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Article for *Minnesota Counties*

New OPEB Law – A Primer for Counties

By Rebecca Otto, State Auditor

Under new accounting rules issued by the Government Accounting Standards Board (GASB), counties must disclose their accrued actuarial liability for post-employment benefits (other than pension) in their financial reports. These benefits consist mainly of health care-related benefits that had been promised to retirees before they retired. These benefits are referred to as "OPEB" benefits--Other Post-Employment Benefits.

Because counties in Minnesota have never been required to account for this liability, many are now in the process of determining the extent of their liability and its effect on their financial statements. Once a county determines the extent of its liability, the county has one choice if it wants to minimize its accrued actuarial liability. The GASB rules only allow a county to show it has put money aside to pay this liability to the extent the county has put money into an "irrevocable" OPEB trust.

This year the legislature enacted a new law, Minn. Stat. § 471.6175, intended to help counties address their OPEB liability in at least three important ways.

First, it allows counties to create both irrevocable and revocable OPEB trusts. Counties with OPEB liability will now be able to create an irrevocable OPEB trust and, to the extent money is put into the trust, counties will be able to reduce the net OPEB liability presented in their financial statements. The law also provides for the creation of "revocable" trusts. This part of the new law was requested by public entities that believe the federal government will become involved in the health care field sometime in the next thirty years. (OPEB actuarial liabilities are calculated on a 30 year maximum time period.) These public entities are concerned that, if national health care is adopted in some form, their OPEB liability to their retirees will be reduced or eliminated. If that happens, large amounts of money could be "trapped" in an irrevocable OPEB trust. Even though public entities cannot improve their financial statements with a "revocable" trust, many feel that being able to get some of the money returned if some form of national health care is adopted is worth whatever discomfort will be associated with having a large net OPEB liability on their annual financial statements.

According to new law, even if a county creates a revocable OPEB trust, funds in the trust are dedicated to paying OPEB benefits unless certain events occur. One of the events is a change in federal or state law that would change a public entity's OPEB liability. A federal law creating a national health care system is one example of a change in law that would affect a public entity's OPEB liability. If one of these events occurs, funds not needed to make OPEB payments can be withdrawn from a revocable trust.

If a county does not intend to take advantage of the law to set up an irrevocable trust to deal with OPEB liabilities, why would it set up an OPEB trust at all? The answer to this question involves the second major advantage created by Minnesota law. It authorizes the use of a different list of permissible investments for both irrevocable and revocable OPEB trusts. Instead of using the limited list of investments available to counties and other public entities, OPEB trusts can use the long list of investments currently available to public pension plans. This list includes stocks, international securities and various mutual funds and index funds. With prudent investments, this list should yield a greater return over the likely thirty-year life of an OPEB trust than the limited list of investments available to public funds would earn.

Third, the new law also permits counties to invest OPEB trust assets with the State Board of Investment (SBI), bank trust departments and certain insurance companies. Investing with the SBI is desirable because of its traditionally high rate of return. Traditionally, the SBI has had very low administrative costs which accounts for, in part, its annual rate of return of about ten percent for the last twenty years (Combined Fund through 6/30/07).

Whether a county uses SBI or a bank trust department or an insurance company to administer its OPEB trust investments, the county should proceed cautiously. Counties do not have experience investing in the various types of investments on the long list that have been historically permitted for public pension plans. In addition, counties do not have experience with the various fees, front-end and annual, charged by fund managers. If problems occur, a county can always change trust administrators. Once a trust is set up and investments are made, however, making such a change is problematic. A little extra work at the beginning of the process will result in greater returns over the life of the OPEB trust.

If you have any questions regarding the new OPEB rules or the trust statute, please feel free to contact Dave Kenney at the Office of the State Auditor at 651-297-3671.