

# HOUSE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEM

February 04, 2003 Hearing Room E  
3:00 PM Tapes 12 - 14

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

**MEMBER EXCUSED:** Rep. Tom Butler

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

**MEASURE/ISSUES HEARD:** HB 2004 – Public Hearing

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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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<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<b>Tape 12, A</b>		
003	Chair Knopp	Calls meeting to order at 3:05 p.m.
	<b><u>HB 2004 – PUBLIC HEARING</u></b>	
	Bill Gary	Attorney at Law, Harrang, Long, Gary, Rudnick, PC. Submits prepared statement ( <b>EXHIBIT A</b> ) and speaks about contract law as it relates to PERS.
073	Gary	Continues presentation on contract law ( <b>EXHIBIT A</b> ).
144	Gary	Comments on outdated mortality tables that result in benefit amounts greater than provided for in the statute.
182	Gary	Advises committee that he disagrees with Greg Hartman on contract rights.
164	Gary	Reads from Lipscomb decision.
210	Gary	Comments on litigants not arguing contract rights before Judge Lipscomb.
241	Gary	Comments on cases cited in previous statements that were submitted to the committee by Greg Hartman.
274	Gary	Comments on Internal Revenue Code, which has no applicability to government pension plans. States there is not a colorable argument that directing the PERS Board to do what the law has always required it to do and immediately implement mortality tables would constitute a breach of contract or impair the obligation of contract.
302	Rep. Macpherson	Asks, if under contract rights, the Board's use of out-of-date mortality tables becomes binding at any point.
	Gary	Responds he does not believe they do; the Legislature has provided that the board can recoup overpayments for the past five years.
	Rep. Macpherson	Asks what impact new mortality tables would have on the

		litigation in the Lipscomb decision.
	Gary	Advises that, In general, actions taken by this body will not affect the legislation, except to the extent it may moot the legislation. The petitioners have a judgment that says the PERS Board will implement mortality tables immediate and fully. To the extent that this body enacts a law that does less than that, they will insist on the benefit of their judgment.
	Gary	Adds that if the legislature directs the Board to enact the tables immediately and fully effective on some date and the board follows that, that portion of the Lipscomb decision will probably become moot. A challenge, if there is one, will be to the new legislation.
369	Rep. Nolan	Asks if the Lipscomb decision directs the Board to enact certain tables.
	Gary	Responds, no. States that he believes Judge Lipscomb was careful not to intrude on the discretionary judgments this body has entrusted to the PERS Board. The actuary proposes the tables based on the demographic of the PERS member group. The decision on what tables would be implemented would rest with the PERS Board.
	Rep. Nolan	Asks if the PERS Board is directed by the decision to consider the "lookback".
	Gary	Responds he does not believe the decision deals with the lookback, except, in their view, one cannot implement current mortality tables immediately and fully if there is a lookback.
<b>TAPE 13, A</b>		
003	Rep. Nolan	Comments on Solomon decision relating to mortality tables based on sex.
016	Gary	Explains that the case, <u>Henderson vs. State of Oregon</u> , was a consent decree entered into by PERS. The decision had nothing to do with the issues before the committee. Comments on the use of a separate mortality table for men and another for women.
055	Gary	Comments on information provide by Greg Hartman on mortality tables.
079	Rep. Nolan	Asks if Judge Lipscomb ruled on blended mortality tables.
	Gary	Responds it was a non issue and they did not argue the issue because they knew the tables used by PERS were blended.
	Rep. Barker	Asks if Gary has done an analysis of the lookback.
	Gary	States he has submitted a written analysis today ( <b>EXHIBIT A</b> ).
100	Chair Knopp	Asks what the arguments were in the Lipscomb decision and what they expect the arguments to be in the appeal.
	Gary	Comments on arguments before the court.
122	Chair	Ask if full and immediate means retroactively.
	Gary	Comments on press conference by Governor Kulongoski. States that the effect of not making the tables effective retroactively is that everyone will rush to retirement.
155	Chair Knopp	Ask if it is Gary's intent to apply new mortality tables retroactively for the five-year period to try to recoup the costs.
	Gary	Comments he hopes they can talk about HB 2003 next week. The bill includes a mechanism that would pay for the cost of benefits dating back to 1996, which is as far as the litigation permits them to go.
173	Rep. Barker	Gives hypothetical example of a retiree and asks what the benefit

		would be.
189	Gary Rep. Macpherson Gary Don Powell	Explains that he cannot make the calculation, but the information is available from Mr. Johnson, Actuary for PERS. Asks Gary about workings of the tax code. States that he is not the best person to respond to tax law and that he will be happy to provide someone who can talk about the law. PERS member. Submits prepared statement and speaks against changing the system without allowing current employees to retire without penalty caused by changes in the system.
271	Chair Knopp Powell Velma Hartwig Richard Leonetti	Comments that the lookback is not in accordance with the law. States he believes the legislature trusted the PERS Board and they have let employees believe they have certain benefits. Submits prepared statement ( <b>EXHIBIT C</b> ) and advocates for combining the PERS insurance program with the Oregon Health Plan and assurances of a continued retirement system. Asks that those of retirement age be given a chance to retire before changes are put in effect. Oregon Tax Research. Submits prepared statement advocating for changes in the Public Employee Retirement System ( <b>EXHIBIT D</b> ).
<b>TAPE 12, B</b>		
029	Leonetti Don McIntire	Continues his presentation. Comments on previous audit of PERS. Suggests using a combined average of mortality tables of perhaps the top five insurance companies.
062	Rep. Barker McIntire Don Johnson	Asks if McIntire is suggesting that the mortality tables be updated every year. Responds affirmatively. Lincoln County resident. Submits prepared statement and advocates for combining the insurance program through PERS with the Oregon Health Plan ( <b>EXHIBIT E</b> ). Comments on injuries received on the job, inability to get disability, difficulty with the workers' compensation system, local activities to recall the school board, and lack of funding for schools.
191	Brian Delashmutt	Oregon Nurses Association, Oregon Council of Police Associations, Association of Correction Employees, and Federation of Oregon Parole and Probation Officers. Comments on Gary's comments on Lipscomb decision and not arguing contract rights. Suggests Hartman can write a brief discussion of contractual rights as a result of the Lipscomb decision. Comments on number of people rushing to retire and the "brain drain" on employers. States they are not interested in pursuing a retroactive date. Suggests that their multi-segmented plan last summer would have saved more money.
372	Pat West	Oregon State Firefighters. Comments that most of the shortfall in the PERS fund is a direct result of the stock market. Comments on Alaska retirement system and effects of mortality tables on employees who do not know what to do. Advocates for the lookback to stop the runs to retirement and brain drain.
<b>TAPE 13, B</b>		
037	Brian Delashmutt	Comments that they do not want to end up in litigation because it could cost more down the road.
051	Chair Knopp	Comments he does not believe litigation can be avoided on

		mortality tables. States that the decision will be made by not only the legislature, but by the courts.
060	Delashmutt	Comments they are working toward a solution that is most legally defensible.
	Chair Knopp	Comments that the goal of this committee is to work toward a legally defensible and fair solution.
076	J. L. Wilson	National Federation of Independent Businesses (NFIB). States he wants to lend a private sector perspective. From the point of view of NFIB and the 12,000 employers, there is a level of urgency on PERS reform, particularly on HB 2004. The understanding ends in the private sector when there appears to be a reluctance to adopt remedies that seem well within the reach of the committee, or something that a prudent business would do. States that the full and immediate implementation of the mortality tables in HB 2004 is well within reach as a significant cost saving measure.
	Chair Knopp	Notes the receipt of a letter from Jason Williams in support of HB 2004 ( <b>EXHIBIT F</b> ).
106	Chair Knopp	Asks if Voytko can respond to Gary's comments on the lookback.
115	Jim Voytko	Director, PERS. Explains that the question is in the FAQ's that have been posted on their website in order to try to keep employees up to date.
130	Voytko	Presents information on implementation of the new mortality table ( <b>EXHIBIT G</b> ).
196	Voytko	Reviews statement on acceleration of retirement ( <b>EXHIBIT G, page 2</b> ).
251	Voytko	Reviews table on implementation timeline ( <b>EXHIBIT G, page 6</b> ).
349	Rep. Nolan	Asks if the PERS staff have evaluated the effect of the policy decisions on the accuracy of the calculations that will be done.
	Voytko	Explains they have not done a formal analysis. States that an audit was done for the agency by the Secretary of State Audits Division. They concluded that 15 percent of the calculations have financial errors; the errors tended to be small. An additional 15 percent of the transactions had documentation errors.
	Rep. Nolan	Asks if there is a chance that the lookback would result in the original calculation being an overpayment.
	Voytko	Responds that they recommend doing this rather than trying to get money back from the retirees. The PERS staff believe there would most likely be underpayments.
428	Rep. Macpherson	Referring to the chart ( <b>EXHIBIT G, page 6</b> ), asks if 15 months is what we are likely to see regardless of the lookback date.
	Voytko	Explains that staff has estimated 18-24 months; about two months has elapsed. States that the legislature has given them authority to spend a little over \$2 million of the trust fund money to prepare for doing a lookback. They have not been ready to spend it yet and there has been some uncertainty about whether there will be a lookback, what the fate of the judge's order is, what the Board's response might be, or what the legislature might do.
<b>TAPE 14, A</b>		
013	Rep. Macpherson	Asks what the typical duration of time would be before the

	Voytko	catch-up payment, if one were owned, would reach the retiree. Explains timelines.
036	Rep. Macpherson	Asks if the catch-up would not happen until the system is automated.
	Voytko	Responds affirmatively. Explains how the process would work.
	Rep Nolan	Asks how often most programs update their mortality tables.
058	Voytko	Explains intervals of review of tables.
071	Chair Knopp	Announces that HB 2004 will be heard again on Thursday and reviews projections for future committee meetings.. Closes the public hearing on HB 2004 and adjourns the meeting at 5:08 p.m.

### **EXHIBIT SUMMARY**

- A – HB 2004, prepared statement, Bill Gary, 9 pp**
- B – HB 2004, prepared statement, Dan Powell, 3 pp**
- C – HB 2004, prepared statement, Velma Hartwig, 1 p**
- D – HB 2004, prepared statement, Richard Leonetti, 6 pp**
- E – HB 2004, prepared statement, Ed Johnston, 3 pp**
- F – HB 2004, prepared statement, Jason Williams, 1 p**
- G – HB 2004, prepared statement and graphs, Jim Voytko, 9 pp**