

# HOUSE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEM

January 28, 2003 Hearing Room E  
3:00 PM Tapes 9 - 10

**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:** Work Session  
Introduction of Committee Bills  
Public Hearing  
HB 2004  
HB 2005

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 9, A</b>		
003	Chair Knopp	Calls meeting to order at 3:03 p.m. and opens work session for the purpose of introducing LC Drafts.
<b><u>WORK SESSION - INTRODUCTION OF COMMITTEE BILLS</u></b>		
	Chair Knopp	Explains LC 1668, LC 1704, and LC 2116. States that he expects the measures will be changed.
023	Rep. Nolan	<b>MOTION: Moves LCs: 1668, 1704, and 2116 BE INTRODUCED as committee bills.</b>
024		<b>VOTE: 6-0-1</b>
	Chair Knopp	<b>EXCUSED: 1 - Rep. Kafoury</b> <b>Hearing no objection, declares the motion CARRIED.</b>
026	Chair Knopp	Opens a public hearing on HB 2004.
<b><u>PUBLIC HEARING - HB 2004</u></b>		
032	Mark Johnson	Actuary for Public Employees' Retirement System. States they have looked at HB 2004 and find areas that need more definition. Reviews impact statement on HB 2004 ( <b>EXHIBIT A</b> ). Explains Board's action on the "lookback" and explains how they have arrived at the calculations in this report.
070	Johnson	Reviews calculation methods for options in the table ( <b>EXHIBIT A, page 2</b> ).
135	Chair Knopp	Asks if the change relating to sex of members was caused by the federal case.
	Johnson	Responds that the change to go from male and female factors into one unisex factor was the federal court case in 1978.
	Chair Knopp	Asks what the reason for the change was in 1999.
	Johnson	Comments on the administrative rule adopted by the Board and a rule

170	Chair Knopp	of the Board in 1992. Explains factors in table ( <b>EXHIBIT A, page 2</b> ). Asks if everyone is under the same rule because the Board never adopted the new rule.
	Johnson	Explains that last month the Board adopted factors under the New Basis in the table for retirements in January 2004 and after. Those who retired in 2003 will not be affected. Starting in January 2004 there will be a comparison test to give the greater of the two benefits. The Board has protected from a reduction benefit the account balances as of 2003 with interest.
195	Rep. Richardson Johnson	Clarifies the makeup of the account balance and earnings. States that is true except for contributions that come in and make the account grow beginning in 2004 will not be covered under that protection.
	Johnson	Explains the variations of conversions under the three options in the table ( <b>EXHIBIT A, page 2</b> ).
247	Rep. Macpherson Johnson	Asks for verification of his understanding of Johnson's testimony. Responds affirmatively and comments further on factors used by the Board.
	Rep. Macpherson Johnson	States the segmented approach only applies to those hired after 1/1/99. States that Rep. Macpherson is correct, and under the Board's approach, in 2004 that will go by the wayside as well and they will talk about protecting the account balances and interest at that time.
	Chair Johnson	Asked when the discussions on old versus new basis started. Responds they have had discussions since last summer when the recommended revision to the mortality assumptions they use in the valuation. States the Board had a subcommittee that studied this and decided the process needed to be changed.
225	Johnson	Reviews impact statement ( <b>EXHIBIT A, page 3</b> ). Explains how he developed the projections.
368	Chair Knopp Johnson	Asks what percentage of people take the various options. Comments that they will provide the information. A fair number of people take Option 0 which protects their account balance in case of death. Explains that in Option 1, we must include the number of people who take Option 2, 2A, or 3 and 3A because their benefits are computed on Option 1 factors.
391	Rep. Nolan	Asks how she can relate Options 1, 0, and 4 to the lookback with interest and without interest.
	Johnson	Explains that the options are ways to convert the account balances to monthly benefits. They all relate in exactly the same way to the guarantee of the 2003 account balance. Explains the options.
<b>TAPE 10, A</b>		
024	Rep. Nolan Johnson	Asks what option choices the retirees have to choose from. Gives examples of various scenarios and the related calculations.
055	Rep. Nolan Johnson	Asks if "interest" includes all sources of income. Explains it is the portfolio rate of return available.
060	Rep. Richardson Johnson	Asks for clarification of the table on page 3 ( <b>EXHIBIT A</b> ). Refers to page 7 ( <b>EXHIBIT A</b> ) and explains the calculations.
086	Rep. Macpherson	Asks if the committee has an illustration of the cost impact on unfunded liability and employer rates of a lookback without interest as of January 1, 2003. Asks if the differential is about the same that exists in the numbers for January 1, 2004.
	Johnson	Responds he has not run the numbers but his best estimate would be approximately \$100 million less.

	Rep. Macpherson Johnson	Asks what the prevailing age is of people leaving the system. States that the latest financial report on the system has the number of individuals retired under the different options. States they will summarize and provide the information for the committee.
102	Chair Knopp Johnson	Asks if he gave a recommendation to the board on which method to adopt. Explains the PERS Board had before it the first two, the lookback with interest and the lookback without interest, which were developed by their committee. The PERS Board received advice from the Department of Justice and did not ask for his advice.
110	Rep. Macpherson Johnson Chair Knopp Johnson Chair Knopp	Notes that HB 2004 calls for an update every two years and asks if that is reasonable. Comments on process of adopting mortality tables. Believes it is a good idea to look at mortality tables every two years but does not believe they need to be updated more often than every 8-10 years. Asks if there is one mortality table that most private pension funds use, and whether he has recommended a potential table, and would he recommend that it be put in bill form. States that the way they study mortality is different than in private industry because there are so many retirees. Believes it would be a mistake to put it in law. Declares the meeting in recess due to a medical emergency in the room.
160	Chair Knopp Johnson Chair Knopp Johnson Chair Knopp Johnson Chair Knopp Johnson	Reconvenes the meeting at 3:58 p.m. Continues, commenting on determination of which actuary tables to use. Asks if it makes sense to include a timeline for updating the tables Responds he believes a requirement that says the actuary must look at the mortality table every two years makes sense. Asks whether Johnson would recommend updating the mortality tables being used if the experience show that people were living longer. Responds affirmatively. Asks if Johnson has recommended that the tables be updated in the past. Responds affirmatively and explains history of reviewing mortality tables. States he did not make a recommendation to the Board but the Board already had a staff recommendation before it.
229	Chair Knopp Johnson	Asks if benefits are not generally decreased when new mortality tables are adopted. States that in 1992 they change the mortality table but also increased the interest assumption from 7-1/2 to 8. Notes Old Rule Basis in the table on page 2 ( <b>EXHIBIT A</b> ). States that all the factors for Option 0 and Option 4 were put into place in 1992. And all the factors at age 54 and below under Option 1 were put into place in 1992. States the Board did follow his recommendation but at that time because of the interest rate, there were some modest increases in the factors.
253	Greg Hartman	Attorney, PERS Coalition. Presents copies of letters and attachments ( <b>EXHIBIT B</b> ). Testifies on contract law, including Measure 8 of 1994.
423	Hartman	Testifies that the Board's decisions have been in accordance with the contract law. Comments on total payments to members and states he cannot believe anyone could argue against the same total payment regardless of the length of time over which the payments are made.

**TAPE 9, B**

025	Hartman	Continues presentation on contract law and aggregate analysis.
068	Rep. Richardson	Asks why someone hired in 1972 would not have the assumed earnings rate of 3.75 percent instead of the eight percent that came on later.
	Hartman	Comments on the various factors in the plan based on 1978 mortality and earnings. States that conceivably the 3.5 percent could be used for those employees.
	Rep. Richardson	Comments that it seems like if it works for the raising of benefits, then it can be changed as time goes on, but if it would work to the benefit of the employer, it would not be allowed to apply.
	Hartman	States the reason is the unilateral contract law. Talks about the Taylor case in Multnomah County.
123	Chair	Asks if a pension system could be set up that has a bi-lateral concept.
	Hartman	Responds affirmatively. Comments on plans in the private sector.
	Chair	Asks if the six percent was from collective bargaining.
	Hartman	Responds the six percent was collectively bargained, and that the six percent is in the statute.
265	Chair Knopp	Asks if Hartman refers to the six percent that is in statute as part of the unilateral pension contract.
	Hartman	Responds affirmatively.
	Chair Knopp	Asks if the six percent pickup by the employers is considered bilateral.
	Hartman	Responds affirmatively. Adds that since Measure 8 some employees and employers have bargained to remove the pickup. Believes it can be bargained either way. Adds that it is different for those not in a collective bargaining agreement. Agrees it is something that was intended to be subject to bilateral contract making.
164	Rep. Macpherson	Asks what the defensibility is of the PERS Board's decision to implement the rule on a lookback with interest basis.
	Hartman	Explains the PERS Board's decision to implement new tables on a fixed date and that they will figure out what that date will be. States that it is a different road because when the draft of the rule came out the Board began talking about the protection of accrued benefits. Believes the Board began studying how this would play out if we were in the private sector. Explains his intent in his memo dated December 10 ( <b>EXHIBIT B, pages 7-12</b> ). Believes the Department of Justice is pretty much at the same place as he if the Board is going to adopt the accrued benefit approach. States the Oregon Supreme Court will have to be convinced to either abandon unilateral contract, which is unlikely because it is embedded in law in Oregon and many other states. Adds an alternative would be to convince the court they are somehow different and therefore a different rule needs to be applied, and make the argument that the accrued benefits is the correct rule to apply in this circumstance.
223	Rep. Macpherson	Asks if it would be within the power of the legislature to establish a unilateral contract that is limited on an accrual basis, i.e. for a new hire, could a statute say the promise is 'incremental' until the legislature decides to change it on a going forward basis.
	Hartman	Responds he thinks it is within the law for the legislature to say to new hires that this will be the unilateral contract but retains rights to change the contract. Comments on the Supreme Court case that found the legislature, in giving up their taxing authority, only gave it up for benefits accrued or accruing but did not give it up for future benefits.

		Believes the legislature can design whatever restrictions it wants to, within reason, and believes it would be entirely consistent with unilateral contract theory.
	Rep. Nolan	Asks if PERS has an individual unilateral contract with each active and inactive member.
	Hartman	Comments that the contract is between the member and employer. And the plan is administered by PERS. Believes there are 290,000 contracts but they are with 800 separate employers, all administered by PERS.
	Chair Knopp	Asks if an employee who leaves the system then comes back, comes back under the unilateral contract they started with, or would they come back under changes that have been made.
	Hartman	Responds that it depends. Explains variation of employment situations.
	Chair Knopp	Asks what happens if the legislature changes the bridging statutes.
	Hartman	States there would be two levels of analysis. If it is part of the deal, you can't change it. Does not think every single part of PERS is necessarily a part of the deal. Believes the legislature is within their power to strengthen the reserving system even though it may have an adverse impact on benefits.
328	Chair Knopp	Asks if the same applies to investments and the ability to move some of the significant swings in investment earnings.
	Hartman	States that if it is mechanism to lowering the guarantee, it would seem to be in trouble. It would seem, to be trying to get around the contractual promise. States that his first impression would be if it is to lower the eight percent guarantee, it would be problematical. But if there are other things to be accomplished by doing that, there is a chance of convincing the court that those are more akin to strengthening the reserving system.
352	Rep. Richardson	Asks Hartman to comment on the Lipscomb decision.
	Hartman	Comments on the Lipscomb decision and gives history of the reserve account.
	Hartman	States that the Lipscomb decision only directly affects seven employers and eight employees—a limited population. Adds that assuming the Supreme Court rules on the case, we will not get definitive analysis on things like contract rights. His analysis was limited to review of the administrative decisions of the Board. Contract rights won't arise until we go back down to the Board level and the Board asks how to implement it.
<b>TAPE 10, A</b>		
029	Hartman	Comments on blending and his memo dated December 10, 2002 <b>(EXHIBIT C, page 7-12)</b> .
065	Rep. Kafoury	Asks if the legislature can make changes in the mortality tables.
	Hartman	Responds that the legislature must keep in mind there must be a legal theory and how it might survive in the Supreme Court.
083	Rep. Kafoury	Asks if changes made retroactively would be upheld.
	Hartman	Responds there would be no problem with new hires. Does not think the starting date is key. Believes going back to January 1, 2003 would be a problem.
	Chair Knopp	Asks if any part of the Lipscomb decision can be appealed to the U. S. Supreme Court.
	Hartman	Responds that he does not think any issues would be appropriate for appeal to the U. S. Supreme Court.

125	Chair Knopp	Opens a public hearing simultaneously on HB 2005.
<b><u>PUBLIC HEARING – HB 2004 AND HB 2005</u></b>		
	Jack Sollis	Secretary-Treasurer, Oregon PERS Retirees, Inc. States he is confused by Sections 3 and 4 of HB 2004; they don't seem to mesh. Reads language of HB 2004. States the purpose of HB 2004 was to allow people, once they know the mortality table is going to be adopted, to have a chance to bail out because their pensions will be cut from eight to 12 percent if they do not retire before the effective date of the mortality table. Adds that he does not see the importance of inserting days after the effective date of the act because it has already said they are supposed to adopt tables effective January 1, 2004.
	Sollis	States that on HB 2005 he was going to suggest what the amendments already do.
	Chair Knopp	Closes the public hearings on HB 2004 and 2205. Announces that his intention is to go into work session on HB 2005 on Thursday. Notes that the HB 2005-3 ( <b>EXHIBIT C</b> ) amendments were submitted by Greg Hartman. Asks that everyone review the -3 amendments.
159	Chair Knopp	Adjourns meeting at 4:56 p.m.

**EXHIBIT SUMMARY**

- A – HB 2004, actuarial impact statement, Mark Johnson, 7 pp**
- B – HB 2004, letters and attachments, Greg Hartman, 182 pp**
- C – HB 2005, HB 2005-3 amendments, Greg Hartman, 2 pp**