

HOUSE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEM

January 16, 2003 Hearing Room E
3:00 p.m. Tapes 2 - 4

MEMBERS PRESENT: Rep. Tim Knopp, Chair
Rep. Alan Brown, Vice-Chair
Rep. Deborah Kafoury, Vice-Chair
Rep. Greg Macpherson
Rep. Mary Nolan
Rep. Dennis Richardson
Rep. Wayne Scott

STAFF PRESENT: Cara Filsinger, Administrator
Annetta Mullins, Committee Assistant

MEASURE/ISSUES HEARD: Informational Meeting
Report from PERS Staff
Public Hearing
HB 2001

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 2, A		
004	Chair Knopp	Calls meeting to order at 3:02 p.m. and opens informational meeting.
<u>INFORMATIONAL MEETING</u>		
013	Jim Voytko	Presents written statement (EXHIBIT A) and graphics (EXHIBIT B) on the status of PERS.
	Voytko	Presents status of pending employer PERS rate increase (EXHIBIT A, page 1).
037	Chair Knopp	Asks if the Board is required to give notice of the new rates.
	Voytko	Explains that the rate notices have been mailed out but they have not become official. Believes the Board has the authority to adopt the rates and the effective date.
	Voytko	Reviews 2001 Employer Rates (EXHIBIT B, page 2). Notes school districts' rates vary.
053	Chair Knopp	Asks if the rates shown are without the pickup.
	Voytko	Responds affirmatively.
059	Voytko	Reviews Unfunded Liability (EXHIBIT B, page 3).
071	Voytko	Reviews Employer Rate Outlook (EXHIBIT A, page 1 and EXHIBIT B, page 4).
084	Rep. Richardson	Asks what the return received has been for the last three months. States there was a modest positive return in the fourth quarter of last year. Adds that the fund over the last three years has not earned its actuarial assumptions. States that the rates are available and he will report back.
	Voytko	States there was a modest positive return in the fourth quarter of last year. Adds that the fund over the last three years has not earned its actuarial assumptions. States that the rates are available and he will report back.
	Rep. Richardson	Asks if there are expectations that the eight percent will be maintained.
	Voytko	Explains why they continue to expect eight percent.

116	Voytko	Explains what happens when they would earn more than eight percent (EXHIBIT B, page 5) .
134	Voytko	Explains projections with six percent earnings (EXHIBIT B, page 6) .
142	Voytko	Responds to status of the Board’s decision on actuarial equivalency factors and the mortality/retiree longevity assumption embedded in them (EXHIBIT A, page 1 and 2) .
176	Voytko	Explains graph on account growth (EXHIBIT B, page 8) .
201	Voytko	Explains benefit growth graph (EXHIBIT B, page 9) .
258	Voytko	Explains the Board is trying to pursue a concept to ensure that monthly benefits do not go down as a result of the change until post implementation events are sufficient to raise the benefit above the old level even when modern actuarial tables are applied to it.
	Chair Knopp	Asks if the Board took a different tact than what Judge Lipscomb ruled.
	Voytko	Responds yes and explains.
	Chair Knopp	Asks if the red line is “full and immediate” and asked whether the Board could come to the conclusion that full and immediate is the green line (EXHIBIT B, page 8) .
294	Voytko	Comments on request to the court for an explanation of “immediate.”
308	Chair Knopp	Asks if the Board is acting on legal advice received from the attorney general.
	Voytko	Explains sources of information given to the Board.
	Chair Knopp	Asks if the information relates to the mortality table or other issues as well.
	Voytko	Responds it is on the mortality table and more. Adds that the experts have been asked specific questions.
	Chair Knopp	Asks if the Board has a policy to keep the advice private.
	Voytko	Responds that the Board operates under state law and suggests it is up to the attorneys to release information that is covered under attorney/client privileges. Notes there is litigation pending.
350	Chair Knopp	Comments it would be valuable to understand why the Board has made the decisions they have made. Asks that the Board release information on advice they have received on these issues.
361	Rep. Macpherson	Asks if the policy of the Board on the transition rule was driven by their decision of what they thought was good policy, or by their legal constraints they were advised on.
	Voytko	Responds that without direct access to the Board and their willingness to speak, believes it is fair to say there are legal constraints and opinions about where they lie.
384	Voytko	Responds to the status of the litigation before Judge Lipscomb in Marion Circuit Court (EXHIBIT B, page 2) .
463	Chair Knopp	Asks if the decision on the appeal will apply only to those who appeal, or to everyone.
TAPE 3, A		
	Voytko	Explains that the exchange of information between the Board and attorneys is in executive sessions.
042	Chair Knopp	Calls attention to the spread sheet on history of PERS since 1946 (EXHIBIT C) , the book of statutes relating to PERS, and news articles on PERS (EXHIBIT D) .
<u>PUBLIC HEARING – HB 2001</u>		
065	Chair Knopp	Opens public hearing on HB 2001.

	Dave Heynderickx	Legislative Counsel. Explains HB 2001 and reviews history of PERS' earnings capabilities.
139	Heynderickx	Explains subsection (2) of HB 2001.
163	Chair Knopp	Comments he has requested language to amend line 23.
	Heynderickx	Responds that PERS staff was going to talk to the actuary. Believes Voytko can explain.
170	Chair Knopp	Explains the effect of the requested amendment.
189	Heynderickx	Explains that the discussion is about the majority of the people in the fund. Gives understanding of how the actuary makes decisions.
229	Rep. Nolan	Comments on her understanding of subsection (2) and asked if they are recognizing the policy of the 30 month reserve, or whether this would prohibit the Board from maintaining a reserve.
	Heynderickx	Explains that after the reserve account is paid up and is fully funded, at whatever level the reserve is, the Board has always had a policy to maintain a reserve for 30 months; the reserve was depleted in the first year of the losses.
287	Chair Knopp	Comments that the bill does not say what the policy should be.
	Jim Voytko	Director, Public Employees' Retirement System (PERS). Comments that because this legislation affects benefits, neither he nor the Board will present a position on the legislation. Presents staff analysis of the bill (EXHIBIT F).
372	Chair Knopp	Asks if the \$100 million liability is annually.
	Voytko	Responds he believes it is annually. Explains that because the State is by far the largest employer, the State would garner the largest amount.
	Chair Knopp	Asks how much it would reduce the unfunded liability.
	Voytko	Responds it would reduce the liability by just under \$100 billion.
	Chair Knopp	Asks if Johnson, the actuary, will testify on the bill.
	Voytko	Advises that the actuary needs a formal definitive change in the plan structure in order to make a change in actuarial assumptions, and that Johnson is prepared to explain the rates.
	Chair Knopp	Summarily states that the actuary is saying this bill saves \$100 million in statewide costs as it relates to PERS annually, and it would take about \$1 billion off the unfunded liability.
412	Voytko	States that Chair Knopp is correct in his summary statement.
	Voytko	Comments on a hard cap versus a concept that would tightly constrain the opportunities for earning above eight percent. Offers that the legislature could constrain the opportunity to get above eight percent; perhaps consider limiting Tier I credit.
TAPE 2, B		
049	Voytko	Continues explanation of limiting earnings.
	Voytko	Explains that no trust fund moneys go to employers. Concern is for any indication that would create a new crediting sequence. Will provide in writing whether the existing crediting accomplishes the aim without using the employer language. Gives example of crediting to accounts.
	Voytko	The Board does have guidance about how big the gain loss reserve should be in numerical terms, but SB 134 of last session instructs the Board and the staff to set up a reserve that is of sufficient size to avoid the creation of Tier I deficit.
087	Rep. Macpherson	Asks if there is anything in the private section that the legislature can get information from.

	Voytko	Responds there really is not. Believes there is one fund that guarantees a financial return but it is at a substantial discount.
106	Rep. Richardson	Comments on history of earnings and asked if a new calculation would not adjust the rate down.
	Voytko	Explains process the actuary uses and investment strategies of the Oregon Investment Council.
	Rep. Richardson	Asked how the actuary is selected.
	Voytko	Explains the selection process.
161	Chair Knopp	Asks if it was Voytko's testimony that the actuary would see this as a hard cap.
	Voytko	Explains how the actuary looks at earnings over a 26-year period.
	Chair Knopp	Asks if the Board has taken a position in favor of expediting the Lipscomb decision to the Supreme Court, and whether the Board has taken a position on expediting legislation to the Supreme Court.
	Voytko	Responds the Board has not taken a position and there is nothing in the goals and objectives. Comments on timing of Board actions and expediting the process.
223	Rep. Richardson	Asks if the actuarial liability is set at \$14.3 billion.
	Voytko	Explains there is in addition about \$500 million associated with the retiree health plan. Explains trust fund to fund the subsidy provided for health insurance for retirees.
	Rep. Richardson	Asks if the projection is that it will take about 26 years to get back into the black.
	Voytko	States the 26 years is a choice they make. Explains that the Board has an amortization schedule. Explains history of amortization table.
272	Rep. Richardson	Asks if the actuary has recommended eight percent for the last 12 or 13 years.
	Voytko	Responds that is his understanding.
274	Rep. Richardson	Asks if the actuary has justified how to retain the same eight percent in the current market and with the projected deficits.
	Voytko	Responds that the actuary did present a justification and showed a composition of the anticipated return. Comments that the eight percent in 1999 was excessively low, but it was not meant for just that period. Explains that the estimation of the assumed rate is independent at the time the decision is made. State that the unfunded liability has no effect, nor the rate of return.
	Rep. Richardson	Comments that the eight percent projected in 1998 may have been grossly low because with the deficit, he is still projecting eight percent. Gives example of calculations on reduced funds.
	Voytko	Explains on projections and states that the estimation of the assumed rate is independent of the financial situation of the fund or system at the time it is made; the estimate is what is going to be earned by the fund, not whether it is the right size. Adds that the unfunded liability plays no role in the estimation of the assumed rate or the size of the principal.
313	Jim Green	Oregon School Boards Association. Submits prepared statement in support of HB 2001 for the Oregon School Boards Association, Association of Oregon Counties, Special Districts Association of Oregon, and the League of Oregon Cities (EXHIBIT F) .
359	Brian Delashmutt	PERS Coalition, which includes Oregon Council of Police

Associations, Association of Oregon Correction Employees, Federation of Oregon Parole and Probation Officers, and Oregon Nurses Association. Adds that he is also, today, representing the PERS Coalition, which represents all the public members who have an employee interest.

Responds that they also have a concern on the question of access to legal advice to the PERS Board in executive sessions.

Chair Knopp

Asks if they have legal advice on how to get the testimony from the Board.

Delashmutt

Responds that they have been denied access on the basis of attorney-client privileges. Believes their inability to get the information fosters more litigation. States that SB 134 was the precursor. It talks about the sufficient size of the gain/loss ration. Explains goal of SB 134.

TAPE 3, B

025

Delashmutt

States they too have a list of suggestions and will continue to reinforce them. States that HB 2001 has been agreed to by the employers and employees, with the one caveat about lines 22 and 23. Explains concerns.

Chair Knopp

Asks if they will support the hard cap if it is in agreement with the actuary.

Delashmutt

Comments they do not expect there will be a time soon when there will be more than eight percent. Comments on concerns and realizations of their members and the future of the system.

075

Chair Knopp

Asks if Delashmutt has thoughts on an expedited clause on suits.

Delashmutt

Comments their concern is that the sooner they can get this resolved, the better it is for all parties.

Anthony Bieda

Lane County Government. States that Lane County has participated and cooperated with the Association of Oregon Counties and the Employers Task Force in developing recommendations, and they support those recommendations.

Bieda

States that Lane County has said they will work to fix the system to hold down the employer rates.

Comments on issue of crediting earning above the guarantee, greater liabilities down the road, that increase liability increases employer rates, and to some degree the awarding above eight percent to member accounts could be construed as representing a unilaterally award of benefits above the amount expressed by the legislature.

Chair Knopp

Asks if Bieda means there should be a defined percentage.

130

Bieda

Responds there are many different ways to define what the benefit level should be. Explains his position on the benefit level.

130

Tricia Smith

Oregon School Employees Association (OSEA) and member of the PERS Coalition. Comments OSEA supports Delashmutt's comments. Will focus comments on the deletion in lines 14-16 of HB 2001, and they assume the sentence in lines 22 and 23 drove the deletion in lines 14-16. They are concerned about deleting the goal that the gain/loss reserve is funded adequately to guarantee Tier I accounts are funded appropriately, and no more than that. They don't want to see changes in statute today that 25-30 years will cause a fund that cannot be used. Hopes the changes also take into account whether it is appropriate to

		delete the language. States they also support the concept of limiting concerns to the assumed rate guarantee. There is some merit in the idea that a less hard language in the statute that would limit future suits.
184	Chair Knopp	Suggests that Heynderickx include an expedited appeal process in the amendment he has been requested to draft.
	Dave Heynderickx	Legislative Counsel. Suggests the chair think about expediting the process. Explains complications that may be realized in the future if there is an expedited review provision. Comments on decrease of members in Tier I and possible suits in the future.
249	Voytko	Comments on limitations of use of gain/loss reserves. Believes moneys placed in the reserve will be used for only Tier I accounts. Explains fluctuations in reserve account and the ability of the Board to change its funding policy.
	Heynderickx	Adds that he agrees with Voytko. Explains scenario from his point of view.
	Voytko	Agrees there will be a time when there will be 20 percent earnings, the fund is loaded, and the question will be whether the employees have a contract right to a minimum return equal to the assumed rate, or a minimum return equal to the assumed rate and excess earnings.
	Heynderickx	States it would be to the extent that there are no other statutory demands for reserves and other things in place. Comments on SB 134 of last session.
	Voytko	Explains that is why he has proposed the alternative of an effective cap. Explains his proposal.
341	Chair Knopp	Asks if an expedited clause would say in the future that we thought it to be unconstitutional.
	Heynderickx	Advises that one would have to get to the day when harm is inflicted.
	Chair Knopp	Asks if Heynderickx believes there is no need for the clause.
	Heynderickx	Responds affirmatively.
365	Rep. Richardson	Asks if they are not talking about a right in this issue. Explains his question.
394	Heynderickx	Comments on a negative view of unnecessary expedited review.
	Chair Knopp	Asks if it is possible to include a sunset clause on an expedited process.
	Heynderickx	Comments on previous provisions on automatic appeals.
TAPE 4, A		
015	Heynderickx & Voytko	Discuss court procedures.
030	Voytko	Comments on ability to appeal, and effect of decisions retroactively.
	Heynderickx	Counters that if someone came in during the first year, only that one year would be looked at.
	Koytko	Counters that because of the Lipscomb decisions, the set of transactions they would have to undo would date from the time they made a crediting under the circumstances described and the time the court ruled. States that is where expedited decision making would become possible, but would not argue for or against it.
073	Chair Knopp	Asks Heynderickx to draft amendments; explains content.
	Heynderickx	Advises that the deleted language mentioned by Tricia Smith in lines 13-16 should be reinstated. Explains why the language

083

Chair Knopp

should be reinstated.
Adjourns meeting at 5:01 p.m.

EXHIBIT SUMMARY

- A – Informational Meeting, prepared statement, Jim Voytko, 4 pp**
- B – Informational Meeting, graphics, Jim Voytko, 9 pp**
- C – Informational Meeting, spreadsheet on PERS history, PERS staff, 2 pp**
- D – Informational Meeting, news clippings, staff, 4 pp**
- E – HB 2002, PERS summary, Jim Voytko, 2 pp**
- F – HB 2001, prepared statement, Jim Green, 3 pp**