

HOUSE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEM

April 24, 2003 Hearing Room E
3:00 PM Tapes 56 - 57

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 2003 – Work Session

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.

TAPE/#	Speaker	Comments
Tape 56, A 003	Chair Knopp	Calls meeting to order at 3:11 p.m. and opens a work session on HB 2003.
<u>HB 2003 – WORK SESSION</u>		
	Dave Heynderickx	Deputy Legislative Counsel. Explains the HB 2003-6 amendments (EXHIBIT A).
017	Heynderickx	Explains Sections 1 and 2 (EXHIBIT A, page 3).
061	Chair Knopp	Asks if the members would still have money in their variable accounts—they just couldn't add any more to the account.
	Heynderickx	Responds that to the extent they are in the variable account, they will remain in the variable. It also means exactly the same thing for the regular accounts of Tier I and Tier II.
072	Heynderickx	Explains Section 5 (EXHIBIT A, page 15).
148	Heynderickx	Explains Section 8 (EXHIBIT A, page 17).
179	Heynderickx	Explains Section 10 (EXHIBIT A, page 27).
222	Heynderickx	Continues explanation of Section 10.
254	Rep. Barker	Explains he had a call from a retired constituent who says he is getting about 50 percent of his salary, cannot seek other employment, when he walked out the door it was with a promise of a certain amount of money including the two percent increases, and he may not have retired if he knew he may not get the increases because he will need those dollars. Asks what he can tell his constituent, and asks if the constituent was promised he would get the two percent.
271	Heynderickx	Responds that is what the current statute on the COLA indicates for retirees. Explains there was no desire to reduce the pension of anyone who had retired, which would happen if the money credited in 1999 were taken back. If the PERS Board's crediting

in 1999 was valid, recovering the amounts through this mechanism would become problematic at best. Thinks almost all the changes in the bill raise significant legal questions. Most of them relate to a bigger question which is, can you change the benefit structure midstream during a career so long as you protect accrued benefits. This is a narrower question than the bigger one because it is looking back at a specific Board decisions—the crediting of the accounts in 1999. In the Lipscomb decision in the Marion County case, the decision held that in fact the crediting in 1999 was too much. The Lipscomb decision does not say how much it should have been; it says it was too much and an abuse of discretion. The number that has been arrived at was arrived at try to say what is a reasonable figure if 20 percent was too much.

- 324 Rep. Barker Asks if the courts can pick and choose sections of the legislation to rule on.
Heynderickx Explains that all of laws passed by the body are covered by a general clause that deals with severability. This bill has its own **(EXHIBIT A, page 26)**.
- 334 Rep. Barker Comments on person receiving a retirement estimate of \$3,500 per month and is then notified of a lesser amount. States that the courts have said the person retired based on the estimate. And that is a concern.
- 342 Heynderickx Responds that mistakes have been made with respect to retirees. PERS does go back and recover those moneys. Comments on case in Marion County.
- 362 Heynderickx Explains Section 11 **(EXHIBIT A, page 19)**.
419 Heynderickx Explains Section 13 **(EXHIBIT A, page 21)**.
470 Heynderickx Continues explanation of Section 13.
- TAPE 57, A**
- 020 Rep. Nolan Asks if the employee contributions would be on a pre-tax basis.
Heynderickx Responds that the only way to do a pre-tax contribution is to have it qualified as defined contribution plan and we need additional stuff to make this a defined contribution plan.
- 024 Rep. Macpherson Asks if the contributions were made by the employer on behalf of the members as a class, whether it would not be taxable to the member. It is taxable only if it is a member contribution paid by the member that would not be pre-tax.
- 034 Heynderickx Responds that the transitional accounts are not being set up as part of the PERS system and does not think they can fall under the tax qualification of PERS. Believes there needs to be a tax qualified plan that the employers make contribution to in order to get the pre-tax treatment.
- 041 Rep. Macpherson States if the PERS Board takes the actions called for in Section 13 (10), whether it would be pre-tax.
Heynderickx Responds yes, if they are successful and get it qualified.
- 046 Rep. Barker Asks if they could go into a 457G plan.
Heynderickx Responds that only one 457 plan is allowed per employer and we already have that one for deferred compensation.
- 051 Rep. Nolan Asks how quickly we can get the tax qualification, noting that this provision would take effect two months from today.
Heynderickx Responds he does not know. States that it is important to note that contributions would be made starting in July 2003 and

through the end of the year. Most tax payers need to know by April 15, 2004 and it would probably make a difference in their choice about whether they make the contributions. Pre-tax costs six percent of their paycheck and post-tax costs over seven percent.

063 Rep. Nolan Comments it is important not only for that decision, but if the contribution is going to be made up to the same net effect, both the employee and employer need to know to gross it up. They need to know the status before they make the first payment.

Heynderickx Comments that he would presume the payments would be treated post-tax until a determination is made that they are pre-tax.

080 Rep. Barker Asks if it is possible to amend the proposal so we can use the present 457.

Heynderickx States that employees may not be able to make the contributions because the employees would probably come up against the caps.

105 Heynderickx Explains Section 14a (**EXHIBIT A, page 23**).

110 Heynderickx Explains Section 14b (**EXHIBIT A, page 23**).

186 Heynderickx Explains Section 15. (**EXHIBIT A, page 24**).

183 Steve Delaney Legislative Liaison, Public Employees' Retirement System (PERS). States they have look at tax qualification in the past for PERS. PERS would probably need a letter of ruling from IRS about whether the plan was legitimate and falls within their standards. Last year, the IRS indicated they did not have a lot of private letter ruling requests before them so the usual one-year turn around was shorter than that. States that the Board currently is hiring a private sector tax attorney. They were given permission by the Department of Justice to work with the attorney dealing with mortality issues, equivalency factors, and it is possible they could work on this issue.

227 Rep. Nolan Asks hour many active Tier I members there are.

Delaney Responds there are approximately 140,000 active members; approximately 100,000 are Tier I.

Rep. Nolan Asks how many retirees have retired since January 2000 and would be affected by the COLA provisions in the HB 2003-6 amendments.

Delaney Responds that since January 2000, there have been 6,000 to 7,000 retirees per year; about 18,000 retirees.

240 Rep. Macpherson Asks if Delaney is familiar with the concept of remedial amendment rights for tax qualification—that is, where a plan is created and then filed with the IRS and as long as the application is carried forward, when the IRS ultimately rules favorably, the ruling relates back to the inception of the plan.

Delaney Responds that he has no experience with the issue.

Chair Knopp Announces that the record will remain open for purposes of receiving comments until 5:00 p.m. on Wednesday, April 30, 2003.

232 Steve Johnston Retired state employee. Comments on retirements by himself and his wife and the reductions in benefits that they felt they were promised.

314 Brian Delashmutt Oregon Nurses Association, Oregon Council of Police Associations, the Federation of Oregon Parole and Probation Officers, Oregon Association of Oregon Correction Employees.

	Delashmutt	States they are strongly opposed to HB 2003 for a variety of reasons that committee members are well aware of. Relays information being received from his clients asking what to do about retirement, and agency staff who is retiring. They believe this will be overturned. The real concern is this is going to be almost impossible to unravel.
383	Chair Knopp	Recesses meeting at 4:03 p.m.
388	Chair Knopp	Reconvenes the meeting at 4:07 p.m.
396	Rep. Brown	MOTION: Moves to ADOPT HB 2003-6 amendments dated 4/24/03.
401	Rep. Nolan	Comments this is an enormous piece of legislation in volume and financial impact and is hesitant to vote until she knows how it is played out and how it will affect public policy as well as contracts the state is obligated to. States that one of the anxieties caused by the amendments is this legislature has already enacted measures that will reduce the unfunded liability in PERS by almost \$2.5 billion. Those savings are accrued by reducing the benefits of 118,000 workers. We are asking those Oregonians to each contribute \$20,000, on average, to help the state provide services to the 3.5 million Oregonians. Thinks that is a lot to ask them to do. Thinks it is aggressive and unreasonable for our public employees to chip in at that level. This bill takes another \$7 billion from roughly those same 118,000 people to benefit services that all 3.5 million Oregonians get. That is another \$60,000 each. Cannot see a way to ask them to chip in when the rest are not.
456	Rep. Richardson	Comments he thinks everyone understands the magnitude of what is being done here and will try to put this in some perspective. States he is glad HB 2003 does have the floor indicating that although the adjustments are being made, the workers will not be receiving less than the eight percent annual accrued benefit which was the underlying figure for a 40-year average investment return, and to say those who were given a windfall that was not anticipated in the retirement plan are now having their money taken from them is like saying a bank account credited a large sum of money that was not anticipated by the depositor and ultimately has to given back.
	Rep Richardson	States there was a strange consternation in the late 1990s that resulted in the over allocation of funds to these accounts and this is the fairest way to allow those who have had their benefits and been planning their lives around those benefits to be able to retain what they are getting presently and then over time get back closer to what their anticipated retirement should have been based on a retirement plan that guarantees eight percent.
TAPE 56, B		
011	Rep. Barker	Comments on reduced earnings of teachers due to fewer days of school and pay cuts causing their average final salary to be reduced. States he is worried that police and firefighters who retire at age 55 and cannot draw social security until age 6. They have a long time to go between the day they leave service and get the other piece of their retirement. Adds that he wishes the preamble could have been left out of the amendments; it is an unnecessary tip of the balance. The public employees will carry a burden of restoring PERS to some kind of retirement plan. A

		large part of that has been caused by the huge thefts by corporate CEOs that have put Wall Street in the tank. Believes as a responsible fiduciary position, the savings should be escrowed because this is going to court and if it is overturned, the money will be on hand to deal with it.
044	Rep. Barker	States he was tempted to vote no because he has a lot of problems with it but it would be a symbolic vote because we have to do something about PERS and we need to get it to the court so it can be resolved for the benefit of everyone.
048	Rep. Brown	Comments this is one of the toughest votes any of the members will take in their careers. Does not feel that any member wants to hurt the state employees, but he was elected to represent all the people in his district and in the state. The PERS debacle is hurting all the people in Oregon and feels he has a responsibility to look at and care for those people's demands and needs. Feels it is his responsibility to act responsibly and that requires his supporting the measure.
059	Rep. Macpherson	Comments it is useful to think about what has happened over the last eight years in this country. Comments on high markets followed by a classic collapse in the markets. Those in retirement plans saw their accounts surge upward and collapse. The people in the variable account in PERS saw that same thing. Within the Tier I regular accounts, we saw accounts rapidly move upward with unsustainable and inappropriate credit rates and drop back to an eight percent guaranteed level. It is useful to look at the accounts over that four-year period. In 1996, the actual return was 24.4 percent and 21 percent was credited, 13 percent over the guaranteed rate. In 1997, 20.4 actual return of which 18.7 percent was credited. In 1998, 15.4 percent was earned and 14.1 percent was credited. In 1999, 24.9 percent was earned and 20 percent was credited. We know now with the benefit of hindsight that the crediting of those kinds of rates was improper. Now the system is burdened by the consequences of that poor judgment.
091	Rep. Macpherson	Comments that a teacher in the Lake Oswego Public Schools is approaching retirement. The teacher had 75 percent in the variable account and is now seeing an account that zoomed upward and then collapsed. It is only the 25 percent piece that received the credits. States that she is distraught because the regular portion of her account, 25 percent, is going to suffer as a result of the changes being considered today. As a teacher she is looking at a pay freeze and limitations in the school district that will impact her pay and benefits. And, as a resident and taxpayer in the school district she will be asked by the school district to pay more in either income taxes, property taxes, or both in a local effort to fund the local schools beyond what is being provided by the state. Thinks her situation is a microcosm of the situation we have. The decisions for the committee are wrenching but are decision that deal with the consequences a lot of other people have suffered through in their own way. In order to support our public services this needs to be done. It is a very difficult thing to do but is something that must be done and will vote yes.
107	Rep. Scott	Comments he, too, takes the vote painfully and thinks the state

126	Chair Knopp	<p>employees are deserving of everything we can possibly do. Feels the legislature has an obligation to the remainder of the citizens of the state and sympathizes with the remarks that have been made and to the people this directly affects in both ways. Agrees that wrong decisions were made as to the amount contributed. Believes moving forward is the right thing to do. Thanks Governor Kulongoski for working with the legislature; this is a bipartisan plan and the culmination of work from many people from both sides of the isle. This is what they believe is as fair as can be done in trying to put the Genie back in the bottle that was released during the mid 1990s and has led us to this situation. It will have a great effect, but if we do nothing, we are going to fail. Would prefer to do something and try to give the court some options, some remedies to fix the problem. The PERS plan is 66 percent funded which means there is not money to pay the benefits of Tier I and Tier II benefits. If the legislature does not fix it, the taxpayers will not vote themselves a tax increase to pay the benefits that no one intended people to receive. Does not believe that even public employees believed they were going to receive more than 100 percent of their retirement when they signed up 25 or 30 years ago. That number grows and would top out at 200 percent in the next 20 years if we do nothing. The state and every district will be in bankruptcy within two or three years because they cannot afford the PERS costs; they cannot afford doubling of the fees in the next ten years.</p>
174	Chair Knopp	Thanks members for their hard work and calls for a roll call on adoption of the HB 2003-6 amendments.
177	Chair Knopp	<p>VOTE: 7-1-1 AYE: 7 - Barker, Brown, Kafoury, Macpherson, Richardson, Scott, Knopp NAY: 1 - Nolan EXCUSED: 1 - Butler The motion CARRIES.</p>
191	Rep. Brown	<p>MOTION: Moves HB 2003 to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the committee on Ways and Means BE RESCINDED.</p>
199	Chair Knopp	<p>VOTE: 7-1-1 AYE: 7 - Barker, Brown, Kafoury, Macpherson, Richardson, Scott, Knopp NAY: 1 - Nolan EXCUSED: 1 - Butler The motion CARRIES. REP. KNOPP will lead discussion on the floor.</p>
184	Chair Knopp	Closes the work session on HB 2003 and adjourns meeting at 4:26 p.m.

EXHIBIT SUMMARY

A – HB 2003, HB 2003-6 amendments, Rep. Knopp, 26 pp

B – HB 2003, Legislative Fiscal Statement on HB 2003-6 amendments, staff, 2 pp