

HOUSE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEM

March 18, 2003 Hearing Room E
3:00 PM Tapes 33 - 35

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

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

MEASURE/ISSUES HEARD: **HB 2020 – Public Hearing**
 HB 2008 – Public Hearing
 HB 2003 – Public Hearing
 HB 2407 – Public Hearing

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>
<u>Tape 33, A</u>		
003	Chair Knopp	Calls meeting to order at 3:05 p.m. and opens a public hearing on HB 2020.
<u>HB 2020 – PUBLIC HEARING</u>		
015	Doug Smith	PERS retiree. Comments that HB 2020 seems superior to HB 2008, and that both bills have a problem with Section 19 on contract rights. Suggests that HB 2020 without Section 19 would be preferred.
031	Chair Knopp	Closes the public hearing on HB 2020 and opens a public hearing on HB 2008.
<u>HB 2008 – PUBLIC HEARING</u>		
	Chair Knopp	Advises members that the committee will not hear from the employer/employee negotiating group today because they are still working on the cost analysis.
	Chair Knopp	Closes the public hearing on HB 2008 and opens a public hearing on HB 2003.
<u>HB 2003 – PUBLIC HEARING</u>		
057	Bill Gary	Harrang Long Gary Rudnick, Attorneys at Law. Introduces Jim Green, Oregon School Boards Association (OSBA).
	Gary	Advises members that he has submitted written testimony, written testimony submitted in February, and a section-by-section of analysis of HB 2003 (EXHIBIT A).
070	Gary	Explains the issues in the lawsuit and reviews conclusions of Judge Lipscomb and related provisions in HB 2003 (EXHIBIT A).
164	Gary	Continues testimony (EXHIBIT A, page 2).

221	Gary	Continues testimony (EXHIBIT A, page 2).
300	Gary	Continues testimony (EXHIBIT A, page 3).
378	Gary	Continues testimony (EXHIBIT A, page 4).
TAPE 34, A		
010	Gary	Continues testimony on the six percent contribution (EXHIBIT A, page 5).
060	Gary	Continues testimony (EXHIBIT A, page 6).
106	Jim Green	Oregon School Boards Association. Comments on savings if the six percent contribution were eliminated. As of December 2001, the unfunded actuarial liability (UAL) of the entire system was about \$5.6 billion and it has grown dramatically. Enacting HB 2003 and eliminating the six percent contribution would reduce the UAL by about \$2 billion. Explains how the actuary figures the employer rates. In the rates for 2001, the actuary estimated that the normal cost rate for the system was about 10.52 for every employer across the system. To amortize the \$5.6 billion, an additional 5.28 was added. At the 1999 valuation, the UAL for school districts and education service districts (ESD) was \$680 million. In December 2001, their UAL went to \$2.5 billion.
	Green	Gives statistics on projected earnings per increments and cost savings.
170	Greg Hartman	PERS Coalition. Submits outline of comments and letter to Sen. Corcoran from Legislative Counsel (EXHIBIT B). Speaks to items listed in outline.
273	Hartman	Continues presentation on low savings/high risk proposal in HB 2003.
293	Hartman	Comments on implementation of the Eugene case in HB 2003.
340	Hartman	Comments on division of legislative and judicial actions.
414	Hartman	Comments on implementation of the full formula benefit in 1981 and asks whether that means those in the system prior to 1982 had a broader money match and have a protected interest, a protected contract right. It is a separate issue that would have to be addressed because if the people in the system in 1981 had a protected interest that could not be change, then this calculation is in error.
450	Hartman	States that HB 2003 does provide that the group who, at least arguably, received benefits erroneously, according to Judge Lipscomb's view, are not the people who will pay for the error. Under HB 2003, the people who are currently in the systems and those people who will be in the system in the future will pay. Calls members' attention to the Legislative Counsel opinion (EXHIBIT B, pages 3-5) and states that the Legislative Counsel Opinion makes that approach flawed.
TAPE 33, B		
030	Hartman	States that the bill does require some adjustment of Cost of Living Allowance (COLA) increases for people who retired since 1996. Believes this will have problems in contract law.
	Hartman	Suggests that the reserving statutes be reviewed, ORS 238.670 (1), (2), (3) and (4). States that HB 2003 simply makes an attempt to redirect the income of the fund, earned in part by employee money in the fund, to pay expenses currently paid by employers; it is a mechanism for redirecting cash flow to the

		benefit of the employers and disadvantage the employees.
050	Hartman	States that he will be submitting highlights of the HB 2003.
052	Chair Knopp	Asks why the Governor would think HB 2003 is constitutional.
	Hartman	Comments he has never had a discussion with the Governor and does not know what his thinking is. Adds that Governor Kulongoski did not participate in any of the decisions during the 1990s, which would be a base for challenges to these statutes.
		Comments on case law.
	Chair Knopp	States that Hartman thinks the savings would be much less because the employee contribution would be pulled out. Asks Hartman to expand on his comments.
100	Hartman	Explains why he thinks the savings in HB 2003 would be less than projected by Gary.
148	Chair Knopp	Asks if there is a simple way to state the legal problems with opening up contracts.
	Hartman	Comments on reopening of bargaining agreements and questions how to deal the other group of employees who are not represented by collective bargaining.
	Hartman	Points out that his outline has a typographical error on page 2. In the second to last line, "employer" should say "employee."
187	Gary	Rebuts comment by Hartman that this bill will not get you where you want to go. States that there can be no savings in the system without reigning in projected future benefits, which is what HB 2003 does.
	Gary	Disagrees about degree of risk. Explains projected savings and savings to specific entities.
	Gary	Comments on reserving statutes.
287	Chair Knopp	Cites ORS 238.600(2) and states that termination of the system was contemplated at some point. Asks why they did not go there as opposed to a solution that involves removing employee contributions.
	Gary	Responds that termination is an option the legislature has considered in prior sessions and is something they looked very carefully at as well. It is an option worthy of consideration. However, you get most of the way there through HB 2003 by correcting the practices that were driving up the cost of the system and by eventually scaling back the money match. The difficulty terminating the system is how to define accrued rights. The six percent solution eliminates that fight because it protects whatever the members have today and changes the system to a defined benefit plan on a going-forward basis.
309	Rep. Macpherson	Comments on provisions in HB 2003 that are addressed in other legislation passed by the committee, the makeup of the PERS Board and the mortality tables. Notes that mortality provisions in HB 2003 calls for a retroactive adjustment to the first of this year with no lookback provision. Asks if Gary is urging the committee to remake that decision to a more aggressive strategy as outlined in HB 2003.
	Gary	Responds that he prefers the strategy of a comprehensive bill, he has no quarrel with the decisions of this committee relating to composition of the PERS Board. States that he told the Senate committee that while they believe HB 2004 is moving in the right direction, it is not going as far as the judgment they won in

346	Rep. Macpherson	<p>the Lipscomb decision and would like to see an earlier implementation date. They do oppose the lookback and advocate for the full and immediate adoption of mortality tables.</p> <p>Comments that he is baffled by the provision in HB 2003 that attempts to resolve the issues in the litigation by creating a reserve fund that is to be paid for by employees. States that earnings only affect member benefits to the extent they are controlled by the money match formula, yet one of the major features of this bill is to try to make the money match subside so it is overtaken by the full formula benefit at which point reductions in earnings would not affect the members. Asks where the correction of those errors comes from if it is not borne by the employers.</p>
	Gary	<p>Comments that the adjustment is to be paid by future earnings and would affect employer and employee accounts alike. States that over time when a member retires under the full formula benefit, the amount that is in the account is of no moment. The only reason that an account would matter to an employee who would ultimately retire under full formula is if they leave the PERS system before retirement and cash out.</p>
TAPE 34, B 007	Rep. Macpherson	<p>Asks if they contemplate anything less than the seven percent rate being credited so there is a makeup, in effect, coming out of member accounts, or is only the effect of reducing the assumed interest rate from eight to seven that would be recovered from Tier I accounts that are in the regular account investment option.</p>
	Gary	<p>States the only effect on Tier I accounts would be to reduce the assumed earnings rate and therefore reduce the credited period of time it takes to earn out the deficit account. It also has an impact on Tier II accounts because the actual earnings that would be available for crediting to member accounts would be reduced by the netting out of the deficit account.</p>
	Rep. Macpherson	<p>Asks if it would have a disproportionate effect on Tier II accounts.</p>
	Gary	<p>Responds he does not think it would be disproportionate. Thinks the impact on Tier II accounts would probably vary more year by year based on actual earnings. States this would be taking money off the top and this will only work in years when earnings are on the positive side and at least the assumed rates.</p>
040	Rep. Macpherson	<p>Comments the committee needs more information on this aspect of the bill.</p>
	Rep. Macpherson	<p>Comments on Hartman's statement regarding savings and opening collective bargaining agreements. Asks if the expectation is that the employer will recover some or all the six percent.</p>
	Gary	<p>Responds that the goal was to reduce the cost of the system and focus has been on reducing system costs. There is not much to negotiate with now because there is not much money at the state or local level. There is a six percent where the employers have been picking up the contribution. The expectation is that they talk about it; it could go into other benefits.</p>
090	Rep. Richardson	<p>Asks if the attempt in HB 2003 is to bring back the full formula</p>

		benefits.
	Gary	Responds affirmatively. States that the intent of the bill is to do that in a gradual way that is sensitive to the employees.
	Rep. Richardson	Comments that in the introductory part of HB 2003, it estimates that PERS retirees were averaging about 106 percent of final average salary. Asks if Gary knows what those numbers would be today compared to two and one-half years ago.
	Gary	Responds that someone from PERS may be more qualified to answer the questions. Comments that he has seen estimates that the amount may increase to 124 percent. Comments on replacement ratio used by PERS.
129	Rep. Richardson	Comments it is not the intention of the legislature or the employers to provide 125 percent of final salary on an on-going basis. States that this has not been caused by PERS member employees, but it must be dealt with. Comments on concerns about the provision that the employee can no longer contribute the six percent and the six percent must be paid some way. Asked if there is a possibility if this plan is held unconstitutional because of a contract provision, that the employers will have to make up the six percent, accrued interest and other ramifications.
	Gary	Comments that he personally thinks it is an unlikely outcome. Thinks that the elimination of the requirement of the six percent contribution on a going-forward basis is not likely to be overturned. States that part of the design of the bill is to put the solution to the problem before the court at the same time the court considers the case that deals with the City of Eugene case.
162	Rep. Richardson	Comments that something must be done and that the alternatives are somewhat limited. One of the limitations is termination of the plan. Asks what the difficulty would be in determining benefits if the plan were terminated on some date on the calendar.
	Gary	Responds there are many limitations. Comments on HB 2004 provisions relating to mortality tables and the look back provision.
187	Rep. Nolan	Asks Gary to address why he thinks Chaimov can so clearly conclude (EXHIBIT B, pages 3-5) that HB 2003 does constitute a material breach of contract rights.
	Gary	Responds he would not offer criticism without seeing the opinion.
201	Chair Knopp	Comments on discussions with legal counsel. Adds that the legislature needs to ask the questions and give them to the court in order for them to make the determination.
221	Rep. Nolan	Comments that she welcomes the opportunity to hear Gary's opinion. Asks Gary how his clients would propose that we recoup the repayment for the damages that need to be assessed if the Eugene decision is overturned in some material way.
243	Gary	Comments that with respect to the Lipscomb decision, HB 2003 does two things. It tells the PERS Board they are directed in the future to conform its conduct to the law as it was interpreted by Judge Lipscomb. If one thinks the Board should be using current mortality tables and should be sitting aside reserves which the statutes direct, they ought to not be imprudently crediting member accounts. The passage of this bill will take those issues off the table in the future. That will make it the law even if the

court ultimately says Judge Lipscomb was wrong, that that was not the law before. If the court were to reverse Judge Lipscomb's decision in any particular, the cost associated with the part of the decision that got overturned would be backed out of the Lipscomb adjustment and would not be factored in. If the Supreme Court says they have no idea what Judge Lipscomb was talking about, then they are back to square one. The statutes provide that the employers pay the cost of the system other than the employees' six percent contribution.

Gary Comments that it has been several months since the decision that benefits were being paid unlawfully and excessively and thus far the Board has done nothing to change its practices. Comments that he thinks it would be easier to pay members more money if they lose the case than to try to recoup excess payments. States that he favors implementation of the judgment while the case is on appeal, and thinks that members would be well advised to make their decisions about whether to retire on the assumption that the decision will be upheld.

298 Chair Knopp Asks Hartman if the legislature can terminate the system (ORS 238.600(2)).

Hartman Responds negatively. Explains that the statute was enacted in about 1996 or 1998 and was motivated by tax counsel from PERS who said there needs to be a provision in the statute to protect the continued qualification of the plan. The language of the statute is private sector language. Questions whether the members who joined PERS after enactment of the statute could be terminated; that is different than terminating the whole plan.

347 Chair Knopp Comments that a new plan could be started for new hires.

Hartman Agrees that a new plan could be started for new hires.

Chair Knopp Enters into the record written testimony from Bob Livingston, Oregon State Firefighters (**EXHIBIT C**).

Chair Knopp Announces protocol for another hearing on HB 2003 on Thursday.

Chair Knopp Closes the public hearing on HB 2003 and opens a public hearing on HB 2407.

HB 2407 – PUBLIC HEARING

Chair Knopp Comments that it is the intent to pass a bill relating to legislators. Advises he is seeking an amendment to HB 2407.

414 Rep. Macpherson Comments he declined to participate in the system. Stats he thinks this raises some long-term issues about how we relate to people who make a substantial commitment to public service. Adds that he is open to input from other committee members. Suggests that perhaps taking away the additional value of the benefit that the members of the legislature get now by being classed with public safety people might be sufficient to alleviate the concerns of the public that decisions are being affected by legislators' self interests.

Rep. Barker Comments he has introduced a bill that would begin a process with the freshman class of the 2003 legislative session.

TAPE 35, A
005

Chair Knopp Asks why all legislators should not be included. Comments there could be an interesting lawsuit.

019	Rep. Nolan	Comments this is an important issue to deal with, and she also has filed a bill at the request of one of her constituents.
	Chair Knopp	Advises that all the bills will be included on an agenda for public hearing and possible work session.
029	Chair Knopp	Closes the public hearing on HB 2407 and adjourns meeting at 5:00 p.m.

EXHIBIT SUMMARY

A – HB 2003, prepared statement, Bill Gary, 22 pp

B – HB 2003, prepared statement, Greg Hartman, 5 pp

C – HB 2003, prepared statement, Bob Livingston, 2 pp