

SENATE COMMITTEE ON GENERAL GOVERNMENT

May 6, 2003
3:00 PM

Hearing Room B
Tapes 52-54

MEMBERS PRESENT: **Sen. Tony Corcoran, Chair**
 Sen. John Minnis, Vice-Chair
 Sen. Vicki Walker

MEMBERS EXCUSED: **Sen. Bruce Starr**

STAFF PRESENT: **Cara Filsinger, Committee Administrator**
 Heather Gravelle, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2003A – 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.

TAPE/#	Speaker	Comments
TAPE 52, A		
005	Chair Corcoran	Calls the meeting to order at 3:05 PM. Opens a public hearing on HB 2003A. Presents –A8 amendments dated 5/5/03 and -A11 and –A12 amendments dated 5/6/03. (EXHIBITS A, B, C) .
<u>HB 2003A – PUBLIC HEARING</u>		
005	Bill Gary	Attorney. Explains HB 2003A. States HB 2003A is from a long and arduous process on the House side initially introduced at the request from various employers groups. Provides the specific groups. Submits written testimony and material (EXHIBIT D) .
030	Gary	Discusses when and how HB 2003A was introduced. Following the guidelines presented by Governor Kulongoski. Comments it wasn't an easy task as the PERS committee has spent months trying to resolve conflict. States the amended bill was a 7-1 vote in committee and passed the House 38-20.
060	Gary	States HB 2003A is a better bill than it was before it went through the process. Discusses the three main components of HB 2003A.
100	Gary	States what the assumed earnings rate is. Claims currently the member accounts must be credited 8%.
115	Gary	Explains what will happen when people retire. Claims it will preserve the commitment made in current statute and provide more money for the times when it did not earn the assumed rate. States tier one members will not receive interest crediting on accounts until deficit is retired.
125	Gary	Discusses further member accounts in tier one will not be credited with earnings in excess of actual earnings except to extent money in reserves to cover crediting up to assumed rate.
160	Chair Corcoran	Asks for clarification of the term "unlawful."
165	Gary	Explains the term was used by Judge Lipscomb with respect to 1999.
180	Gary	Explains the third issue of the bill. States Judge Lipscomb found areas where benefits had been unlawfully calculated and PERS

		Board is not to charge employers for cost of benefits that exceed what law provides which is presenting a problem for PERS. Adds currently in statute only remedy is to authorize PERS to recoup from members benefits in excess of what law provides that are paid to them.
190	Gary	Mentions bill provides the PERS Board will authority to use two mechanisms to recover benefit costs without charging them to employers. <ul style="list-style-type: none"> • Pay benefits out of future earnings • Withholding cost of living benefits to members who benefits are higher than what legally should be. States it will only apply if PERS is required to implement Judge Lipscomb's decision.
200	Gary	Speaks to the issue of legality of HB 2003A. Claims others will state 2003 will breach or impair the contract between public employers and public employees violating federal and state constitution. Notes it is impossible to reduce cost of system without reducing projected future benefits.
220	Gary	Comments fundamental legal analysis is not the disagreement. Claims the state needs to uphold their contract. Discusses why they don't breach the contract rights. Points out history of the past five years. Discusses down years of 2000-2002 with negative earnings where money was not in the reserve accounts to pay guaranteed rate of return. States HB 2003A addresses that problem.
275	Gary	Feels it does not breach the contractual promise of credit member accounts with assumed rate. HB 2003A crafted to take the steps necessary to put PERS back on track. Adds PERS tier one members will have two guarantees.
330	Chair Corcoran	Comments 8% in life of the plan in regards to an employee hired in the last two years where there have been negative earnings. Asks if the employee works for thirty years, will you go back every year the employee worked and do the 8% assumption.
340	Gary	Responds only if member was tier 1.
345	Chair Corcoran	Comments tier 1 hired in 1995 would have eight years in the system assuming they were in the fixed. Asks if the employee works twenty-two more years, and that employee s crediting would look at 8% per year, would you calculate it in terms of giving 8% overall.
370	Gary	Responds yes. Explains over the life of a person's career, each year the amount of interest credited will be determined by statute. States at retirement point PERS would look back at account balance member actually has in account and at what account would be if the member would have been credited with assumed earnings rate in each year that the member worked.
390	Gary	Adds whatever is greater, is the amount used for calculating members benefits. Elaborates further. Provides another example.
400	Sen. Walker	Asks if the bill becomes effective July 2003.
405	Gary	Responds yes.
407	Sen. Walker	Asks if there is any delayed implementation of the bill.
409	Gary	Responds there are different provisions in the bill that take effect at different times but the bill will be effective on July 1, 2003.

TAPE 53, A

005	Sen. Walker	Asks Gary is he has reviewed the fiscal analysis. Explains the fiscal impact states that PERS does not know how much it will cost.
010	Gary	Responds he has not reviewed the fiscal analysis.
015	Sen. Walker	States the cost of PERS is not yet determinable. Adds there are potential costs to the State Treasurer and since bill provides administrative costs be born by member accounts, the Treasurer can seek additional expenditure limitation through the Committee on Ways and Means.
020	Gary	Responds PERS fund is a closed system, and the income of administering the fund are paid first out of income earned by the fund. States there will be a cost to implement the bill. Comments the administrative costs is a small amount compared to the cost of the system. Notes the savings of future costs are quite dramatic and increased expenditure limitation does not involve general fund dollars.
033	Sen. Walker	Asks if the court would find action illegal if it goes to the Supreme Court.
040	Gary	States if the contract is breached, the effect would return it back to where we are now and if members received less money than entitled to then PERS would be obligated to pay what is due with interest. Discusses costs. Feels no dramatic risks of added costs. Notes there is risk the legislators will act on assumption the bill will be upheld and make commitment to spend. Comments the ultimate cost will be born by the public employers.
065	Sen. Walker	Refers to a newspaper article quoting what Mr. Gary said. Asks if he agrees with courts striking down this law then Oregon would simply revert back to PERS as it is now.
070	Gary	Responds saying he is misquoted. States if HB 2003A is determined by the courts that it is invalid, the court would order the state or PERS to restore anyone harmed by the implementation of HB 2003A to the position they would have been in had HB 2003A not become law.
090	Chair Corcoran	Asks within that news article if Mr. Gary can distinguish between impairment of contract and breach of contract.
095	Gary	Provides definition of what impairment of contract is. Provides a hypothetical situation. Defines what a breach of contract is. States it is possible that the legislators can impair a contract. Provides an example.
120	Greg Hartman	Representing PERS Coalition. Testifies in opposition of HB 2003A. Feels it is a breach of faith with public employees all over the state and breach of contractual rights. Appreciates the artful explanation of Mr. Gary in why he does not believe it is a breach of contract. Explains the written testimony from Legislative Counsel. (EXHIBIT E) .
160	Hartman	Continues discussion in opposition of HB 2003A. Comments the key word is benefit which is simpler that it is made out to be. Notes if a benefit has been promised, it needs to be honored. Suggests the opinion of Legislative Counsel and the Attorney General's office.
190	Hartman	Comments HB 2003A takes away about \$6 billion of benefits promised to public employees and provide they will not be paid. States the purpose of HB 2003A is to save money. Believes any

		bill, no matter how constructed, that takes away benefits will be held as an impairment or breach of contract. Mentions the 6% solution. Notes the purpose of doing away with 6% contribution is doing away with the money match. Adds the language is promissory in nature and the Supreme Court used the same terminology.
225	Hartman	Mentions Judge Lipscomb's decision. Comments it is a tremendous danger for this body to go forward based on a case that has not gone through the full judicial process. Stresses the need for looking at \$6 billion in benefits promised that will not be paid.
240	Hartman	Stresses caution with law of unintended consequences. States in some measures if this bill is passed it may improve tier 2 participants and if this is passed a promise will have been made to them that will not be permitted to take back. Mentions the changes in pension plans.
270	Hartman	Suggests if want to move ahead with the bill in addition to transaction costs, potential damages that may accrue may also have unintended consequences which may make problem worse for saving money. States that economically we are in hard times caused by forces bigger than PERS.
290	Chair Corcoran	Mentions a previous decision that was made. Comments told PERS coalition could have reached \$4 billion in savings. Asks how they could have done that differently than what the bill proposes.
300	Hartman	Responds PERS coalition supported HB 2001 passed early in the session which saved a small percent of employer rates. Comments PERS coalition has supported implementation of new actuarially tables as long as it protects members accrued rights saving in excess of \$500 million but less than \$1 billion.
375	Hartman	Comments this is a very troublesome bill. Expresses need for a clear pension policy other than saving money to look at and see if it makes sense for members in long turn. Feels the bill will be overturned on appeal. Suggests reading his letter and looking at both cases referenced.
385	Sen. Minnis	States all comments seem to reflect that the PERS Board acted prudently.
TAPE 52, B		
005	Hartman	Responds he would not necessarily say that but believes PERS Board acted responsibly.
015	Sen. Minnis	States the need to look at the system as a whole and look at responsibility of the Board. Refers to Judge Lipscomb's decision saying monies to account should not have been credited but instead put into reserve.
045	Sen. Walker	Appreciates comments on economic hard times and trying to fix them by going after PERS. Refers to article in New York Times. Asks if Hartman agrees with that statement in the article that we are in a crisis in the Oregon and yet we seem to have emphasis that PERS is causing the crises.
055	Hartman	States the economic difficulties are from a variety of causes. Notes there are problems with how Oregon raises money. Comments PERS is not largely different than other defined benefit pension programs that are heavily invested in the stock market. Adds much of the problem in Oregon is caused by the

		down turn of the market.
090	Sen. Walker	Refers to another article from Seattle discussing problems are not just in Oregon. Mentions that every available option should be addressed first, including raising premium employers pay to fund insurance which employers oppose .
125	Chair Corcoran	Refers to Oregonian article where \$7 trillion value lost in the stock market in three years.
135	Gary	States if this bill passes it will not begin to deal with economic problems that state and employers deal with. Comments not every PERS member is getting rich off the system. States PERS is estimated that a full career employee with thirty years of service will retire on average of 106% of final salary and within next ten years it will be around 120%. Expresses the need to rebalance the system because something went seriously awry.
175	Gary	Discusses the nature of a contract. Defines Mr. Hartman's testimony. Provides history of PERS.
290	Gary	Continues discussion of how benefits will be determined. States it is not the problem with the next biennium, but in four years. Adds the poor market performance is why we are here. Provides explanation of why PERS unlike any other retirement plan has the best of both or worst worlds. States in up markets employees get all benefits of upside. and then the next year the money goes away and employees don't lose money but get 8% more which is why system is in trouble.
330	Sen. Walker	Asks if Gary agree that employers have the right to go into the variable account.
335	Gary	States the Board passed a rule allowing employers to match investments in variable which is not the correct solution. Believes PERS has been miscalculating money match benefits with respect to variables.
360	Sen. Walker	Comments the issue is you keep hammering away employees are getting all benefits but employers got something out of it too. Asks if employers pay payroll taxes on the 6% they pay.
365	Gary	Responds no.
370	Chair Corcoran	Asks if there are any concerns with the tax exempt status of transition accounts contemplated in 2003.
380	Gary	Responds no because pension lawyers are more knowledgeable.
385	Chair Corcoran	Asks about the hybrid successor plan.
390	Gary	States any hybrid plan this body approves as a successor system will have as an essential component to meet with the IRS.
TAPE 53, B		
005	Hartman	Comments on -11 amendment that when reviewed in Ways and Means the word "exclusive" was placed back into the bill.
015	Hartman	Discusses having it go to the Supreme Court will answer whether contract difficulties with legislation. If "exclusive" left in the bill, the only way to protect clients would be to file a class a action claim in Supreme Court which they are not set up to deal with that type of litigation. Claims we all want fast answers but leaving the word "exclusive" is counterproductive and will raise more issues. Encourages with Mr. Gary's support to remove the word "exclusive".
040	Gary	Comments an agreement on the language was reached.
045	Sen. Minnis	Asks for an example of issues included if the word "exclusive"

		stayed.
050	Hartman	States the problem is if making it a process of going to the Supreme Court the exclusive remedy then 300,000 PERS participants will be brought into the lawsuit to assure the remedy the court comes up with is going to be a remedy available. Notes the way to do that is to file a class action. Concludes, the only way to protect the clients is to go through that process and if not “exclusive” a test case can be done.
090	Sen. Minnis	Feels the Supreme Court should have exclusive jurisdiction and the entire issue should be sitting in front of them.
100	Sen. Walker	Asks wouldn’t it drastically increase litigation cost if you had to file a class action lawsuit and involve all members rather than test case.
105	Hartman	Responds yes. States biggest concern is the process being slowed down.
110	Bill Linden	Representing Oregon PERS Retiree Incorporated Association. Provides background and information regarding the group he represents. Points out specific areas in statute that are set in place for PERS Board to determine the benefits.
115	Linden	Mentions freezing the colas. Believes the benefit promised will not be provided which is a breach of contract. Discusses the -10 amendments and what the intent is. Urges adoption of the -10 amendments.
117	Mark Nelson	Representing Oregon PERS Retirees Incorporated. Refers to Oregon State Police case. Comments a contract has been agreed to by retirees and awarded a specific pension. States it is not fair to take existing retiree pension plan and reduce the plan after retiring. Comments the bill is fundability inequitable and change should be made.
175	Nelson	Comments it is not an issue of who is going to win on appeal but it is an issue on what is right and this isn’t right.
180	Adrienne Willer	OHSU retiree. Testifies in opposition of HB 2003. Claims state budget became a crisis because large corporations are not taxed. Mentions PGE as example. Claims PERS is not responsible for the downfall. Notes employees are being targeted and are not the problem having earned the money, contributed to it with the right to use it. States legislators working to destroy PERS are hurting current and future workers. Provides personal examples.
230	Marjorie Sandows	Retired school counselor. Testifies in opposition of HB 2003A. Feels everyone in the state deserve an adequate, secure pension. Claims pension is 67% of final salary not the 105% falsely discussed in the press. Feels the PERS system is not the problem. Notes legislators should defend pensions of working people, public education, healthcare and funds for medications. Concludes save money by increasing the funding to pay for services.
280	Rosalie Pedroza	Oregon resident. Testifies in opposition of HB 2003A. Provides personal experience of unreasonable retirement having worked for the state for sixteen years. States every provision of the bill hurts. Mentions all that they do for the state to keep it running. Feels angry that the legislature is balancing the budget on the backs of those who are keeping the state running. Expresses frustration in being asked to accept no pay increase and sacrifice the benefits promised in the future which is wrong. Submits

		written testimony (EXHIBIT F).
335	Chair Corcoran	Asks when Pedroza started working for the state and had the pension plan explained what she thought she was going to get.
342	Pedroza	Responds she did not know for sure, but assumed at least 75% with social security benefits.
344	Chair Corcoran	Asks if she realizes that item was preserved in the bill.
345	Pedroza	Responds she does not believe it was preserved.
347	Chair Corcoran	Reiterates the full formula is still in the bill.
350	Erin Cook	Teacher. Testifies in opposition of HB 2003A. Expresses financial concerns with being a teacher. States with change in property costs in Oregon his family may not be able to afford housing on one salary.
TAPE 54, A		
030	Chair Corcoran	Comments within four years we could be looking at 30% payroll contribution for PERS. Claims other expenses are 35%. States 19% increase in health insurance last year. Asks about sustainability.
040	Cook	Responds the cut in PERS is too drastic. States specifics on healthcare in Lebanon. Claims state needs to look at other issues. Discusses the state average of 68%. Expresses the need for looking at another way for healthcare and PERS.
060	Chair Corcoran	Closes the public hearing on HB 2003A and adjourns the meeting at 5:30 p.m.

EXHIBIT SUMMARY

- A – HB 2003A, -A8 amendments dated 5/5/03, staff, 1 p**
- B – HB 2003A, -A11 amendments dated 5/6/03, staff, 1 p**
- C – HB 2003A, -A12 amendments dated 5/6/03, staff, 6 pp**
- D – HB 2003A, written testimony & material, Bill Gary, 8 pp**
- E – HB 2003A, written testimony, Greg Hartman, 6 pp**
- F – HB 2003A, written testimony, Rosalie Pedroza, 1 p**