

SENATE COMMITTEE ON JUDICIARY

July 24, 2003
8:00 a.m.

Hearing Room 343
Tapes 191-193

MEMBERS PRESENT: **Sen. John Minnis, Chair**
 Sen. Ginny Burdick, Vice-Chair
 Sen. Ted Ferrioli
 Sen. Charlie Ringo
 Sen. Charles Starr
 Sen. Vicki Walker

GUEST MEMBERS: **Sen. Rick Metsger**
 Rep. Patty Smith
 Rep. Laurie Monnes Anderson

STAFF PRESENT: **Craig Prins, Counsel**
 Jane Bodenweiser, Committee Assistant

MEASURE/ISSUES HEARD: **HB 2278B 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 191, A		
003	Chair Minnis	Calls the meeting to order at 8:10 a.m. and introduces Sen. Rick Metsger, Rep. Patty Smith and Rep. Laurie Monnes Anderson. Opens a work session on HB 2278B.
<u>HB 2278B WORK SESSION</u>		
021	Mark Ellsworth	Committee Services. Submits written material and outlines the history of HB 2278B that provides consistent terminology for public bodies in laws relating to districts (EXHIBIT A). Introduces the B8 and B9 amendments (EXHIBITS B & C).
057	Rep. Monnes Anderson	Asks if there was a contractual agreement to the rate increase with Public Employees Retirement System (PERS).
058	Ellsworth	Says there was no written contractual agreement. Continues his presentation. Says that originally PERS was not notified of any contract between the city of Portland and Fire District #10.
152	Rep. Smith	Asks if there was any discussion in 1984 of the unfunded level of PERS.
146	Ellsworth	Says this issue was not discussed.

167	Rep. Monnes Anderson	Asks for clarification of audits done.
170	Ellsworth	Refers to the packet of information provided to the committee.
176	Rep. Monnes Anderson	Asks about audits that might have been done by Fire District #10 addressing unfunded liability.
180	Ellsworth	Says there was an auditor from Coopers & Lybrand who was asked to look into the situation.
185	Chair Minnis	Asks how annexation plays in this retirement issue.
209	Ellsworth	Says liabilities have historically stayed with the districts. Talks about the tax base that has funded the retirement bill.
220	Chair Minnis	Explains that the tax base has been eroded by annexations.
228	Ellsworth	Discusses the current budget in East Multnomah County.
241	Sen. Metsger	Asks if payment to employees is paid out of the tax base, or where it comes from.
269	Ellsworth	Says this is the complex piece that is missing.
289	Vice Chair Burdick	Asks if Fire District #10 was a pay-as-you-go plan.
296	Ellsworth	Says that it was when under contract with Connecticut General.
321	Sen. Walker	Asks if this is the only district that has the problem.
326	Chair Minnis	Says, no, there are others.
343	Jim Voytko	Executive Director, PERS. Discusses where the money comes from, and says that the responsibility for paying the pension obligation was never put in writing. Says the purpose of this hearing is to weed-out these problems.
430	Vice Chair Burdick	Asks if PERS has the ability to re-create the original plan.
435	Voytko	Says it would take a court order.
TAPE 192, A		
011	Vice Chair Burdick	Asks what recourse is available to Fire District #10.
017	Voytko	Says that is a question for the legal community.
024	Rep. Monnes Anderson	Asks how unfunded liabilities are paid when an employee transfers from one PERS entity to another.
032	Voytko	Explains the procedure.
060	Rep. Monnes Anderson	Asks what happens to people who go from a PERS to a non-PERS retirement system.
065	Voytko	Explains that an employee has the option to remain in PERS for one year, but says the accounting is complicated.
089	Chair Minnis	Asks what the liability amount is based on.
099	Voytko	Explains that the actual liability is an unknown.
114	Chair Minnis	Asks about the estimates and assumptions used on how long an employee will live after retirement.
123	Voytko	Explains what is called "successive approximation."
150	Chair Minnis	Asks about the lump sum of \$40 million paid by the city of Portland.
154	Voytko	Says it was like a consolidated debt payment.
173	Sen. Ringo	Asks if there is any uncertainty about the obligation to pay.
178	Voytko	Explains that it is understood that these funds are due.
193	Sen. Walker	Asks about the \$40 million paid by Portland and wonders if it was refunded when it was discovered that it should have gone to Fire District #10.
199	Voytko	Says no money has been refunded to Portland.
215	Sen. Walker	Questions the explanation given.
219	Voytko	Says if payment is made to a trust fund it is not refundable, except for administrative error.

250	Sen. Ferrioli	Asks when the \$40 million payment was made, and what predicated the payment.
267	Voytko	Says he was not with PERS in 1999 and has not seen any documentation that might explain why the payment was made.
284	Chair Minnis	Explains his understanding of why that payment was made.
310	Dale Orr	PERS. Explains why this payment was made by the city of Portland.
341	Sen. Ferrioli	Wonders about the chronology of this payment and the Fire District 10 issue.
348	Orr	Clarifies the events.
406	Sen. Ferrioli	Asks about the notifications of unfunded liability.
423	Orr	Explains unfunded liability.
444	Sen. Metsger	Asks about the ability to validate the actuarial liability.
466	Voytko	Explains that there may not be a clear paper trail.
TAPE 191, B		
041	Leslie Roberts	Attorney for Fire District #10. Speaks about the contract that District #10 formed with the city of Portland with regard to payments to retirees of the district.
099	Vice Chair Burdick	Asks about the legality of transferring responsibility for liability.
103	Roberts	Says, yes it is legal within municipalities.
128	Chair Minnis	Describes the move by the City towards an aggressive annexation.
153	Roberts	Confirms Sen. Minnis' comments. Continues her testimony addressing the concepts of a funded system versus pay-as-you-go.
210	Sen. Ringo	Asks for clarification of the 1984 agreement with Portland.
217	Roberts	Says the committee has a copy of the written agreement between the city of Portland and Fire District #10 in their packet of information provided by Mark Ellsworth.
311	Sen. Walker	Asks if minutes were taken at the board meeting.
319	Roberts	Says she will provide the committee with those minutes.
322	Sen. Metsger	Asks when it was discovered that there may be an unfunded liability attributed to Fire District #10.
330	Roberts	Says it was in 1997. Discusses the Connecticut General fund that came before PERS.
368	Sen. Metsger	Asks if there were understandings with regard to liability in 1994 when Wood Village and other municipalities withdrew from Fire District #10 to form its own tax base.
387	Roberts	Explains how the withdrawal of the municipalities was accomplished.
431	Sen. Ringo	Refers to the contract between Fire District #10 and the city of Portland and asks if article 11 is what is being relied on.
442	Roberts	Says that article 11 sweeps up everything else.
451	Chair Minnis	Interjects his understanding of underlying assumptions. Refers to article 7, subsection 3.
TAPE 192, B		
030	Sen. Ringo	Says that he disagrees with the interpretation of article 11.
035	Roberts	Explains that at the time of the contract there was no liability.
063	Vice Chair Burdick	Declares that she has a potential conflict of interest because of her position as a citizen trustee on the Fire and Police Pension/Disability Board. Asks why the employees would continue with PERS instead of being included in the Fire and Policy Pension/Disability Board.
058	Chair Minnis	Says that article 7, section 3 allows this so long as a medical evaluation is passed.

071	Roberts	Clarifies that this is on an employee-by-employee basis.
079	Steve Manton	City of Portland. Provides a brief chronological history. Disputes Fire District #10's liability obligation.
147	Chair Minnis	Asks if the \$257 million included the obligation disputed.
156	Manton	Explains that it was paid but there is nothing in writing that says there was a dispute. Continues testimony.
236	Sen. Walker	Asks if there was an obligation to notify PERS of the transfer under the contract between Portland and Fire District #10.
243	Manton	Says that PERS was notified.
267	Sen. Metsger	Asks if part of Fire District #10's tax base became part of the city of Portland's tax base.
284	Manton	Says 65% of the tax base was transferred to city of Portland.
306	Terry McCall	City of Gresham. Contends that PERS created the problem and that they should be liable.
378	Paul Snider	Association of Oregon Counties. Testifies in opposition to the B8 and B9 amendments.
395	Chair Minnis	Wonders about the contractual obligation.
410	Snider	Believes that we're looking for an equitable solution to a very sticky problem. Suggests looking at who was benefited by the employment of these folks.

TAPE 193, A

017	Maria Keltner	Association of Oregon Counties. Offers to help work on resolving the issue.
035	Hasina Squires	Special Districts Association of Oregon. Testifies in support of the B8 and B9 amendments.
057	Sen. Walker	Believes that the city of Portland knew the liability existed even though they had not been billed for 13 years.
063	Vice Chair Burdick	Contends that it was believed the liability had been taken care of in the existing rate structure.
070	Chair Minnis	Explains that he would like to assign a group to work on this issue.
083	Voytko	Says that the decision by PERS not to bill anyone for 13 years was not proper or actuarially sound. Explains that PERS wants to clean up the books.
173	Chair Minnis	Asks if it assumed that all debt is collectable.
175	Voytko	Says, yes.
185	Rep. Monnes-Anderson	Asks about the contingency fund.
188	Voytko	Says the fund currently contains \$0. Explains what uses were planned for a contingency fund.
219	Dave Heynderickx	Legislative Counsel. Talks about the contingency fund. Discusses the possibility of an unfunded mandate.
264	Rep. Monnes-Anderson	Asks about funds that come from investments and if they should not go into the contingency fund.
280	Heynderickx	Says that PERS operates under a fiduciary responsibility and that tax law limits their ability to do some of the things that private companies do.
326	Chair Minnis	Contends that because of the way the transfer took place, it would be assumed that all other obligations would go along with the transfer.
332	Heynderickx	Disagrees.
338	Chair Minnis	Says he is appointing Sen. Walker and Sen. Ferrioli to lead a work group to work on this problem. Believes that there are pathways to resolving this issue already in place.

397	Sen. Ferrioli	Asks that there be a clear set of parameters to address.
411	Bob Livingston	Oregon State Firefighters. Asks to be included in the work group.
459	Chair Minnis	Closes the work session on HB 2278B and adjourns the meeting at 10:30 a.m.

EXHIBIT SUMMARY

A – HB 2278B, written material submitted by Mark Ellsworth, 125 pp

B – HB 2278B, -B8 amendments submitted by staff, 8 pp

C – HB 2278B, -B9 amendments submitted by staff, 8 pp