



South Carolina Association of Counties

L. Gregory Pearce, Jr., President
Richland County

Michael B. Cone
Executive Director

August 20, 2008

MEMORANDUM

From: SCAC Staff

To: County Council Members
County Chief Administrative Officers
County Attorneys

County Financial Directors
County Personnel Directors
County Treasurers

Re: Funding GASB 45 Liabilities: Seventh Memo in a Series

On Monday, August 18, the Supreme Court filed its opinion in the case of Wilson v. South Carolina ORBIT. The decision of the Court has received a good deal of media attention and the staff felt it would be helpful to advise counties of the impact of the decision, given that SCAC is sponsoring a similar OPEB Trust, the South Carolina Counties Other Post Employment Benefits Trust (SCCOPEBT). The Wilson case was a declaratory judgment action filed by an employee of the City of Charleston to establish that the trust set up by the Municipal Association (SCORBIT) could invest in stocks, even before the constitution could be amended. SCAC was asked by MASC to join in the lawsuit, on behalf of SCCOPEBT, but declined to do so.

SCORBIT was formed earlier than SCCOPEBT, because of the difference in the start dates for budget years (January as opposed to June) for counties and some municipalities. Whereas SCORBIT was formed in 2007, SCCOPEBT was not even available until late June of 2008. The latter trust adopted a “go-slow” approach to avoid mistakes that could be magnified by creating a flawed irrevocable trust. SCORBIT was such a mistake that SCAC was trying to avoid.

SCORBIT was set up to invest its assets in the stock market from the beginning, based upon a theory designed to side step the constitutional provision prohibiting such investments. The Supreme Court not only determined that the investment of municipal money in the trust was unconstitutional; it also ruled that the trust, itself, was unconstitutional. The Court ruled that SCORBIT must be disbanded and the funds returned to its members. Because SCCOPEBT was organized with the intention that funds would only be invested in bonds until the constitution is amended, SCCOPEBT will not have the same problem as SCORBIT. The constitutional amendment will be on the ballot in November.

This memo will be posted on the SCAC website in the OPEB/GASB 45 section, along with the other GASB 45 memos. If you have questions about SCAC’s program, please do not hesitate to contact Clif Scott at 1-800-922-6081 or via e-mail to clif@scac.state.sc.us.

cc: Board of Directors



South Carolina Association of Counties

K. G. "Rusty" Smith, Jr., President
Florence County

Michael B. Cone
Executive Director

June 30, 2008

MEMORANDUM

From: SCAC Staff

To: County Council Members
County Chief Administrative Officers
County Attorneys

County Financial Directors
County Personnel Directors
County Treasurers

Re: Funding GASB 45 Liabilities: Sixth Memo in a Series

The Trust is ready to go! In the initial memo in this series, dated February 17, 2007, SCAC announced that it would sponsor an OPEB trust for its member counties. In the second memo, dated March 16, 2007, we expressed our intention to adopt a deliberate approach and not attempt to rush into a trust agreement. We were mindful that our largest counties may need a trust agreement to be available by the end of the fiscal year, and the staff adopted June 30, 2008, as an unofficial goal. This past Wednesday, June 25th, the finishing touches were completed on the Trust Agreement, the document that will establish the Trust, and the Intergovernmental Agreement that each county will execute to become a member.

The Association relied on two law firms to assist in drafting a trust agreement that would meet two requirements that were often in conflict. Kilpatrick & Stockton, a Washington, D.C. tax firm, ensured that the Trust would be tax exempt and Haynsworth Sinkler Boyd provided advice on South Carolina law, particularly regarding protection from creditors and irrevocability of the Trust assets. On Wednesday, ten of the counties that had expressed the greatest interest in the Trust met with the staff to go over the provisions of the Trust Agreement and Intergovernmental Agreement and to discuss OPEB in general.

Looking ahead, a Constitutional amendment will be on the ballot in November that would allow OPEB trusts to invest in the stocks. If the amendment passes, which is expected, enabling legislation will have to pass before the investments can be made. Finally, the State is sponsoring a meeting in July that will look into funding mechanisms for OPEB pools, and the staff will send a representative. We will provide additional information when it becomes available.

This memo will be posted on the SCAC website in the OPEB/GASB 45 section, along with the other memos. If you have questions about SCAC's program, please do not hesitate to contact Clif Scott at 800-922-6081 or via e-mail at clif@scac.state.sc.us.

cc: Board of Directors



South Carolina Association of Counties

K. G. "Rusty" Smith, Jr., President
Florence County

Michael B. Cone
Executive Director

April 10, 2008

MEMORANDUM

From: SCAC Staff

To: County Council Members
County Chief Administrative Officers
County Attorneys
County Financial Directors
County Personnel Directors
County Treasurers

Re: Funding GASB 45 Liabilities: Fifth Memo in a Series

It has been seven months since SCAC's last GASB 45 memo. We made it clear in the second memo, dated March 16, 2007, that we would be taking a go-slow approach to make sure we got it right the first time. In the interim, we have made slow but steady progress; but, there hadn't been enough progress to date to justify a separate memo. Now, there is. Yesterday, SCAC invited five counties to participate in the first organizational meeting for the Trust. This first meeting focused primarily on whether counties were prepared to invest the staggering sums necessary to fund OPEB liabilities, to discuss alternative strategies to funding OPEB and to discuss strategies for reducing the Actuarial Accrued Liabilities (AAL). The next meeting will focus on language in the Trust Agreement, which has been completed by our tax law firm and needs to be reviewed by our local attorneys. We are still on track to have the Trust in place by June 30th.

Initial modeling done by the staff concluded that the total AAL for all counties could be as high as \$2.4 billion, based on the state's AAL and the number of county employees, compared to state employees. Last week, SCAC conducted a survey of counties who had done an actuarial study with 28 counties responding, seven of which had a completed study. Based on these seven counties, it appears that the total AAL for all counties may be in the range of \$500 to 650 million, a much more manageable figure.

It is critical that counties have access to the stock market in order to reduce their AAL. Last year, a declaratory judgment action was filed, as original jurisdiction in the Supreme Court, that would allow trust funds formed by local governments to invest in stocks, based on current law. The case was heard February 5th, but to date, it has not been ruled on by the Court. Also, a joint resolution, S. 463, would place a constitutional amendment on the ballot this November to allow the state to invest its OPEB funds in equity investments (stocks). The bill has been amended to allow local governments to invest OPEB funds in stocks, as well. S. 463 has passed both chambers, having passed the House on Tuesday. There was an amendment added in the House of a technical nature that was supported by SCAC. No problems are expected in the Senate, and the bill should pass. If the bill and the referendum both pass, implementing legislation will be needed next year before such investments will be allowed.

This memo will be posted on the SCAC website in the OPEB/GASB 45 section, along with the other memos. If you have questions about SCAC's program, please do not hesitate to contact Clif Scott at 1-800-922-6081 or via e-mail to clif@scac.state.sc.us.

cc: Board of Directors

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Building Stronger Counties for Tomorrow



South Carolina Association of Counties

K. G. "Rusty" Smith, Jr., President
Florence County

Michael B. Cone
Executive Director

September 7, 2007

MEMORANDUM

From: SCAC Staff

To: County Council Members
County Chief Administrative Officers
County Attorneys
County Financial Directors
County Personnel Directors
County Treasurers

Re: Funding GASB 45 Liabilities: Fourth Memo in a Series

The long promised direct link to Gabriel Roeder Smith (GRS) is now in operation at <https://my.gabrielroeder.com/Portal/Default.aspx?alias=my.gabrielroeder.com/portal/scac> or on the SCAC website, www.sccounties.org. This link will enable counties to exchange necessary information online with GRS and to obtain an actuarial study, as required by GASB 45.

The actuarial study is the only requirement under GASB 45, although it is envisioned that the vast majority of governmental entities, nationwide, will choose to pre-fund their Other Post Employment Benefit (OPEB) liabilities. Failure to pre-fund OPEB liabilities will be noted on the entity's audited financial statements and, some believe, could lead to lower bond ratings. In order to get the benefits of pre-funding, entities will have to set aside their OPEB funds in some mechanism that makes the funds untouchable for any other purpose, such as creation of a trust.

The staff is currently working with two law firms, one national and one local, to draft the documents necessary to create a trust to collect, manage and invest the funds for counties that participate. The national firm, Kilpatrick & Stockton, will ensure compliance with the federal tax code and the local one, Haynesworth Sinkler Boyd, will ensure compliance with state law. Additionally, we have confirmed that the City of Charleston has filed its declaratory judgment action, which, if successful, would allow investment of local government OPEB funds in equity investments without a constitutional amendment. The holding in this case may affect the language of our trust documents; consequently, we are not in a hurry to get them drafted. We will continue to keep you posted as things develop.

This is the fourth memo in a series on GASB 45. The previous memos can be found at <http://www.sccounties.org/Other%20Helpful%20Information.htm>. If you have questions regarding SCAC's GASB 45/OPEB program, please do not hesitate to contact Clif Scott at 800-922-6081 or by e-mail at clif@scac.state.sc.us.

cc: Board of Directors



South Carolina Association of Counties

Belinda D. Copeland, President
Darlington County

Michael B. Cone
Executive Director

April 23, 2007

MEMORANDUM

From: SCAC Staff

To: County Council Members County Financial Directors
County Chief Administrative Officers County Personnel Directors
County Attorneys County Treasurers

Re: Funding GASB 45 Liabilities: Third Memo in a Series

This past week, Haynesworth Sinkler Boyd and others sponsored the first Palmetto Public Finance Forum at the Marriott at Renaissance Park Hotel in Spartanburg. The first two hours were devoted exclusively to GASB 45 and the problems it poses for local governments. The seminar was very well done and counties that did not attend should make plans to attend a second presentation of the same seminar on April 30 - May 1 at the Double Tree Guest Suites – Historic District in Charleston.

The most pressing problem for South Carolina counties under GASB 45 is that they must have an actuarial study done to determine their unfunded OPEB liability. Periodically, these studies will need to be updated. When the initial study is due depends upon the amount of revenues received by the county in 1999. Those counties whose revenues exceeded \$100 million in 1999 become subject to the GASB 45 reporting procedures effective July 1, 2007. Those counties will have until the end of the year to publish their study, or sooner if they issue bonds. Most other counties (whose 1999 revenues were between \$10 million and \$100 million) become subject to GASB 45 reporting the following year (beginning July 1, 2008). Those counties with 1999 revenues less than \$10 million become subject to GASB 45 reporting beginning July 1, 2009.

To assist counties with their reporting requirements, SCAC has selected Gabriel Roeder Smith (GRS), the same firm that was used by the State to determine its OPEB liability. Under SCAC's agreement with GRS, counties will contract directly with GRS at a substantially discounted rate. When the final details are worked out, presumably by the middle of May, counties will be able to contact GRS through the SCAC website and get their actuarial studies started.

This is the third memo in a series on GASB 45. The previous memos can be found at <http://www.sccounties.org/Other%20Helpful%20Information.htm>. If you have questions regarding SCAC's GASB 45/OPEB program, please do not hesitate to contact Clif Scott at (800) 922-6081 or by e-mail at clif@scac.state.sc.us.

cc: Board of Directors



South Carolina Association of Counties

Belinda D. Copeland, President
Darlington County

Michael B. Cone
Executive Director

March 16, 2007

MEMORANDUM

From: SCAC Staff

To: County Council Members
County Chief Administrative Officers
County Attorneys

County Financial Directors
County Personnel Directors
County Treasurers

Re: Funding GASB 45 Liabilities: Second Memo in a Series

The Association of Counties continues to move ahead with plans to create a trust to assist counties to pre-fund their GASB 45 obligations. Haynesworth Sinkler Boyd, PA, is doing the research and drafting on the legal documents necessary to create the Trust. SCAC has identified an actuarial firm to assist each county in determining its individual GASB 45 liability and is currently negotiating a contract with that firm. We expect the contract with the actuaries to be signed by the end of the month. Additionally, we are working with the House and Senate to amend a pending bill to allow local governments to invest GASB 45 funds through the State's Other Post Employee Benefits (OPEB) fund. This amendment would ensure that local governments receive the most favorable interest rate available, which would in turn reduce their GASB 45 liability as much as possible.

The Haynesworth firm is sponsoring a financial seminar for local governments next month, which will go a long way toward explaining GASB 45. SCAC staff will participate in the GASB 45 portion of the seminar. The seminar will be held April 19-20 in Spartanburg and will be repeated April 30-May 1 in Charleston. The first evening will be primarily social, with the conference getting started early the second day (the GASB 45 information will be presented between 8:45 and 10:45 a.m.). Your county should have already been contacted; if not, give us a call.

Apparently, a number of private firms are contacting counties with programs to deal with GASB 45. SCAC would caution against moving too quickly on GASB 45. GASB 45 does not require that the funds be set aside; but if they are set aside, they must be set aside in a way that would preclude the governmental entity from ever accessing these funds again—this means that the actions taken must be taken deliberately and without haste or a feeling of urgency. Additionally, there is no GASB 45-specific reason to abandon the county's current retiree health benefit plan, such as the State Health Plan. You can be assured that SCAC intends to take its time to make sure that our GASB 45 trust is done right the first time. The first memo in this series is dated February 13, 2007; if you did not receive a copy, or if you have questions about SCAC's program, please do not hesitate to contact Clif Scott at 1-800-922-6081 or via e-mail to clif@scac.state.sc.us.

cc: Board of Directors

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Building Stronger Counties for Tomorrow



South Carolina Association of Counties

Belinda D. Copeland, President
Darlington County

Michael B. Cone
Executive Director

February 13, 2007

MEMORANDUM

From: SCAC Staff

To: County Council Members County Financial Directors
County Chief Administrative Officers County Personnel Directors
County Attorneys County Treasurers

Re: Funding GASB 45 Liabilities: SCAC Trust to be Established

In June 2004, the Governmental Accounting Standards Board published a new accounting standard, GASB 45, which will become effective for all state and local governments between now and December, 2008, depending upon the size of the entity. This new standard will require earlier recognition of governmental liabilities for post employment non-pension benefits or "Other Post Employment Benefits" (OPEB). The term, "OPEB" generally refers to post retirement health and dental plans. The potential is for GASB 45 to degrade a county's credit rating, unless or until these obligations are fully funded. The unfunded obligations will count as a debt owed by the county on the county's balance sheet.

The overwhelming majority of counties fund, in whole or in part, the employer's portion and some fund the employee's portion of the premium payable as a retiree under the State Health Plan. Historically, these premium payments have been made out of current assets on a pay-as-you-go basis. GASB 45 will require these obligations to be funded each year, as the OPEB are "earned" by county employees. On January 9, 2007, the State's OPEB Study Committee issued its report on how the State will deal with its GASB 45 obligations. Significantly, local governments will not be allowed to participate in the State's program, as currently proposed.

The solution to the GASB 45 problem is to put sufficient funds into an irrevocable trust that is dedicated to funding OPEB obligations. To set up such a trust requires governments to incur significant legal expense, to identify and retain actuarial services over the life of their trusts and to retain qualified trustees to invest the assets of their trusts. Having seen the complexity of the problem facing counties, the Association of Counties is in the process of forming a trust that can be used by counties to meet their GASB 45 funding obligations. SCAC will inform you of any educational seminars that may be held on dealing with the GASB 45 issue. If you have questions or have interest in the SCAC program, please do not hesitate to contact Clif Scott at 1-800-922-6081 or via e-mail to clif@scac.state.sc.us.

cc: Board of Directors