



King County

Ron Sims

King County Executive

516 Third Avenue, Room 400
Seattle, WA 98104-3271

206-296-4040 206-296-0194 Fax
TTY Relay: 711
www.metrokc.gov

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CLERK
KING COUNTY COUNCIL

2003-488

October 30, 2003

The Honorable Cynthia Sullivan
Chair, King County Council
Room 1200
COURTHOUSE

Dear Councilmember Sullivan:

This letter transmits to the Council three ordinances related to the *Roberts/Duncan v. King County* class action lawsuit described below. These lawsuits, in large part, arise from implementation challenges stemming from the Metro merger, and the County's historical salary schedules that established annual salaries for each pay range with hourly rates adjusted for the standard hours of work per week. Neither of these lawsuits is related in any way to the County's current financial/payroll systems, and implementation of the Financial Systems Replacement Project would not have prevented these legal actions.

The Metro merger triggered a countywide classification compensation study merging Metro's and King County's classification systems into a single system. At Council direction, the study was executed in phases with the represented employees implemented first and non-represented employees implementation to follow. While the implementation was staggered, all employees receiving their new classification and range prior to January 1, 2003 received retroactive pay, with most employees receiving the pay back to January 1, 1998. The last major phase of the classification/compensation study was implemented on January 1, 2003 with 1,100 non-represented employees receiving new classifications and the corresponding pay ranges. However, given the County's financial situation and budget crisis, I proposed and the County Council concurred with the adoption of Ordinance #14516 not to authorize retroactive pay back to 1998 for this group of employees. Our decision was a responsible one but not without controversy. Subsequently, three county employees served a lawsuit for themselves and other similarly situated employees seeking compensation at their new "class comp" rate of pay effective January 1, 1998. Given that the matter may be subject to lengthy and costly litigation, I find that this settlement is fair and reasonable and a prudent step to take at this time. Reaching this negotiated settlement completes the process for those nonrepresented employees who were class/comped beginning in 2003.



This consolidated lawsuit was originally two separate class action lawsuits. The *Roberts* lawsuit filed in 1997 alleged that in 1994 and in subsequent years King County violated the "equal pay for equal work" provision in the King County Code where non-represented employees with a standard 40-hour work week were paid at a rate lower than other non-represented employees in the same job classification with a standard 35 hour work week. The *Duncan* lawsuit alleged that for certain nonrepresented employees, King County violated the King County Code with the prolonged implementation of the Classification/Compensation study and the denial of back pay.

Prior to implementing the Classification/Compensation study, the County's salary schedules set a single annual salary for each step within a pay range. The annual salary was translated into an hourly rate based on the standard number of work hours per week. Most County agencies existing prior to the Metro merger had a standard work week of 35 hours per week. Portions of Health and other departments had a standard 40-hour work week. Because the salary schedules provided the same annual salary for a step within a range for a particular classification, individuals with a standard work week greater than 35 hours per week received a lower hourly rate than those who were in similar classifications with a standard 35 hour work week. This phenomenon existed in certain pockets of the County and was **not** a widely used practice.

With the implementation of the Classification/Compensation study, all FLSA-exempt employees have a standard 40 hour work week. Further, for non-represented hourly employees, the County salary schedules set a single hourly rate for each step within a pay range. The Classification/Compensation study was implemented in phases starting in 2000 for non-represented employees. The new salary schedules **fully resolve** issues raised in the Roberts lawsuit.

The first ordinance approves the settlement agreement negotiated between King County and the Plaintiffs and directs the Executive to implement the terms of the agreement. The settlement agreement completely resolves all claims arising from the lawsuit.

The second ordinance is a 2003 supplemental ordinance appropriating \$13.9 million to the Risk Abatement Fund. An additional appropriation is included in the 2004 proposed budget. The entire budget for the *Robert/Duncan* lawsuit is \$24 million including the \$18.5 million cash settlement, \$1.0 million in estimated costs for future benefits agreed to in the settlement, \$1.4 million in employer related costs, and \$3.1 million in administrative and legal costs related to the lawsuit deliberations and the claims process.

Modifications to Chapter 3.15 of the King County Code are proposed in the third ordinance consistent with the settlement agreement. The changes clarify the County's classification and compensation system. Many of the changes are to improve the Code's readability aiding the consistent application countywide. Additionally, there are two major changes proposed. The first change clarifies that the County's equal pay policy is consistent with state and federal law. The second change provides for a continuing five year cycle for classification reviews and market assessments. These changes address issues raised in the lawsuit insuring consistent compensation practices throughout the County.

Over 63 Funds will be responsible for making contributions to the Risk Abatement Fund to address their settlement liability. At this point in time, it is not possible to identify with a high degree of certainty the exact amount owed by each and every Fund. As the *Roberts/Duncan* claims process refines the database, determining the specific cash awards to individual class members, a specific, defensible budget will be developed for each fund.

The enclosed \$13.9 million appropriation request commits \$12.2 million from the CX fund and provides an additional appropriation of \$1.7 million for the Risk Abatement Fund with moneys already appropriated in other funds. Since 2001, the Executive and Council have set aside reserves in anticipation of this settlement. The 2004 proposed budget includes additional appropriation for 20 of the 63 Funds where there is confidence that the amount budgeted will cover the likely costs. By mid 2004 the claims process will have advanced sufficiently that it will be possible to identify the individual fund liability and a second appropriation request reallocating the \$24 million budget will be forwarded for Council review. This process is similar to the one used for the *Logan/Knox* Settlement where there was uncertainty regarding individual fund liability until the actual claims process was begun and claimants and their employment histories were established.

The Settlement package is being transmitted to the Council on the same day as potential class members are being advised by letter of the proposed settlement and the Superior Court Settlement hearing scheduled for December 4, 2003. Judge Richard A. Jones signed an Order on October 27th, 2003 giving preliminary approval of the Settlement Agreement and the fee award pending a hearing on final approval by the Court and Council.

Based on the potential damages that could result from litigation, I recommend that the County Council approve the enclosed ordinances. This settlement represents the last of the employment lawsuits related to the King County merger with Metro.

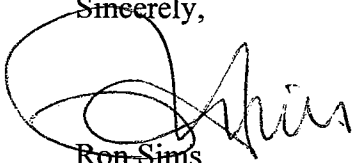
The Honorable Cynthia Sullivan

October 30, 2003

Page 4

I certify that funds needed for 2003 are available. If you need additional information, please call Steve Call, Director, Office of Management and Budget, at (206) 296-3434.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Sims", written over a circular scribble.

Ron Sims

King County Executive

Enclosures

cc: King County Councilmembers

ATTN: David deCourcy, Chief of Staff

Shelly Sutton, Policy Staff Director

Rebecha Cusack, Lead Staff, BFM Committee

Anne Noris, Clerk of the Council

Steve Call, Director, Office of Management and Budget (OMB)

Terri Flaherty, Senior Policy Analyst, OMB

Paul Tanaka, County Administrative Officer, Department of Executive Services (DES)

Anita Whitfield, Division Director, Human Resource Management, DES

Bob Cowan, Division Director, Finance and Business Operations, DES

FISCAL NOTE

Ordinance/Motion No.	Duncan/Roberts Settlement
Title:	Risk Abatement Fund
Affected Agency and/or Agency	CX Fund and Various NonCX Funds
Note Prepared By:	Jim Record
Note Reviewed By:	Terri Flaherty

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue to:

Fund Title	Fund Code	Revenue Source	1st Year	2nd Year	3rd Year
Risk Abatement	1391	Current Expense			
		Fund Balance	12,240,000		
Previous 2003 Supplemental	1391	Current Expense			
		Fund Balance	200,000		
2003 Adopted	1391	Various Funds	1,671,436		
2004 Proposed	1391	Various Funds		9,888,564	
TOTAL		\$ 24,000,000	14,111,436	9,888,564	0

Expenditures From:

Fund Title	Fund Code	Department	1st Year	2nd Year	3rd Year
Risk Abatement	1391	0091	14,111,436	9,888,564	

Expenditures by Categories

	1st Year	2nd Year	3rd Year
	**	**	**
51000 Salaries & Benefits	975,000	378,000	
53000 Services & Other Charges	348,287	348,288	
55000 Charges from Other Agencies	205,800	205,800	
56000 Capital Outlay	22,000	2,000	
59999 Contingency Reserve	350,000	347,825	
51000 Settlement & Other	12,210,349	8,606,651	
TOTAL	14,111,436	9,888,564	0

Notes

The supplemental ordinance has a total appropriation of \$13,911,436.

The \$13,911,436 appropriation request is a combination of the \$12,240,000 transfer from the Current Expense Fund Balance and an additional \$1,671,436 that was adopted in 2003 budget for class comp

The total amount of the settlement and administrative costs are \$24,000,000. This amount is budgeted as follows:

- \$13,911,436 in the ordinance
- 200,000 previously appropriated to the Risk Abatement Fund in the 1st Quarter 2003 Omnibus Ordinance
- \$9,888,564 budgeted in individual funds in the 2004 budget as well as a lump sum in the Risk Abatement Fund.

Due to the complex nature of the lawsuit, and timing issues with regards to the settlement and the proposed 2004 budget process, the appropriation for the Risk Abatement Fund has been split between 2003 and 2004.

Assumptions:

The expenditure assumptions cover two full years, starting in mid 2003 and going through mid 2005. King County is preparing to do the claims process in-house, with the help of approximately 6 TLTs over two years. There are potentially 30,000 class members, although it is anticipated approximately 3,500 to 4,000 will receive claim settlement checks. The class action lawsuit claims process is a time consuming, labor intensive process, involving thousands of payroll records, thousands of correspondence to keep track of, as well as thousands of calls in which to respond.

The process is carefully monitored by both the Plaintiffs' Attorneys as well as the Court system, to make sure all due diligence is used in tracking down all potential class members. Each class member has an individual file in which copies of all correspondence to/from is kept. As well as a database log of questions and concerns from class members and answers given. It is assumed that a majority of the salary expenditures will take place during the first year gearing up for the final settlement distribution later in year 1 or early in year 2.