAs for non-vested active members are based on the first 2% of CPI and one-half of the next 1%, with an annual cap of 3%, compounded.	Effective 1/1/2013, COLAs for non-vested members are capped at 3% rather than 5%; for early retirees, COLA onset is delayed until July 1 one year following retirement.
Vermont State Employees	Automatic based on CPI, up to 5%, compounded.	
Vermont Teachers	Automatic based on one-half of CPI, up to 5%, compounded.	
Washington LEOFF Plan 1	Automatic, full CPI, compounded.	
Washington LEOFF Plan 2	Automatic based on CPI, up to 3% compounded.	
Washington PERS and Teachers Plan 1	None.	2011 legislation eliminated automatic COLA which provided a postretirement benefit increase based on a $/years of service calculation. The law was challenged and upheld by the WA Supreme Court in 2014.

Plan	COLA Provision	2009-2021 Changes
Washington PERS, School Employees, and Teachers Plan 2/3	Automatic, based on CPI, up to 3%, compounded.	
Wisconsin Retirement System	Dividend adjustment provided based on investment returns, and can increase or decrease, but not below base benefit.	
West Virginia PERS	Ad hoc as approved by the legislature.	
West Virginia Teachers	Ad hoc as approved by the legislature.	
Wyoming Public Employees	Effective 7/1/12, the COLA is removed until the actuarial funded ratio reaches 100 percent "plus the additional percentage the retirement board determines is reasonably necessary to withstand market fluctuations."	Prior to 7/1/12, COLAs were ad hoc and linked to perceived affordability.

COLA provisions listed above are in effect as of June 2021

Attachment 2B

GRS INSIGHT

April 2011

Postemployment Cost-of-Living Adjustments: Concepts and Recent Trends

By Paul Zorn, Mark Randall, and Joe Newton

In This Issue

The sharp investment declines in 2008-2009 and the resulting economic and financial pressures have led state and local governments to search for ways of controlling pension costs and stabilizing contributions.

This search includes reviewing the costs associated with postemployment cost-of-living adjustments (COLAs). While COLAs are an important component of pension plan design, different types of COLAs have different advantages and disadvantages.

Recent changes to COLA designs may be seen as working to find some middle ground between ad hoc and automatic COLAs. In some cases, the COLA remains automatic but is also contingent on the plan's funded ratio or on amounts accumulated in a reserve account. In other cases, the COLA remains ad hoc but is provided on an actuarial basis.

The following article is based on a study done by GRS for the Wyoming Retirement System (WRS). Our thanks go to Thomas Williams, Executive Director of WRS, for his permission to use the study as the basis for our article. Our thanks also go to David Stella, Secretary of the Wisconsin Department of Employee Trust Funds, for his help in describing Wisconsin's postemployment benefit adjustment.

The sharp investment decline that occurred in 2008-2009 and the resulting financial pressures on state and local governments have led government officials to search for ways of controlling pension costs and stabilizing required contributions. As a result, many pension plans and plan sponsors are reviewing their plan designs, including reviewing the costs associated with postemployment cost-of-living adjustments (COLAs). This article discusses the purpose of COLAs, how they are provided, and the advantages and disadvantages of different types of COLAs. It also discusses recent changes in public-sector COLAs and the relative costs of COLA designs.

The Purpose of COLAs

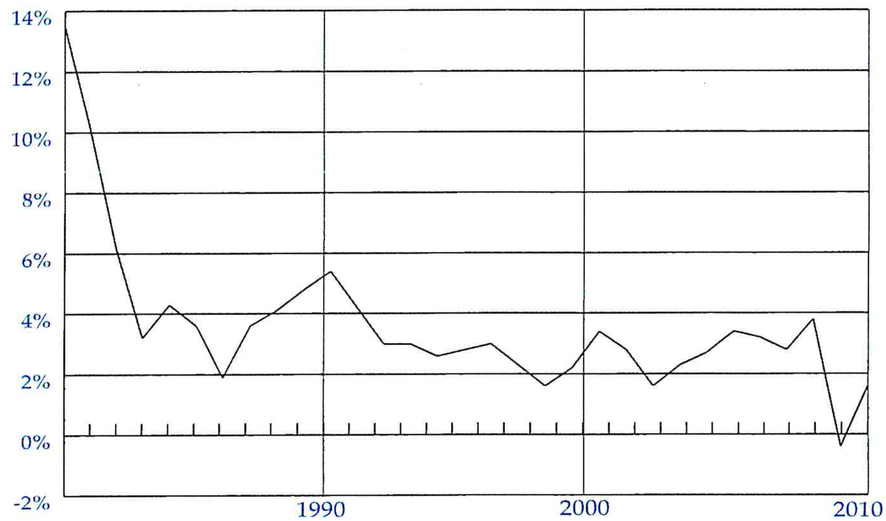
To protect retiree benefits from inflation, many public retirement systems provide COLAs. Inflation is typically measured through one of two indexes, both produced by the U.S. Bureau of Labor Statistics. The first is the Consumer Price Index for All Urban Consumers (CPI-U) and the other is the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).[1] Over the past 30 years, both measures have shown similar patterns of inflation. Chart 1 on the next page shows inflation based on the CPI-U.

As measured by the CPI-U, inflation averaged 3.3% over the past 30 years and ranged from 13.5% in 1980 to -0.4% in 2009. Over the past 10 years,

[1]The CPI measures average changes over time in the prices of goods and services, including food, clothing, shelter, fuels, transportation, medical services, and other items people buy for day-to-day living. The CPI-U measures the average change in prices for approximately 87% of the U.S. population, and is collected from 87 urban areas across the country. The CPI-W is a narrower measure than the CPI-U, in that it only covers wage earners and clerical workers, who make up about 32% of the U.S. population.

inflation averaged 2.4% and ranged from 3.8% in 2008 to -0.4% in 2009. For people receiving retirement benefits that are not adjusted for inflation, even relatively small rates of inflation can significantly reduce their purchasing power when applied over extended periods of time.

Chart 1: Changes in the CPI for All Urban Consumers (1980-2010)



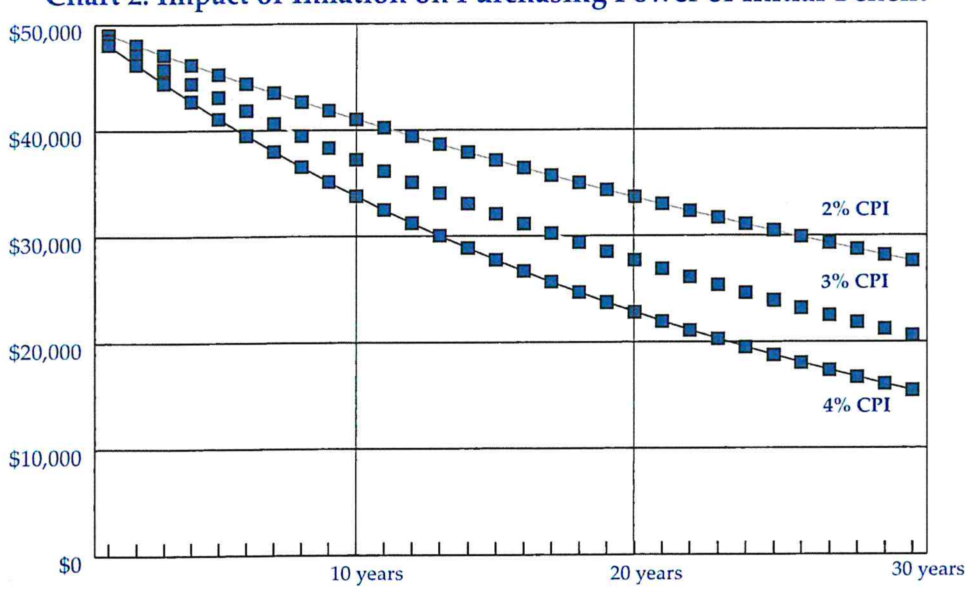
Changes in the CPI-U averaged 2.4% over the last 10 years and 3.3% over the last 30 years.

As shown below in Chart 2 , annual inflation of 3% would cause the purchasing power of a $50,000 initial benefit to fall to $27,700 after 20 years (a 45% reduction) and $20,600 after 30 years (a 59% reduction). Similarly, annual inflation of 4% reduces purchasing power by 54% over 20 years and 69% over 30 years. Even a relatively low inflation rate of 2% reduces purchasing power by 33% after 20 years and 45% after 30 years.

COLAs Provided by Public Plans

Most public pension plans have provided postemployment COLAs either on an ad hoc basis or on an automatic basis. A key feature of ad hoc COLAs is that they require the approval of the plan sponsor's governing body (or in some cases the plan's board). In contrast, automatic COLAs do not require the governing body's approval and are often based either on a fixed annual rate (e.g., 3%) or on the CPI - often with an upper limit (e.g., CPI up to 3%).

Chart 2: Impact of Inflation on Purchasing Power of Initial Benefit



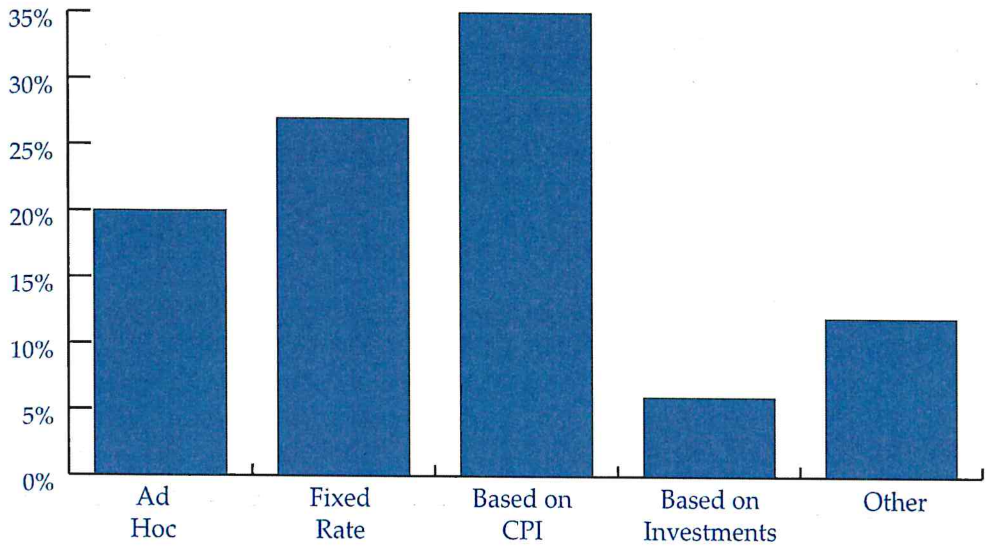
Several public pension plans base COLAs on investment earnings that are above some benchmark rate of return for the year (e.g., the assumed long-term rate of return). COLAs based on investment returns were introduced in the 1990s due, in part, to the relatively high investment returns earned in that decade. More recently, some plans have implemented a combined approach, including a relatively low fixed COLA (e.g., 2%) in combination with a COLA based on investment earnings that exceed long-term expected returns.

On the next page, Chart 3 summarizes the general COLA approaches used by over 100 large public plans included in the Public Fund Survey conducted by the National Association of State Retirement Administrators (NASRA) and the National Council on Teacher Retirement (NCTR).

About 20% of the plans use ad hoc COLAs, 27% use a fixed rate (often 3%), and 35% base their COLAs on the CPI (often capped at 3%). Only about 6% base their COLAs solely on investment returns. However, of the 12% that provide COLAs through other approaches, about half include COLAs based partly on investment returns.

These other approaches include COLAs that are based on amounts

Chart 3: COLA Approaches Used by Large Public Pension Plans



Source: Authors' calculations based on NASRA/NCTR Public Fund Survey

that accumulate in reserve accounts and ad hoc COLAs that are provided when plan resources are judged sufficient to fund the COLA on an actuarial basis (e.g., "Break-Even" COLAs). Further discussion of "Break-Even" COLAs and COLAs based on a reserve account is provided later in this article (on page 4).

The advantages and disadvantages of different COLA designs are discussed in Table 1, below.

Table 1: Advantages and Disadvantages of COLA Designs

Type of COLA	Key Feature	Advantages	Disadvantages
Ad Hoc	COLA is provided at the discretion of the sponsoring employer's governing body (or the plan's board)	• COLA is provided when judged affordable by the sponsoring entity	• COLA may be infrequent and not sufficient to protect retirees' purchasing power • COLA may not be included in actuarially determined contributions and so not prefunded
Fixed Rate	COLA is provided automatically at a fixed rate (e.g., 3%) each year	• COLA can be relied on to protect some portion of retirees' purchasing power • COLA is included in actuarially determined contributions and so is likely to be prefunded	• COLA may be higher than necessary to protect against inflation in some years and lower than necessary in other years
Based on CPI	COLA is provided automatically as some proportion of the CPI increase (e.g., 100% of the CPI up to 3%) each year	• COLA can be relied on to protect some portion of retirees' purchasing power • COLA is included in actuarially determined contributions and so is more likely to be funded • COLA is not higher than necessary to protect against inflation	• COLA may be lower than necessary to protect against inflation in some years, if limited to a set percentage • In periods of high inflation, the COLA may sharply increase contributions, unless capped
Based on Investment Earnings	COLA is provided when annual investment earnings exceed some benchmark (e.g., exceed the actuarially assumed long-term rate of return)	• COLA is provided from investment returns rather than current contributions	• COLAs may be infrequent and not sufficient to protect retirees' purchasing power • Using investment returns to pay the COLA lowers the effective investment returns and so may increase future contributions or lead to a lower funded status
Based on Break-Even Contributions	COLA is provided to the extent the Annual Required Contribution (including the COLA) does not exceed the current contribution policy (e.g., the statutorily required contributions)	• COLA is provided when judged affordable by the sponsoring entity • COLA is included in actuarially determined contributions and so is more likely to be funded	• COLA may be infrequent and not sufficient to protect retirees' purchasing power • When given routinely, a Break-Even COLA may reduce plan surpluses that protect against future investment market downturns
Based on Reserve Account	COLA is provided to the extent funds held in a separate reserve account are sufficient to pay the COLA	• COLA can be funded by plan investments or by an external source • COLA is provided when judged affordable by the sponsoring entity • COLA is provided (partly or fully) to the extent funds have been set aside	• COLA may be infrequent and not sufficient to protect retirees' purchasing power • Using investment returns to pay the COLA lowers the effective investment return and so may increase future contributions or lead to a lower funded status

Recent Changes to Public Pension COLAs

As a result of the recent investment declines and resulting economic pressures, a significant number of public plan sponsors and retirement systems have redesigned their COLAs in order to control their overall plan costs. According to the *Pensions and Retirement Plan Enactments* reports by Ron Snell at the National Conference of State Legislatures (NCSL), these changes include:[2]

- **Lowering the COLA.** In 2008, the Board of Trustees of the Georgia Employees Retirement System lowered its ad hoc COLA from 3% to 2% and expressed caution about providing future COLAs until additional funding becomes available or its funded ratio improves.

- **Capping the COLA.** In 2010, the State of Rhode Island changed its COLA to only apply cost-of-living increases to the first $35,000 of the annual retirement benefit.

- **Extending the date the retiree becomes eligible to receive the COLA.** In 2010, Illinois passed legislation providing that the COLA will become available one year after the beneficiary begins receiving benefits or age 67, whichever is later. In Rhode Island, in addition to the $35,000 cap, the State is also delaying payment of the first COLA to the later of age 65 or the member's third anniversary of retirement.

- **Lowering the amount of the CPI provided by the COLA.** In 2010, the Illinois legislature lowered its COLA from a fixed 3% rate to the lesser of 3% or one-half of the CPI, but not less than zero.

- **Making the COLA contingent on the plan's funded ratio.** In 2010, South Dakota passed legislation linking the COLA to the system's funded ratio based on the market value of assets. The COLA is 2.1% if the funded ratio is below 80%; 2.4% if the ratio is between 80% and 89%; 2.8% if the ratio is between 90% and 99%, and 3.1% if the ratio is 100% or more.

- **Allowing a member to self-fund a fixed-rate COLA through a reduction in the member's initial retirement benefit.** In 2009, Louisiana passed legislation allowing members to self-fund a guaranteed 2.5% annual COLA through an actuarial reduction in benefits.

- **Establishing a reserve account to fund the COLA.** The Teachers' Retirement System of Louisiana maintains a reserve account (referred to as an Experience Account) funded by one-half of investment earnings in excess of 8.25%. COLAs are payable only if there are sufficient funds in the account and the COLA is approved by the state legislature. In 2009, the Louisiana legislature tightened the rules for determining the COLAs paid from the account.

It should also be noted that in several states, changes in automatic COLAs are being legally challenged by retirees on the grounds that reductions in vested pension benefits violate contract protections included in the U.S. Constitution and many state constitutions.

COLA Case Studies - Wyoming and Wisconsin

Wyoming and Wisconsin have innovative COLA designs. Generally, the Wyoming Retirement System uses an ad hoc postemployment COLA.[3] For seven of the Wyoming funds, an ad hoc "Break-Even" COLA is determined each year by the System's Board of Trustees in consultation with the System's actuary. In essence, these are actuarially based ad hoc COLAs.

Under the Break-Even COLA, the maximum COLA allowable each year is limited to an increase in benefits that the actuary determines to be actuarially sound (but not more than the lesser of 3% or the Wyoming Cost of Living Index). The maximum COLA is determined by taking the difference between the statutorily required contribution and the annually required contribution (ARC)[4] and calculating a COLA that could be provided to current and future retirees in perpetuity.

For example, assume that the statutorily required contribution is 14% of payroll and the ARC is 12%. The Break-Even COLA is the actuarially determined COLA that the 2% difference could provide to current and future retirees over their retired lifetimes.

After the COLA is given, it remains in effect over the retirees' lifetimes. However, any future COLAs (over and above those already provided) must be approved by the Trustees. Due to the investment decline in 2008,

[2] These reports provide an excellent summary of the changes enacted by state legislatures related to public pensions and other retirement benefits. The studies are available at: www.ncsl.org/?tabid=13399

[3] Currently, only the Wyoming Paid Firemen's Retirement Plan A has a guaranteed COLA.

[4] The annually required contribution (ARC) is determined in accordance with the Governmental Accounting Standards Board's Statements Nos. 25 and 27.

the Board of Trustees has not granted a COLA for the past three years. Moreover, state legislation has put a hold on future COLAs, at least until June 2012.[5]

The Wisconsin Retirement System's postemployment benefit adjustment also has an interesting design. If investment returns produce a surplus in the retired life reserve account (the account used to pay monthly pension benefits), the pension benefits may be increased (i.e., paid as a "dividend" in their terms). The dividend is structured so that investment earnings have to be higher than 5% for a dividend to occur. Investment returns are smoothed over a five-year period to dampen dividend volatility.

The dividends are not guaranteed and may be reduced. In fact, dividends may actually be negative if the reserve account falls below the value of the pension liabilities. For example, the 2008 investment downturn caused assets in the reserve account to fall below the liabilities. As a result, a "negative dividend" of -2.1% was applied to all annuities that had received positive dividends in prior years. The dividend is designed so that an individual's pension benefit does not fall below the amount of the original benefit.

This structure helps to allocate plan funding risks over employers and retirees. It dampens the growth of plan liabilities when investment returns are low and provides additional benefits when returns are high. Also, while the COLA is automatic, it is also variable. The COLAs have averaged 4.7% over the past 28 years and 1.3% over the past 10 years. However, dividends have been negative over the past three years as a result of the 2008 investment declines.

[5] However, as required under state law, the System has paid the 3% COLA to the Wyoming Paid Firemen's Retirement Fund Plan A.

Relative Costs of Different COLA Designs

Exhibit 1 below shows the relative estimated cost impact of several different COLA designs. The first line of Exhibit 1 shows a cost factor of 1.0 for a retirement plan with no cost-of-living adjustments (our baseline). The following COLA alternatives then show the relative cost impact of the alternative COLA designs in relation to the baseline cost factor of 1.0. For example, a 3% compound COLA with a cost factor of 1.26 is 26% more expensive than the baseline of no COLA.

Conclusions

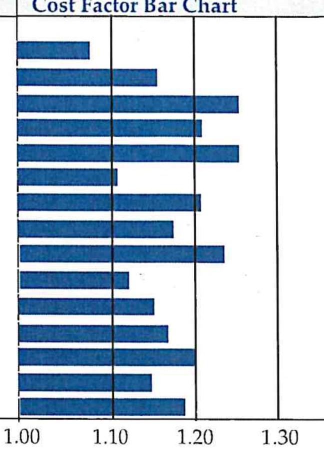
As discussed in this article, there are a variety of ways that COLAs can be designed and funded. They can be provided on an ad hoc basis, which helps ensure that the COLA is only provided when judged affordable. However, this may also result in the COLA being offered infrequently, and the cost not being prefunded in the actuarially determined contributions.

Alternatively, COLAs can be provided automatically, which helps ensure that the cost-of-living adjustments are provided on a regular basis. However, this may also

Exhibit 1
COLAs and Their Relative Cost Impact
(Assumes Cost-of-Living Increases at 3% Annually, Unless Otherwise Noted)

COLA Scenario	Notes	Cost Factor
No COLA		1.00
1% COLA	Compound	1.07
2% COLA	Compound	1.16
3% COLA	Compound	1.26
3% Simple COLA	3% of original benefit with fixed-dollar increases	1.21
Full Consumer Price Index (CPI)	Assumes 3% compound increase	1.26
50% of CPI	Assumes 1.5% compound increase	1.11
CPI capped at 3%	Assumes 2.5% per year to approximate cap	1.21
CPI deferred to age 65	Assumes later of 2 year deferral or age 65	1.17
CPI deferred for 3 years	Deferred 3 years instead of 2 years	1.23
CPI only on first $12,000	Maximum annual COLA = $360	1.12
CPI only on first $12,000 - indexed	Index $12,000 cap at 3% assumed COLA	1.15
CPI only on first $24,000	Maximum annual COLA = $720	1.17
CPI only on first $24,000 - indexed	Index $24,000 cap at 3% assumed COLA	1.20
CPI prorated on service less than 30 years	Maximum 3% COLA with 30 years of service	1.16
CPI capped at 50% of original benefit	Maximum benefit = 150% of original benefit	1.19

Cost Factor Bar Chart



put additional strain on the plan if inflation spikes or sudden investment downturns result in increased funding pressures.

Recent changes to COLA designs may be seen as working to find some middle ground. In some cases, the COLA remains automatic but is also contingent on the plan's funded ratio or on amounts accumulated in a reserve account. In other cases, the COLA remains ad hoc but is provided on an actuarial basis. Combinations of approaches are also possible.

Finally, in evaluating the advantages and disadvantages of various COLA designs, it is important to consider how COLAs might be affected by proposed future changes in pension accounting standards currently being discussed by the Governmental Accounting Standards Board. As tentatively decided by the Board, changes in benefits related to inactive or retired plan members would be recognized immediately in the plan sponsor's pension expense. If this tentative decision is included in the final rules, it would mean that changes in postemployment COLAs would no longer be amortized over time, but rather immediately recognized in the pension expense.

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- Pension Plan Consulting
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GRS
Offices

CHICAGO

20 North Clark Street, Ste. 2400
Chicago, IL 60602-5111
(312) 456-9800
(312) 456-9801 Fax

Contact: Lance Weiss

DALLAS

5605 N. MacArthur Boulevard, Ste. 870
Irving, TX 75038-2631
(469) 524-0000
(469) 524-0003 Fax

Contact: Mark Randall

DENVER

7900 East Union Avenue, Ste. 1100
Denver, CO 80237-2746
(303) 217-7600
(303) 217-7609 Fax

Contact: Leslie Thompson

DETROIT

One Towne Square, Ste. 800
Southfield, MI 48076-3723
(800) 521-0498
(248) 799-9000
(248) 799-9020 Fax

Contact: Judy Kermans

FT. LAUDERDALE

One East Broward Boulevard, Ste. 505
Ft. Lauderdale, FL 33301-1804
(954) 527-1616
(954) 525-0083 Fax

Contact: Theora Braccialarghe

This newsletter and additional information about the firm may be found on the GRS website at:

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DRAFT 2022 Administration and Finance Committee Calendar 12/17/21 version

	Bold Items are Committee Action Items/ Green Items are ES related.
Jan	• CES Project Update • Defined Benefits- Pensioners COLA increase practices
Feb	• **Water/Wastewater Spring Bond Authorization** • Safety Program Update • Low-income assistance program review
Mar	• **Approve 2021 Water Surplus Balance to be transfers** • **T&C changes – AMAP requested changes at least** • IT security audit
Apr	• Election of Committee Chair for the Apr 2022 to March 2023 • **Approve 2021 Wastewater Surplus Balance to be transfers** • ESG statement – **possible Board motion**
May	• **Auditor's Report** • Credit card/AP review
Jun	• Actuary report – Funding Recommendation 2023/Pension Plan Investment Review • **457 Plan Restatement (RMD compliance, COVID & hardship)**
Jul	• 2023 Financial Plan Parameters – done earlier • **Water/Wastewater Fall Bond Authorization**
Aug	• Lake? Only necessary items?
Sep	• Water Rate adjustment (Jan 1st effective date)
Oct	• 2022 Benefit Program Review • Workers Compensation Program RFP • **Home Service Renewal 2023 – 2026**
Nov	• **2023 Budget Review**
Dec	• **Pensioners' Annual COLA Adjustment**

Other thoughts:

- Annual IT Security Audit Result
- IT Multi-year Plan
- Investment Review – Pension and Operating
- Ready-to-Serve Fee concept update
- Fund Balance Policy
- **T&C for Billing System Change and Periodic Update**
- Low-income Conservation Program
- ESG statement approved
- 457 restatement has to be done every 6 years per IRS – due by July 2022.
- Cayenta – things left to do, status – Invoice Cloud, customer contacts, bill error rate
- Finance Plus upgrade
- Multi-year assumptions review
- Customer satisfaction survey?
- Marketing Plan review
- Employee Recruitment
- Annual review of turnover statistics
- Non-union COLA adjustment review mid-year?
- Financial policy review - assets definition, minimum cash balance
- Cybersecurity Fundamentals – how are we doing?

MEMORANDUM
PORTLAND WATER DISTRICT

TO: Operations Committee / Board of Trustees

FROM: Scott Firmin, Director of Wastewater Services
James Wallace, Director of Water Services

DATE: December 30, 2021

RE: **Operations Committee Meeting – January 10, 2022**

A meeting of the Operations Committee of the Portland Water District Board of Trustees will be held on Monday, January 10, 2022 beginning at 5:30 p.m., in the Nixon Room, 225 Douglass Street, Portland, Maine.

AGENDA

1. **Engineering Method Approval – Comprehensive Infrastructure Asset Management Plan**
   Staff will provide a recommendation to procure engineering services for the development of the next phase of asset management planning, which will provide tools and plans that prioritize future projects. (See attached memo)

2. **Overview of Water Operations**
   Staff will provide an overview of water treatment and distribution operations.

3. **Other Business**

Portland Water District
From Sebago Lake To Casco Bay

OPERATIONS COMMITTEE / AGENDA ITEM SUMMARY

Agenda Item:	1
Date of Meeting:	January 10, 2022
Subject:	Engineering Method Approval - Comprehensive Infrastructure Asset Management Plan
Presented By:	Helen Newman, Project Engineer

RECOMMENDATION
The following proposed language is presented for Board of Trustee approval:

> ORDERED, that the Comprehensive Method is authorized for the procurement of engineering services for the Comprehensive Infrastructure Asset Management Plan Project, pursuant to the District's Purchasing Policy, and that the General Manager and the Treasurer, each acting singly, are authorized to take such other steps as may be necessary to accomplish the intent of this vote.

BACKGROUND ANALYSIS
Pursuant to the District's purchasing policy, staff is seeking approval from the Board of Trustees to procure engineering services (Comprehensive Method) for the continued development and expansion of PWD's asset management program for both water and wastewater assets. The effort will produce documentation and tools that that will allow PWD to continuously improve and fine tune project prioritization as new information is learned. The Comprehensive Method for engineering would result in one professional services procurement for delivery of this project (plan development) as well as follow-up process refinement and system optimization efforts.

The project will develop asset management plans for several critical asset classes (including water mains), develop condition based monitoring plans, and determine an optimized financial strategy. Staff estimates that the cost for the Plan to be $750,000. It is anticipated that this effort will recommend additional planning efforts that will be included in future CIPs. If approved by the Board, the intent of this Order is to negotiate professional services with the firm selected for this Project.

Once the Method is approved, staff will issue a request for proposals. It is expected that a recommendation will be offered to the Board at the April meeting.

FISCAL REVIEW/ FUNDING
The project was included in the 2021 CIP, Subprogram 3, Project 3071. The Board authorized the creation of a reserve to fund the project on January 27, 2020 (order 20-002). The reserve is sufficient to fund the project.

LEGAL REVIEW
Corporate Counsel has reviewed and approved the form of motion.

CONCLUSION(S)
Staff recommends that the comprehensive engineering method be utilized to design and build this project.

ATTACHMENT(S)
None

MEMORANDUM
PORTLAND WATER DISTRICT

TO: Planning Committee / Board of Trustees

FROM: Christopher Crovo, P.E., Director of Asset Management and Planning

DATE: December 30, 2021

RE: **<u>Planning Committee Meeting – January 10, 2022</u>**

A meeting of the Planning Committee of the Portland Water District Board of Trustees will be held on Monday, January 10, 2022 at 5:30 p.m. in the Douglass Street EOC, 225 Douglass Street, Portland, Maine.

<u>AGENDA</u>

1. **<u>Request for lease extension and expansion of the leased area - FWP Realty LLC – Broadway, South Portland</u>**
   Staff will recommend a lease extension and expansion of the leased area to FWP Realty LLC owner of Pape Automotive. (See attached memo)

2. **<u>Request from Cumberland County Soil and Water Conservation District for a PWD Contribution of the Trickey Pond Protection Project</u>**
   Staff will recommend a contribution of $9,350 to support Cumberland County Soil and Water Conservation District's Trickey Pond Protection Project. (See attached memo)

3. **<u>Other Business</u>**

Portland Water District
From Sebago Lake To Casco Bay

PLANNING COMMITTEE / AGENDA ITEM SUMMARY

Agenda Item:	1
Date of Meeting:	January 10, 2022
Subject:	FWP Realty Lease Agreement
Presented By:	Laurel Jackson, Right of Way Agent

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

> ORDERED, the General Manager is authorized to execute a new lease agreement with FWP Realty LLC for a driveway and parking area on PWD land located on Broadway in South Portland in accordance with the terms described herein; and
>
> BE IT FURTHER ORDERED, that the General Manager and the Treasurer, each acting singly, are authorized to take such other steps as may be necessary to accomplish the intent of this vote.

BACKGROUND ANALYSIS

FWP Realty LLC, owner of Pape Automotive, has a lease with Portland Water District to use a portion of the District's fee-owned land located on Broadway in South Portland as a driveway entrance to the car dealership. The current lease expires in April 2022 and FWP Realty LLC has requested a new lease and to expand the leased area to include a paved vehicle display area.

Staff recommends that the agreement be in the form of a ten year lease beginning April 2022. The lease will include an option to extend the lease after the initial lease term and can be terminated if necessary by either party upon 30 days written notice. The District has similar leases with Maplewood Dental in Gorham and the Coast Guard Commissary in South Portland. Using these existing leases as well as comparing recent assessment data done by the City of South Portland as guidance to determine an annual lease payment; staff recommends an annual payment of $11,000 for the first five years of the lease term to increase 10% in each subsequent five-year term.

FISCAL REVIEW / FUNDING

FWP Realty LLC will pay annual rent as described above.

LEGAL REVIEW
Corporate Counsel will review the proposed lease prior to execution.

CONCLUSION(S)
Staff recommends that PWD proceed with the proposal described above.

ATTACHMENT(S)
Current Lease Agreement

LEASE AGREEMENT

THIS LEASE is made this 24th day of April, 2002, by and between the **PORTLAND WATER DISTRICT**, a quasi-municipal corporation organized and existing under the laws of the State of Maine with a principal place of business at Portland, in the County of Cumberland and State of Maine (hereinafter the "DISTRICT") and **FWP REALTY COMPANY, L.L.C.**, a Maine Limited Liability Company of South Portland, County of Cumberland and State of Maine (hereinafter "FWP REALTY").

BASIC FACTS

1) The DISTRICT owns a parcel of land located on the northerly side of Broadway in the City of South Portland, County of Cumberland and State of Maine as described in a deed from Horace W. Wilder dated and recorded in the Cumberland County Registry of Deeds in Book 2387, Page 459 (hereinafter the "DISTRICT LAND").

2) The DISTRICT has a 36" water transmission main with appurtenant facilities crossing under the DISTRICT LAND.

3) FWP REALTY and FREDERICK W. PAPE, III own land on both sides of the DISTRICT LAND as described in deeds from Louis Kyle et al to FWP REALTY dated January 26, 2001 and recorded in the Registry of Deeds in Book 15982, Page 75 and from CLP Servico, Inc. to Frederick W. Pape, III dated December 18, 1998 and recorded in the Registry of Deeds in Book 14405, Page 123.

4) FWP REALTY wishes to construct and maintain a driveway and utilities to connect the parcels of FWP REALTY and FREDERICK W. PAPE, III across a 50 foot wide strip of the DISTRICT LAND shown as "50' Access Easement From Portland Water District" on Sheets 2 and 3 of a set of plans entitled "Pape Property, Broadway, South Portland, Maine" prepared by Mitchell & Associates dated November 21, 2001 as amended February 3, 2002, the plans being on file at the offices of the DISTRICT and FWP REALTY (hereinafter the "LEASED LAND"), a copy of that portion of said plan showing the LEASED LAND being attached as Schedule A hereto.

5) The DISTRICT is willing to allow this driveway and utility crossing of the LEASED LAND as shown on the above plans, subject to the terms and conditions of this Lease Agreement.

AGREEMENT

The parties hereto agree as follows:

1) The DISTRICT does lease to FWP REALTY and FWP REALTY accepts such leasehold and agrees to be bound by the terms hereof, the right to enter the LEASED LAND for the purposes of constructing and maintaining a paved driveway, landscaping and utilities as shown on the above described plans and crossing the LEASED LAND on foot and with

vehicles of all types for a period of twenty (20) years beginning on the date of this Lease. FWP REALTY agrees to pay the DISTRICT an annual lease payment upon the execution of this Lease and on or before the anniversary date for each successive year of the Lease. The annual lease payment for the first five years period shall be $1500.00. The annual payment will increase 10% of the immediately prior rental for each successive five-year period of the Lease. The DISTRICT acknowledges and agrees that the rights leased to FWP REALTY hereunder may be utilized by any tenant of FWP REALTY, and/or the employees, agents, customers, patrons, visitors, and invitees of either FWP REALTY or any tenant of FWP REALTY.

2) FWP REALTY, prior to constructing any additional improvements, facilities or pavement on the LEASED LAND that are not shown on the above described plans, shall submit a plan of such improvements, facilities or pavement to the DISTRICT for its review and approval, which approval will not be unreasonably withheld. The DISTRICT shall review the plan with respect to the protection of its present and future pipelines and its ability to operate maintain and repair the pipelines and will respond in writing within 10 business days.

3) Each party agrees to notify the other at least 48 hours prior to conducting work on the LEASED LAND that will involve excavation or construction, except in an emergency, whereupon either party shall notify the other immediately.

4) FWP REALTY shall reimburse, fully and completely indemnify and save harmless the DISTRICT from any and all loss, damage, cost and expense caused by or arising out of FWP REALTY'S use of the LEASED LAND, including without limitation any and all such costs and expenses, including reasonable attorney's fees, incurred to assure the safety, securement, protection and continuity of present and future operations which are deemed necessary by the DISTRICT, including but not limited to the cost of inspection. FWP REALTY agrees to carry, at its expense, for the benefit of the DISTRICT public liability insurance in an amount of not less than $1,000,000 and property damage insurance in an amount of not less than $500,000, said insurance to be in the usual form for the protection of the DISTRICT and FWP REALTY and listing the DISTRICT as an additional insured. Any FWP REALTY property on the LEASED LAND shall be at the sole risk of FWP REALTY. The DISTRICT shall not be liable to FWP REALTY or its employees, agents, customers, patrons, visitors or invitees for any loss or damage to person or property caused by any act, omission or neglect of FWP REALTY, their employees, agents, customers, patrons, visitors or invitees.

5) In the event of any exercise by the DISTRICT of any rights related to the LEASED LAND, it shall have no obligation to FWP REALTY or to any third party, for any loss, damage, cost or expense caused by or arising out of any such exercise, including, without limitation, any loss of business suffered by FWP REALTY or any such third party, except for any such loss, damage, cost, expense or loss of business arising out of the gross negligence or willful misconduct of the DISTRICT.

6) The DISTRICT reserves the right perpetually and without limitation to possession of the LEASED LAND in common with FWP REALTY, and to lay additional line or lines of pipe within the LEASED LAND at such proximity to the improvements of FWP REALTY as the DISTRICT may, in its sole discretion, determine.

7) The DISTRICT agrees to restore any portion of the LEASED LAND to a reasonable condition after the laying, re-laying, maintenance or removal of any existing or future pipelines, and will take reasonable steps to protect the improvements of FWP REALTY located on the LEASED LAND, however, the DISTRICT shall not be responsible to replace any pavement, shrubs, trees or other ornamental plantings.

8) Finished grades of any new construction over the DISTRICT'S present or future pipelines shall provide the DISTRICT with a minimum of 4 feet and a maximum of 7 feet of cover over its pipelines. Underground utilities shall cross perpendicular to DISTRICT pipelines allowing a minimum vertical separation of one foot.

9) This lease shall be binding upon and inure to the benefit of the parties of this Lease and their respective successors and assigns. FWP REALTY may not assign this Lease to another party, except to any owner of land adjacent to the LEASED LAND and to the holder of any mortgage on the land adjacent to the LEASED LAND, which mortgage holder shall have the right to further assign this Lease to any party who acquires title to the mortgaged premises by foreclosure or deed in lieu of foreclosure.

10) If FWP REALTY defaults in the performance of any of the obligations of this Lease, then upon thirty days' written notice, if the default has not been cured, the DISTRICT may terminate this LEASE by entering upon the LEASED LAND, and upon such entry, this Lease shall terminate, provided FWP REALTY shall remain responsible for all the damages caused by the default. FWP REALTY will pay all legal fees of the DISTRICT related to any default by FWP REALTY.

11) The failure of the DISTRICT to enforce or insist upon compliance with any of the terms and conditions of this Lease Agreement shall not constitute a general waiver or relinquishment of any of the terms or conditions, but same shall remain in full force and effect at all times.

12) Notwithstanding anything contrary contained in this Lease, FWP REALTY may, following not less than 30 days' prior written notice to the DISTRICT, terminate this Lease, in which case neither party shall have any further liabilities or obligations hereunder except for liabilities or obligations as are by their terms, to survive the termination hereof.

13) Tenant may record a memorandum of this lease in the CCRD with a description of the premises and term only; provided, however, that if the lease is terminated prior to the end of the term for any reason, then Tenant will promptly record a release of its lease rights. Failure of Tenant to do so shall allow Landlord to bring an action against Tenant to enforce this clause, and the District shall be entitled to collect all damages resulting from

Tenant's failure to release its lease rights, and to collect all legal fees reasonably necessary to have Tenant's lease rights released of record and to recover the District's damages.

The parties have signed two original agreements as sealed documents to be effective on the date at the top of the agreement.

Witness: PORTLAND WATER DISTRICT

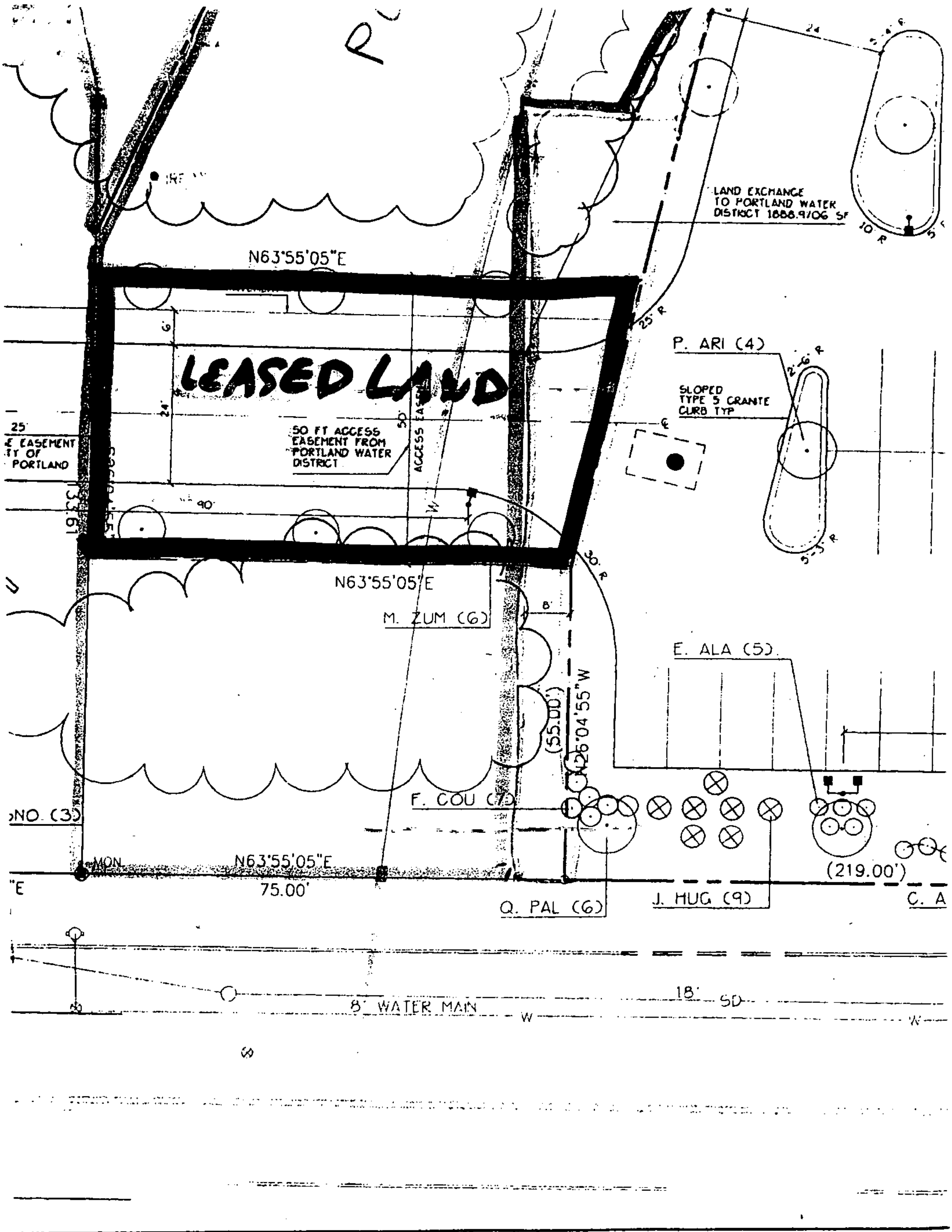
Lorraine L. Neal

Ronald Miller
Ronald Miller
General Manager

FWP REALTY COMPANY, L.L.C.

Donald G. Chase

By: Frederick W. Pape, III
Its: Sole Member and Manager


LEASED LAND
N63°55'05"E
LAND EXCHANGE TO PORTLAND WATER DISTRICT 1888.9/06 SF
50 FT ACCESS EASEMENT FROM PORTLAND WATER DISTRICT
ACCESS EASE
P. ARI (4)
SLOPED TYPE 5 GRANITE CURB TYP
E EASEMENT
TY OF
PORTLAND
N63°55'05"E
M. ZUM (6)
E. ALA (5)
(55.00')
N26°04'55"W
F. COU (7)
NO. (3)
MON
N63°55'05"E
75.00'
(219.00')
Q. PAL (6)
J. HUG (9)
C. A
8" WATER MAIN
18"
SD

Portland Water District
From Sebago Lake To Casco Bay

PLANNING COMMITTEE / AGENDA ITEM SUMMARY

Agenda Item:	2
Date of Meeting:	January 10, 2022
Subject:	Request from Cumberland County Soil and Water Conservation District for a PWD contribution of the Trickey Pond Protection Project
Presented By:	Carina Brown, Water Resources Specialist

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

> ORDERED, the General Manager is authorized to make a cash contribution of up to $8,000 and an in-kind contribution of $1,350 to support Cumberland County Soil and Water Conservation District's Trickey Pond Protection Project.

BACKGROUND

Trickey Pond is a 315-acre lake located in the Town of Naples. The Trickey Pond Watershed covers 870 acres and is part of the indirect watershed of Sebago Lake.

The primary purpose of the project is to improve Trickey Pond's declining water quality trends by limiting the export of sediment and phosphorus into the lake and increasing vegetated shoreline buffers. Conservation practices that reduce erosion and polluted runoff will be installed at 20 high and medium erosion impact sites identified in the 2019 watershed and shoreline survey. In addition, the project will raise public awareness through public notices and educational flyers, one-on-one technical assistance site visits, and a series of educational videos on lake protection practices.

Additional match for the project will be provided by the Town of Naples, the Trickey Pond Environmental Protection Association, Lakes Environmental Association, landowners, and the Stormwater Compensation Fund.

ANALYSIS

The total project cost for the Trickey Pond Protection Project is $128,410 which breaks down to $75,811 in federal grant funds and $52,599 in matching funds. Matching funds include both cash contributions and in-kind services.

The recommended contribution of up to $9,350 in matching funds meets the District policy for contributions to implementation projects in the indirect watershed of Sebago Lake. The policy states that contributions to this type of project not exceed 10% of the total project cost. The cash and in-kind contributions of $9,350 represent 7% of the total project cost.

FISCAL REVIEW / FUNDING
The recommended cash contribution is $8,000. The recommended in-kind contribution is $1,350 to serve on the project steering committee. The cash contribution will come from the Watershed Protection Land Fund.

LEGAL REVIEW
Corporate Counsel has reviewed the proposed motion as to form.

CONCLUSION(S)
Since Trickey Pond discharges directly to Sebago Lake, work that reduces pollution to Trickey Pond ultimately reduces pollution to Sebago Lake.

ATTACHMENT(S)
Location map

Town Boundary
Watershed
Stream
Major Road

N

0 0.1 0.2 0.4 Miles

Fig 1: Trickey Pond Watershed
Naples, ME

Data: MEGIS, CCSWCD, ESRI Coordinates: NAD83, UTM,19N
Drawn by Damon Yakovleff, CCSWCD Spring, 2021

Disclaimer- Watershed boundaries and other datasets represented here are not waranteed for completeness or accuracy by CCSWCD. This map is to be used for planning and demonstration purposes only.