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GERS Files Lawsuit Against WAPA, Records \$67 Million Deficit for 2022 to Meet Annuity Obligations

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G.E.R.S. logo at its St. Croix headquarters. By. ERNICE GILBERT/ V.I. CONSORTIUM

The Government Employees' Retirement System (GERS) is suing the Water and Power Authority (WAPA) for an outstanding balance of \$8.9 million that it owes in employer contributions. The amount is \$1.2 million more than GERS announced in April, when it said it was filing legal action against the utility company.

This was revealed by GERS Administrator Austin L. Nibbs when he appeared before the Committee on Finance on Tuesday to give an overview of the system's operations. He said while WAPA is working to pay down the debt, it is not enough to significantly reduce the bill.

“When someone retires, we’d send them the bill and they would make that person whole,” he said, adding that they have also made attempts to submit back pay of employer/employee contributions and loan payments. “It’s still not what we’d like it to be and there’s a court action against them.”

GERS General Counsel, Cathy Smith said the pension system is in the initial stages of the action and have been engaging in a discovery plan between the two counsels to set out the deadline with the court.

“We have not entered into any settlement or discussions. We did that prior to brining the lawsuit but we couldn’t come to any conclusion so that forced us to file the lawsuit,” she shared.

As of August 5th, 2022, the system was also owed contributions by the Schneider Regional Medical Center of \$1.5 million, and the Juan F. Luis Hospital of \$2.3 million for the years 2012,2013 and 2014.

According to Mr. Nibbs, a total of \$120 million had to be withdrawn from GERS investment portfolio to cover benefit payments and expenses which were not paid by various entities this fiscal year. GERS has recorded a \$67 million deficit so far for 2022 because it is spending more than it receives in contributions.

A recent agreement that utilizes a special type of corporate entity called the Matching Fund Special Purpose Securitization Corporation, secured \$3.8 billion over a 30-year period for GERS, and the pension system received its [first check of \\$89.2 million in April](#).

The Matching Fund Special Purpose Securitization Corporation bond sale matures in 17 years. At that point, the commitments linked to the rum cover-over funds, including debt service payments tied to the Diageo and Cruzan Rum deals, will have been satisfied, freeing up the more than \$250 million that the government receives annually as tax remittances on rum made in the U.S. Virgin Islands and sold on the U.S. mainland.

Importantly, when the special purpose vehicle's 17-year bond sale matures, a restricted account set aside for GERS as part of the [historic agreement](#) will continue to be funded for a 30-year time period with funds from the \$250 million rum cover-over funds. At that point, the \$250 million will be free from decadeslong covenants with Diaego and Cruzan Rum.

On Tuesday, Mr. Nibbs and Mr. Vialet concurred that the agreement staved off collapse of the system, though more work is needed.

"We momentarily stopped the bleeding," Mr. Vialet said. "There's a lot of work left to be done," Mr. Nibbs added after agreeing with the senator.

To be able to deal with its annual cash flow deficits, the pension system has asked legislators to provide additional funding to offset the gaps in its annual cash flow deficits through 2039, which is when the administrator projects the retirement system will experience a negative cash flow balance.

GERS wants lawmakers to amend Title 3, Chapter 27, Section 718 (b) to advance the date for increasing employer contributions from 23.5 per cent to 26.5 per cent — an upgrade which is currently scheduled for an automatic increase on January 1, 2025. This would result in a \$13 million overall increase that would help offset the negative balance that GERS anticipates will begin in the year 2026.

Mr. Nibbs has also asked the Legislature to rescind Act No. 6233 so that GERS can begin to receive a \$15 million appropriation for administrative expenses.

“Together, these two actions will constitute a minuscule 0.03 percent of the GVI’s \$850 million General Fund budget for FY2023; but it can be meaningful in our planning, including the change in our asset allocation policy targets from fixed income (bonds) to equity exposure and the timing and scale of reinstating the member loan program,” he told lawmakers.

GERS did not present a budget to committee for fiscal year 2023 since one has not yet been approved by its Board of Trustees.

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