

ACTION MEMO

AC TRANSIT DISTRICT
Board of Directors
Executive Summary

GC Memo No. 07-015b

Meeting Date: April 11, 2007

Committees:

- | | | | |
|----------------------------|-------------------------------------|------------------------------|--------------------------|
| Planning Committee | <input type="checkbox"/> | Finance Committee | <input type="checkbox"/> |
| External Affairs Committee | <input type="checkbox"/> | Operations Committee | <input type="checkbox"/> |
| Rider Complaint Committee | <input type="checkbox"/> | Paratransit Committee | <input type="checkbox"/> |
| Board of Directors | <input checked="" type="checkbox"/> | Financing Corporation | <input type="checkbox"/> |

SUBJECT: CONSIDER THE ADOPTION OF RESOLUTION NO. 07-004 GRANTING TO QUALIFYING FORMER DIRECTORS HEALTH AND WELFARE BENEFITS PROVIDED TO RETIRED UNREPRESENTED EMPLOYEES AND REPEALING RESOLUTION NO. 2022

RECOMMENDED ACTION:

- Information Only Briefing Item Recommended Motion

Adopt Resolution No. 07-004 selecting between the options referenced in this GC Memo.

Fiscal Impact: Presently, approximately \$9,405 per year.

Background/Discussion:

Continuation from Board Meeting of March 21

The Board considered this item at its meeting of March 21, 2007, and continued it in order to receive an opinion from the General Counsel and to consider an amendment to draft Resolution No. 07-004 to require Board approval of any future health and welfare benefits for eligible retired directors, instead of the blanket provision in the draft

BOARD ACTION: **Approved as Recommended** [] **Other** []
 Approved with Modification(s) []

[To be filled in by District Secretary after Board/Committee Meeting]

The above order was passed on _____, 2007.

Linda Nemeroff, District Secretary
By _____

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resolution. Both the opinion and revised resolution, providing both options for the Board to chose from, are attached to this "b" memo.

Recommendation of the Finance Committee

The Finance Committee unanimously recommended that the Board of Directors adopt the resolution with: (1) option 2, (2) clarification of Resolution No. 2022, regarding the payment of premiums and (3) revision of the GC Memo, indicating why these benefits are not available to present directors. Since the Committee's review, the General Counsel has given further consideration to the content of Resolution 2022 and its compliance with the applicable statutes and revised Resolution No. 07-004 to minimize confusion regarding which former directors are entitled to District paid benefits and the obligation of present directors to self-pay for benefits when they retire from the Board, provided they meet the eligibility requirements. The amendments are as follows:

- (1) Resolution No. 07-004 has been amended to include a new Section 1 clarifying eligibility for paid and/or unpaid benefits, as indicated above. Section 2 extends to qualifying former directors future health or welfare benefits given to unrepresented retirees. Since the benefits can be provided at District cost only to four former directors, the Finance Committee felt there would be no significant impact on the District. The Committee also decided that the resolution should provide former directors with the right to receive future benefits otherwise available to unrepresented retirees, without the need to adopt an amending resolution. Finally, the General Counsel has added Section 3 repealing Resolution No. 2022, since it is no longer necessary with the adoption of Resolution No. 07-004.
- (2) Since the action of the Committee, the General Counsel is recommending, for the reasons stated above, to repeal Resolution No. 2022, which eliminates the need for the proposed revision considered by the Committee.
- (3) Government Code Section 53201 and Public Utilities Code Section 99157 restrict the District's ability to provide for District paid life, accident, or health and welfare benefits to former directors. These sections have been enacted and amended over the years as follows:

In 1982, Government Code §53201 provided:

- (a) The legislative body of a local agency, subject to such conditions as may be established by it, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues, or other charges

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from their compensation, to the extent that such charges are not covered by payments from funds under the jurisdiction of the local agency as permitted by Government Code Section 53205.¹

- (b) The legislative body of a local agency may also provide for the continuation of any health and welfare benefits for the benefit of former elective members of the legislative body who serve in office after January 1, 1981, and whose total service at the time of termination of service is not less than 12 years.

In 1994, Government Code 53201 was amended to add subsection (c)(1), (2) and (3).

- (c)(1) Notwithstanding any other provision of law, a legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body [before] 1995, shall not provide those benefits to any person first elected to a term of office that begins on or after January 1, 1995, unless the recipient participates on a self-pay basis, as provided in subdivision (b).
- (2) A legislative body of a local agency that did not provide benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, shall not provide those benefits to former elective members of the legislative body after January 1, 1994, unless the recipients participate on a self-pay basis.
- (3) A legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, may continue to provide those benefits to those members who received those benefits before January 1, 1994.

In 1988, Section 99157 was added to Part 11(Provisions Applicable to All Public Transit), Division 10 (Transit Districts) of the Public Utilities Code.

“Notwithstanding any other provision of law, a transit district may not provide any life, accident, or health insurance plan to any member or former member of the governing board of the district who first served as a member of the governing board after January 1, 1989, that exceeds the benefits provided to full-time active or retired district employees. The terms, conditions, or contributions applicable to

¹ Section 53205 allows the Board to authorize payment of all or a portion of the premiums, dues, or other charges for health and welfare benefits of officers, employees, retired employees, and former elected members identified in section 53201(b).

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any plan provided for employees shall also apply to any plan provided for those members of the governing board.”

Since Resolution No. 612 was adopted prior to January 1, 1994, the District is able to provide District paid health and welfare benefits to the qualifying retired directors. The present directors, elected after January 1, 1995, would be required to self-pay for any health and welfare benefits they receive after they retire from the board, provided those benefits are the same as provided to unrepresented retirees.

GC Memo No. 07-015 as Originally Submitted to the Finance Committee

On October 11, 2001, the Board adopted Resolution No. 2022, extending health benefits to former directors who met the requirements set forth in Government Code Section 53201 and Public Utilities Code Section 99157. See Attachment 1. The qualifying former directors are Mr. Roy Nakadegawa, Ms. Alice Creason, Ms. Patrisha Piras and Mr. Joe Bischofberger.

Since the District Board adopted Resolution 612 in November 1985 to provide for the continuation and payment by the District of the costs for health and welfare benefits for Directors who terminated service on or after January 1, 1981, with 12 years of service and Resolution No. 2022, the provisions of the aforementioned statutes allow the Board to grant to the qualifying former directors recent changes to health and welfare benefits extended to unrepresented employees.

The specific change that would be granted, as of the date of the adoption of the resolution, would be the retiree medical benefit for unrepresented employees (as of September 1, 2006) to include dependent medical coverage paid for by the District at the lowest HMO rate with a \$100.00 per month contribution from the retiree.

There are two ways to approach this change. One is to have the resolution approve the amendment just for this change. The second method is to adopt the resolution with a blanket provision that extends to the qualifying former directors changes to health and welfare benefits provided to unrepresented employees whenever those changes occur.

The draft resolution contains the two options and the Committee should indicate which option it wishes to recommend to the Board.

Prior Relevant Board Actions/Policies:

Resolution No. 612

Resolution No. 2022

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Attachments:

- A. Opinion from General Counsel
- B. Draft Resolution No. 07-004
- C. Resolution No. 2022
- D. Resolution No. 612

Approved by: Kenneth C. Scheidig, General Counsel
Reviewed by: Rick Fernandez, General Manager
Prepared by: Kenneth C. Scheidig, General Counsel
Date Prepared: April 11, 2007

GC MEMO NO. 07-015b
Attachment A: General Counsel Opinion

**WILL BE AVAILABLE ON
WEDNESDAY**

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

RESOLUTION NO. 07-004

A RESOLUTION A RESOLUTION GRANTING TO QUALIFYING FORMER DIRECTORS HEALTH AND WELFARE BENEFITS PROVIDED TO UNREPRESENTED EMPLOYEES

WHEREAS, on October 11, 2001, the Board of Directors of the Alameda-Contra Costa Transit District adopted Resolution No. 2022 (A Resolution Authorizing The Inclusion Of Former Board Members In The District's Health Plan, Establishing Eligibility Criteria And Applicable Benefits); and

WHEREAS, since the adoption of Resolution No. 2022, the Board of Directors has provided to unrepresented employees a retiree medical benefit to include dependent medical coverage paid for by the District at the lowest HMO rate with a \$100.00 per month contribution from the retiree; and

WHEREAS, the Board of Directors desires to extend this benefit to former directors who qualify for retirement benefits under Resolution No. 2022 (, as well as to extend future unrepresented retiree benefits that may occur to the qualifying former directors);

NOW, THEREFORE, THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT BOARD OF DIRECTORS DOES RESOLVE AS FOLLOWS:

SECTION 1. Approves extending to those former directors who qualify under the criteria of Resolution No. 2022, or any successor resolution, the right to include dependent medical coverage paid for by the District at the lowest HMO rate with a \$100.00 per month contribution from the former directors who select this benefit.

(Potential SECTION 2: Approves extending to those former directors who qualify under the criteria of Resolution No. 2022, or any successor resolution, the right to include themselves (and their dependents, as appropriate) in any health or welfare benefits that would be extended to unrepresented retirees after the effective date of this resolution, subject to the same conditions and requirements imposed on said unrepresented retirees at the same time those benefits are made available to said unrepresented retirees.)

(Alternative SECTION 2: May amend this resolution to extend to those former directors who qualify under the criteria of Resolution No. 2022, or any successor resolution, the right to include themselves (and their dependents, as appropriate) in any health or welfare benefits that would be extended to unrepresented retirees after the effective date of this resolution, subject to the same conditions and requirements imposed on said unrepresented retirees.)

SECTION 3. This resolution shall become effective immediately upon its passage and adoption by four affirmative votes of the Board of Directors.

Resolution No. 07-004 was PASSED AND ADOPTED THIS ____ day of April 2007.

Greg Harper, President

ATTEST:

Linda Nemeroff, District Secretary

I, Linda Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Resolution was passed and adopted at a Regular Meeting of the Board of Directors held on the _____ day of April 2007 by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Nemeroff, District Secretary

Approved as to Form:

Kenneth C. Scheidig, General Counsel

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

RESOLUTION NO. 2022

A RESOLUTION AUTHORIZING THE INCLUSION OF FORMER BOARD MEMBERS IN THE DISTRICT'S HEALTH PLAN, ESTABLISHING ELIGIBILITY CRITERIA AND APPLICABLE BENEFITS

WHEREAS, on November 26, 1985, the Alameda-Contra Costa Transit District Board of Directors adopted Resolution No. 612 continuing District paid health and welfare benefits for Directors who terminated service on or after January 1, 1981, as authorized by sections 53201 and 53205 of the Public Utilities Code; and

WHEREAS, effective January 1, 1989, Public Utilities Code §99157 provided:

"Notwithstanding any other provision of law, a transit district may not provide any life, accident, or health insurance plan to any member or former member of the governing board of the district who first served as a member of the governing board after January 1, 1989, that exceeds the benefits provided to full-time active or retired district employees. The terms, conditions, or contributions applicable to any plan provided for employees shall also apply to any plan provided for those members of the governing board"; and

WHEREAS, on September 20, 2001, a majority of the Executive Committee recommended the Board of Directors consider extending health benefits to former Directors, consistent with the limitations in Public Utilities Code §99157;

NOW, THEREFORE, THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT BOARD OF DIRECTORS DOES RESOLVE AS FOLLOWS:

SECTION 1. Approves extending to former Directors of the District the continuation of health benefits based on the following criteria:

- *Eligibility.* Health Benefits may only be extended to former Directors who held the position of Director on or after July 1, 1998, who held the position of Director for a minimum of 5 years and who were at least 55 years of age when they left office.
- *Open Enrollment.* A one-time open enrollment in Kaiser and HealthNet shall be made available to former Directors meeting the above criteria within 60 days of approval by the Board of Directors. Thereafter, an offer to enroll eligible Directors will occur within 60 days of the seating of new Directors. However, if a former Director has had an opportunity to enroll in a retiree medical plan and declined to do so, he/she shall be precluded from participating in those plans in the future.

United Healthcare will only be offered to eligible Board members who live outside a Kaiser/HealthNet service area, and any costs paid by the District will be limited to the lowest HMO.

- *Payment.* The health benefits shall be paid as follows:

1. District will pay 50% of the medical premium, based on the lowest HMO rate, for Directors with 5 years of service. An additional 10% of the medical premium will be added for each year of service. For example, the District will pay 80% of the lowest HMO premium for a Director who is at least 55 years old with eight years of service. Costs for spousal or dependent participation shall be borne by the participating Director.
 2. Eligible Directors will receive free dental and vision coverage but must pay for spousal and/or dependent participation.
- *Medical Bridge.* Directors who are at least 50 years old with at least 15 years of service may elect to remain with the District benefit plan on Direct (self) pay status. Directors are eligible to convert to retiree medical benefits at age 55.

SECTION 2. This resolution shall not affect the health benefits available to Directors or former Directors who qualify under Resolution No. 612.

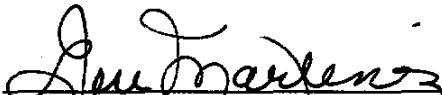
SECTION 3. This resolution shall become effective immediately upon its passage and adoption by four affirmative votes of the Board of Directors.

RESOLUTION NO. 2022 WAS PASSED AND ADOPTED THIS 11th day of October 2001.



 Matt Williams, President

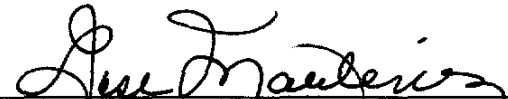
ATTEST:



 Rose Martinez, District Secretary

I, Rose Martinez, District Secretary for the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Resolution was passed and adopted at a Regular Meeting of the Board of Directors held on the 11th day of October 2001, by the following roll call vote:

AYES: Directors Piras, Creason, Wallace, Harper, Vice President Peoples
 NOES: Director Cross
 ABSENT: President Williams
 ABSTAIN: None



 Rose Martinez, District Secretary

Approved as to Form:



 Kenneth C. Scheidig, General Counsel

RESOLUTION NO. 612**RESOLUTION OF THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT FOR THE CONTINUATION AND PAYMENT OF HEALTH AND WELFARE BENEFITS FOR THE BENEFIT OF FORMER MEMBERS OF THE BOARD WHO SERVE IN OFFICE AFTER JANUARY 1, 1981, AND WHOSE TOTAL SERVICE AT THE TIME OF TERMINATION IS NOT LESS THAN TWELVE (12) YEARS**

WHEREAS, Section 53201(b) of the Public Utilities Code provides that the legislative body of a local agency may provide for the continuation of any health and welfare benefits for the benefit of former members of the legislative body who serve in office after January 1, 1981, and whose total service at the time of termination is not less than twelve (12) years; and

WHEREAS, the Board of Directors of the Alameda-Contra Costa Transit District constitute a "legislative body" within the context and intent of Section 53201(b) of the Public Utilities Code; and

WHEREAS, Section 53205 of the Public Utilities Code provides that the legislative body may form funds under its jurisdiction, authorize payment of all, or such portion as it may elect, of the premiums, dues and other charges for health and welfare benefits of officers, employees, retired employees, former elective members specified in subdivision (b) of Section 53201, and retired members of the legislative body subject to its jurisdiction; and

WHEREAS, the Personnel Committee of the Board of Directors did on November 30, 1983, adopt a motion recommending the Board of Directors approve continuation of health and welfare benefits for Directors terminating services on or after January 1, 1981, as authorized by Sections 53201 and 53205 of the Public Utilities Code, and furthermore the full cost of such continued benefits to be paid by the District; and

WHEREAS, the Board of Directors as a part of a regularly scheduled meeting did on May 9, 1984, accept and adopt the recommendation of the Personnel Committee with respect to continuance of health and welfare benefits for Directors terminating service on or after January 1, 1981, as authorized by Sections 53201 and 53205 of the Public Utilities Code, and furthermore the full cost of such continued benefits to be paid by the District.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does as a matter of record adopt Resolution No. 612 confirming the previous action of the Board of Directors to continue health and welfare benefits for Directors terminating service on or after January 1, 1981, as authorized by Sections 53201 and 53205 of the Public Utilities Code, and furthermore the full cost of such continued benefits to be paid by the District.

I certify that Resolution No. 612 was duly and regularly adopted by the Board of Directors of the Alameda-Contra Costa Transit District on Tuesday, November 26, 1985.

I further certify that said Resolution No. 612 and related subject matter is recorded on Page 99 of Volume No. XXI.

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
LAWRENCE A. ROSSIGNOL, Secretary
James J. Stump
Deputy