

HOUSE COMMITTEE ON GENERAL GOVERNMENT

April 9, 1997 Hearing Room D

1:00 P.M. Tapes 69 - 70

MEMBERS PRESENT:

Rep. Ken Strobeck, Chair Strobeck

Rep. Dan Gardner, Vice-Chair Strobeck

Rep. Jim Hill

Rep. Bob Montgomery

Rep. Kurt Schrader

Rep. Liz VanLeeuwen

Rep. Tom Whelan

STAFF PRESENT:

Jeri Chenelle, Administrator

Annetta Mullins, Administrative Support

MEASURE/ISSUES HEARD:

HB 2081 - Work Session

HB 2034 - Public Hearing and 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 69, A		
002	Chair Strobeck	Calls the meeting to order at 1:19 p.m. and opens the work session on HB 2081.
<u>HB 2081 - WORK SESSION</u>		
005	Jeri Chenelle	Administrator, reviews provisions of HB 2081 and the -2 amendments (SEE EXHIBIT D OF COMMITTEE MINUTES DATED MARCH 14, 1997).

	Fred McDonnal	Public Employees Retirement System (PERS), introduces Brian Harrington and states the intent of the bill is to comply with Internal Revenue Code in the event PERS has retirees who exceed a certain level in their benefit. Comments since their last testimony that nobody exceeded the limit, one person has been identified who will exceed the limit and expects there will be others who exceed the limit; PERS will withhold that portion of the benefit which exceeds the federal Internal Revenue Code limit.
030	McDonnal	Adds that the committee had asked how legitimate or how strong the contract right is, and advises he has a letter from counsel that indicates it is a contract right and most likely PERS would be subject to litigation if benefits which are in excess of that amount are held back.
037	Brian Harrington	Public Employees Retirement System, reviews the -2 amendments: * clarifying amendments:
		* specifies that the Benefit Equalization Fund is a trust fund and that the board is also the trustees of the fund
		* PERS will duly apportion up to the limit under the PERS qualified plan, which is \$125,000 for age 62; any excess will be under the Benefit Equalization Fund
		* employers whose employees exceed this limit have to have the difference paid into the Benefit Equalization Fund before PERS can pay out the dollars to the members
		* PERS board will adopt rules pertaining to the Benefit Equalization Fund in compliance with federal law for deferred compensation plans
056	Chair Strobeck	Comments there was discussion about the .75 FTE and asks if the agency is requesting the three-fourth person to administer this over the next biennium.
061	McDonnal	Responds they will be requesting a three-fourth FTE if this is the only bill that passes. Adds that if there should be another bill that would require one-half FTE, they would not request one and one-fourth person, but would pare down to the minimum level; they are convinced that the support is needed to implement the bill.
075	McDonnal	Explains there would not be a need for .75 FTE for each individual exceeding the limit.
085		Discussion is held on staffing levels.
109	Rep. Gardner	MOTION: Moves to ADOPT HB 2081-2 amendments dated 02/21/97.
111		VOTE: 7-0
	Chair Strobeck	Hearing no objection, declares the motion CARRIED.
112	Rep. Gardner	MOTION: Moves HB 2081 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-1

115		<p>AYE: 5 - Gardner, Hill, Montgomery, Whelan, Strobeck</p> <p>NAY: 1 - Schrader</p> <p>EXCUSED: 1 - VanLeeuwen</p>
	Chair Strobeck	<p>The motion CARRIES.</p> <p>REP. GARDNER will lead discussion on the floor.</p>
120	Chair Strobeck	Closes work session on HB 2081 and opens public hearing on HB 2034.
<u>HB 2034 - PUBLIC HEARING</u>		
119	Jeri Chenelle	Administrator, reviews provisions of the bill and the -3 amendments (EXHIBIT A), - 4 amendments (EXHIBIT B), and the -5 amendments (EXHIBIT C).
130	Fred McDonnal	Public Employees Retirement System (PERS), introduces Brian Harrington, Legislative Liaison, and Tory Rudometkin, Assistant Attorney General, and testifies in support of HB 2034 (EXHIBIT D):
		* is a significant bill to the system and members of the system
		* original bill has to do with re-employed veterans as they come back into the system; the veteran could gain service time for the time in the military
		* new federal statutes require that Oregon go on record to say that; but there is antiquated language; bill cleans up antiquated language and does comply with the new federal requirements passed in 1994
		* fiscal impact says rules have to be written (EXHIBIT E); there is no impact to the trust fund
175	Rep. Hill	Asks what the effect would be if the bill does not pass.
188	Tory Rudometkin	Department of Justice, responds if PERS does not provide those benefits, the employees could sue the plan for the benefits.
194	Rep. Hill	Asks if they have the right to return if they quit state employment to join the service or if they are called up for active duty by the National Guard.
	Rudometkin	Responds they have federal rights if they comply with the time and notice limitations.
206	Rep. Hill	Asks if that applies to any employer.
	Rudometkin	Replies it is any employer.
208	Rep. Whelan	Asks if an employer liability is created.
	McDonnal	Explains the employer would be required to contribute the employer part while the employee is in the military; the contribution part would depend on whether the employee or the employer paid that part; there would be a reflection if the employer had a number of those people, and it could have

		an impact on the employer rate.
228	Rep. Schrader	Asks how an employer can plan for an employee returning.
243	McDonnal	Responds there is a five year maximum of service that can be restored; there are about 36 individuals coming back in the system on an annual basis.
2629	McDonnal	Explains that the -3 amendment (EXHIBIT A) has to do with legislation passed last session (HB 2476) which created a new Tier II, a reduced level of benefits:
		* legislation was silent on integration (a new employer coming into the system)
		* the question is when those cities or counties integrate into the system whether those employees come in as Tier I or Tier II; PERS has interpreted it that if an employee was employed prior to the new tier, the employee would come in as Tier I and if the employee was employed after Tier II came in, the employee would be in the PERS system in the Tier II system. The amendment will give PERS the authority to administer it in this matter, which they have been doing and feel is in the spirit of the new tier when it was established
290		* integration in questions are those yet to happen; the majority of public employers in Oregon are PERS-covered employers
310	Chair Strobeck	Comments he carried the bill on the House Floor last session and PERS is following the intent.
354	Rep. Hill	Asks how PERS calculates the benefits if the employee's previous retirement plan was significantly different than PERS.
363	McDonnal	Responds with regard to integration, if they bring any liabilities, they fund the liabilities, and they come into the PERS plan and adapt to the benefit plan of PERS. Adds there have been two exceptions--the Portland School District had employees already getting benefits and PERS was provided the funds to pay it; the key is when they come in, it is with no liability to the system.
389	Rep. Schrader	Asks if someone is returning to work, if the employer would have to pay.
396	McDonnal	Responds that if the employee had been paying his/her own contribution, he/she would have to make it up; the Tier II has no impact on the pickup.
389	Rep. VanLeeuwen	Asks what the justification is for all the added changes.
395	Chair Strobeck	Explains PERS is using the bill for a number of issues because the vehicle was already here.
TAPE 70, A		
010	McDonnal	Introduces Elizabeth Harchenko and explains why the -4 amendments (EXHIBIT B) have been introduced.

		* gives history of state taxation of benefits of PERS retirees
036		* reviews court challenge and decisions
		* HB 3395 of 1995 did not address administrative issues
		* will be able to make payment in August
084	Rep. Montgomery	Asks why there are attorney fees other than those being paid by the association.
096	Rep. Montgomery	"I MUST DECLARE A CONFLICT OF INTEREST BECAUSE IF THIS GOES THROUGH, I PERSONALLY WILL BENEFIT. I AM ON PERS."
098	Elizabeth Harchenko	Special Counsel to the Attorney General, explains Attorney General activities, and that the defendants asks that their attorney fees be recovered; purpose is to reimburse plaintiffs for costs in bringing the litigation.
128	Rep. Hill	"I WOULD LIKE TO DECLARE A CONFLICT OF INTEREST. I HAVE A RELATIVE WHO IS A PERS RETIREE."
130	McDonnal	Reviews portion of prepared statement on the -4 amendments (EXHIBIT D, pages 6 and 7).
161	McDonnal	Notes the third bullet (EXHIBIT D, page 7) is on the -4 amendments.
178	McDonnal	Continues reviewing statement on page 7.
199	McDonnal	Continues reviewing statement on the -4 amendments and the nine percent interest on retroactive payments (EXHIBIT D, page 7). Adds that as soon as the PERS board elects, the employers will begin to replenish the fund amortized over 30 years, or the board could elect to do it in less than 30 years.
210	Chair Strobeck	Asks if all employers understand and agree.
	McDonnal	Responds he knows Ms. Harchenko has had lengthy discussion with employer representatives in the litigation and attorney fee issue, but it may come as a surprise to some employers. Adds that the board will make it as convenient as it can for the employers who have the additional burden.
224	Harchenko	* Adds that the Supreme Court, in its original opinion in which it held that PERS members were entitled to a remedy, is what kicked off this litigation that we are now resolving, and of which these amendments are an integral part of. Adds the second time before the Supreme Court, the court clarified that each individual PERS participating employer was liable in contract to their own former employee. * Explains that when one is liable in contract for money not paid, the contract rate of interest is specified by statute. One word was left out in the 1995 session to provide for that contract rate of interest to be paid along with the benefit payments that were directed. The amendments clarify that intention.
		* will be giving notice to all employers of their obligations

270	Chair Strobeck	Asks if notice will be given to each employer of what they will be paying.
	Harchenko	Responds that the actuary will be assisting the board in determining a process they go through to value the assets and liabilities of the fund, what the liabilities are that will have to be paid by the employers; that information will be going out from the board with the assistance of the actuary after the next valuation; employers will be notified sometime during 1998.
278	Rep. Hill	Asks if there is a way of knowing what the impact will be.
288	McDonnal	Responds that an approximate percentage increase system-wide is about 1.1 or 1.2 percent of payroll over a 30 year period and that it will vary among local governments which have separate rates; schools and the state have one contribution rate.
	Rep. Whelan	Asks if PERS will have to do an evaluation of each lawyer account.
303	McDonnal	Responds the actuary normally does an evaluation every two years and will do so as of the end of this year; the board could elect to address the problem now and have the actuary do a specific valuation for this specific liability, but believes the board will have it done as part of the normal cycle.
346	Rep. VanLeeuwen	Asks what this does to local school districts and cities.
360	McDonnal	Responds this is the method by which the Oregon Supreme Court and the legislature to date have elected to solve the problem. Suggests there is probably no perfect solution to the problem; but in the mind of most of those who have worked on this have come up with this solution as being the best one.
420	Rep. Hill	Asks if people will be sitting here in 2003 settling lawsuits from local districts suing the State of Oregon because we did not make a payment out of the general fund.
426	Harchenko	Explains that was the issue that was before the Oregon Supreme Court the last time; legislation had been passed and directed a benefit increase to be paid to retirees in lieu of the tax exemption that had been included as a term of their retirement benefit and local government challenged the legislature's ability to craft this as the remedy for taxation; the Supreme Court specifically upheld the law. That litigation is over.
TAPE 69, B		
019	Rep. Hill	Asks what happens if this fails to pass.
020	Harchenko	Responds she does not have a settlement and will go back to court.
024	Chair Strobeck	Asks Ms. Harchenko to explain who negotiated on behalf of the retirees.
		Responds the two court cases were brought as class action suits by individuals who wished, in a procedure that is available under the rules applicable to our courts, to represent the interest of other people similarly

025	Harchenko	<p>situated. There was an organization called Oregon Public Retirees, Inc. which instigated one of the lawsuits, and an organization of unions called the PERS Coalition which instigated the other case on behalf of their retired members.</p> <p>Explains the court cases were consolidated for purposes of trial. The lawyers for the Oregon Public Employees, Inc. and for the retirees represented by the union group cooperated in presenting their arguments. We were able to keep the amount of time devoted to the litigation down to a minimum. Local governments were represented by several different groups: cities and special districts hired an attorney, counties had a couple of attorneys, the schools had an attorney, I represented the state and we went through the process of getting the legal issues that had to be resolved in the court system addressed by the Oregon Supreme Court; now we are at the place where we are trying to end the litigation by getting a judgment in place that adopts the legislation, HB 3349, as amended by these amendments--that is the condition of the settlement--approved and accepted by the plaintiff class as satisfactory compensation for taxation of their retirement benefits. It is a package deal. These amendments are part of the condition for the settlement.</p>
050	Chair Strobeck	Asks Mr. McDonnal if, assuming this gets through by May, they will start issuing refunds in August, and if these are lump sum refunds that would be issued one time to affected retirees.
	McDonnal	Responds that is correct; if the dates are met, PERS will begin to issue in August--that is for the 67,000 who are on the retirement roll now. There are others for whom it will take longer; an example would be beneficiaries of deceased retirees.
059	Rep. Whelan	Asks if the \$400 million owed came out of several hundred individual trust accounts.
	McDonnal	Responds the \$400 million is the amount of the retroactive payment.
070	Rep. Whelan	"I SHOULD DECLARE A CONFLICT. I AM UNDER PERS BUT DON'T KNOW IF I STAND TO BENEFIT."
073	Rep. Montgomery	Notes that all the members are members of PERS.
077	McDonnal	Reviews statement on estates and next of kin (EXHIBIT D, page 7).
086	Chair Strobeck	Asks if Mr. McDonnal has other comments on the -4 amendments.
087	McDonnal	Responds that the Oregon PERS Retiree, Inc. group has done a great job communicating with its members to let them know to contact PERS with their new addresses.
094	Rep. Montgomery	"I DON'T KNOW IF I NEED A CONFLICT OF INTEREST; I AM A MEMBER OF THAT ORGANIZATION, TOO."
095	Chair Strobeck	Thanks Ms. Harchenko for her diligent and continuous efforts.

104	McDonnal	Reviews statement on the -5 amendments (EXHIBIT D, pages 8 and 9), and charts on pages 11 and 12.
135		Explains that Method B is the way PERS will have to administer the system unless the -5 amendment is approved, and it is contrary to the way PERS has been doing it in the past prior to Ballot Measure 8.
140	McDonnal	Explains Method C (EXHIBIT D, page 12) covers the majority of persons, and if the -5 amendments are approved, Method C will not change, Method A would not change, but Method B would change and bring it into the same way as in Methods A and C.
162	Chair Strobeck	Asks what prompts the amendment.
163	McDonnal	Responds that it gets into employer reporting issues and what they have calculated versus what PERS has calculated and what will be done from hereafter.
167	Harrington	Explains Method B came about when Measure 8 was in place and before it was overturned by the courts, that under Ballot Measure 8 employees had to pay their own contribution and some employers gave offsetting pay raises and some did not. Adds that present statute which speaks to the employer contributions made to PERS on behalf of employees talks about "picked up, assumed, or paid" and that salary in ORS 238 has a special definition; under Method B designation, they cannot use the \$1,000 the person was actually paying, the six percent has to come off the \$1,000 and the six percent is on the remaining amount..
186	Harrington	Continues explaining that Measure 8 was over turned by the courts and the -5 amendment amends ORS 238.205 to make this method in line with Method A and C--the same \$60 contribution would come into PERS.
192	Rep. Montgomery	Ask what the witnesses would recommend to get this accomplished.
195	McDonnal	Responds if the -5 amendments are approved, " it will accomplish what we feel and our attorneys feel needs to be done."
203	Chair Strobeck	Asks if anyone is currently under Method B.
	McDonnal	Responds there are not, but if this is not approved, then PERS will, of necessity, have to go to the employers and tell them they will have to recalculate, all of them and PERS will have to comply with the way Method B used to be.
209	Rep. Schrader	Asks if those jurisdictions which established the Method B approach agreed to it at that time.
212	Rudometkin	Responds that under Method B the employee pays the contribution, but the employer makes a technical election that transforms the contribution into pre-tax contribution for federal tax purposes; no one every used that method before Measure 8 was passed.
238	Rep. Schrader	Asks if local employers can choose either B or C.

239	Rudometkin	Responds, yes, prospectively.
241	Rep. Schrader	Asks if it would be correct to say if employers choose Option B and choose not to treat the dollar amount as salary, but as benefit, it would make a difference in the amount they would have to pay and the difference in the amount the employee would have to pay.
	Rudometkin	Explains it would not make a difference in the employer contribution because the full amount would still be used to calculate the employer rate; the PERS board does not have to use the statutory definition of salary to base the employer rate on, and it does not. The employee contribution would go down and could affect what the employer would have to put in to fund a full formula benefit.
254	Rep. Schrader	Asks if his concern is legitimate.
259	Rudometkin	Responds she does not know what the actuarial impact would be in reality. If the employer picks up the contribution, that part will go down; the problem is there is a fixed benefit under the full formula which somebody has to fund.
268	Rep. Schrader	Asks if it is based on the projected salary.
268	Rudometkin	Responds no, and explains there is an exception to the special salary definition so the full amount is counted toward final average salary for purposes of calculating the benefit.
274	Rep. Schrader	Comments it does concern him--the fact that we don't use the salary to calculate the benefit at all in terms of what the actual benefit is; has some concern with taking liberties with the definition of salary because in reality it has to be tied to that to some degree to have some reality for the taxpayer who is paying the bill.
284	Rudometkin	Responds that under Method B the employee would be paying less and the only thing that is different between that employee and a Method A employee is that the Method B employee is not paying taxes on the contribution. Adds that they are in similar positions, but because of the federal tax election one employee is paying less of a contribution and not paying taxes.
298	Rep. Hill	Referring to printed HB 2034, Section 2 (5), asks if the definition is appropriate.
312	Harrington	Respond one of the changes in the federal law, added the commissioned corps of the Public Health Service, and that the board will cover it in the rules.
319	Rep. Hill	Asks why not do it in statute.
		Explains there still are technically two different types of military benefits, one under state law which is the pre-existing benefits structure and it only applies to members who return from the armed forces, as defined, and under federal law the class is expanded to include what they refer to as uniformed services which includes some branches not covered in armed forces here. Adds they chose not to put all the details of the federal law

325	Rudometkin	into the statute in order to give PERS flexibility; there are some gray areas in the law which the Department of Labor is not sure how it will interpret, and rather than take a stand in statute that might be changed by federal legislation or by an administrative interpretation, we have chosen to allow the detail of that federal law requirement to be set out in administrative rules--the uniform service category would be one of those details.
349	Rep. Hill	Asks Mr. McDonnal to give a definition of "uniform service."
357	Chair Strobeck	Agrees with Rep. Hill and comments that in line 14 on page 1 of the bill it talks about "credit for any period of service in the uniformed services" and PERS may want to have amendments drafted to include a definition for "uniformed services."
368	Rep. Montgomery	Comments drafting an amendment would delay progress on the bill.
372	Chair Strobeck	Advises staff to draft an amendment to be proposed on the Senate side and the House will concur with it.
375	Rep. Hill	Comments he would be satisfied with a statement of definition of uniformed services from Mr. McDonnal, and if they can get the amendment in on the Senate side it will be better.
378	McDonnal	Responds they have tried to do that in the third paragraph on the written testimony (EXHIBIT D, page 2) .
388	Rep. VanLeeuwen	Comments that on page 9 (EXHIBIT D) there is a comment "There will also be a significant cost to participating employers because of these same issues."
408	McDonnal	Adds they wanted to bring to the members' attention the way Method B is calculated because if they must do that, there would be an additional administrative cost.
418	Chair Strobeck	Comments then the fiscal impact is none unless the amendment is not adopted.
	McDonnal	Responds that is correct, and adds that it would not include the employer administrative costs.
450	Chair Strobeck	Clarifies that the testimony was that the fiscal impact of adopting the -5 amendments is minuscule, and the impact of failing to adopt them is what the rest of the paragraph is about.
453	McDonnal	Responds that is correct.
460	Rudometkin	Responds the -5 amendments do not create any fiscal impact on the agency.
TAPE 70, B		
025	Mary Bodkin	American Federation State, County, and Municipal Employees (AFSCME), commends the attorney general and legal participants in finding a solution, and a way for the employers to afford the fix. Encourages passage of the bill so the checks can get in the mail.

053	Jack Sollis	Secretary-Treasurer, PERS Retirees, Inc., thanks the committee for getting the amendments and getting them worked on. Has worked on this for six years and supports the amendment and hopes the committee will get the bill out and get it to the Senate.
060	Maria Keltner	League of Oregon Cities and Association of Oregon Counties, testifies in support of the -5 amendments. Adds that when cities, counties and special districts got notices they would have to re-compute the amount that had been deducted from employees checks because of something in the law that no one had been aware, they went "ballistics" in terms of determining the administrative costs of recalculating the different methods.
072	Chair Strobeck	Closes public hearing and opens work session on HB 2034.
HB 2034 - WORK SESSION		
073	Chair Strobeck	Asks Rep. VanLeeuwen if she is satisfied with the fiscal impact.
075	Rep. VanLeeuwen	Asks that the agency put on the record there is no fiscal impact, or to clarify that if the amendments are not adopted, there would be significant costs to participating employers.
084	McDonnal	Responds the fiscal impact stated on page 9 (EXHIBIT D) has to do with the -5 amendment, not the taxation issue, and that it is correct that if the committee chooses not to pass the amendment there will be an increased administrative cost to PERS, and that as Marie Keltner just testified, there would be an increased administrative costs on the cities and counties.
095	Rep. Hill	Comments that to clarify the record the -4 amendments, taxation, the LFO fiscal (EXHIBIT E) is incorrect since it specifies no money for the 1.1 percent, the liability that will be incurred if we pass this bill.
101	McDonnal	Responds he thinks the reason it is not there is because it was in the HB 3349 fiscal impact two years ago; it was a liability incurred at that time, and there is no additional liability other than the interest that has accrued. Adds that Rep. Hill is correct; the 1.1 percent is more than a billion dollars over 30 years.
108	Rep. Hill	Notes that it is not included in the Governor's recommended budget.
111	McDonnal	Adds that the administrative costs to implement HB 3349 were approved by the Emergency Board several months ago.
117	Rep. Montgomery	MOTION: Moves to ADOPT HB 2034-3 amendments dated 03/11/97.
118		VOTE: 7-0
	Chair Strobeck	Hearing no objection, declares the motion CARRIED.
119	Rep. Gardner	MOTION: Moves to ADOPT HB 2034-4 amendments dated 03/11/97.

127		VOTE: 7-0
	Chair Strobeck	Hearing no objection, declares the motion CARRIED.
128	Rep. Montgomery	MOTION: Moves to ADOPT HB 2034-5 amendments dated 04/03/97.
129		VOTE: 7-0
	Chair Strobeck	Hearing no objection, declares the motion CARRIED.
131	Rep. Montgomery	Comments that Rep. Hill's concerns can be addressed in the Senate.
132	Chair Strobeck	Encourages PERS to discuss with Legislative Counsel including the uniformed services issues as a possible amendment to be included on the Senate side.
136	Rep. GARDNER:	MOTION: Moves HB 2034 be sent to the floor with a DO PASS AS AMENDED recommendation.
140	Rep. VanLeeuwen	Comments the only concerns she has is what the federal retirees will have to say again because it doesn't leave them with what they class as equity, but does not know what to do about it.
147	Rep. Schrader	Comments he is fully in support of the -4 amendments and thinks it is great the issue is being resolved, that it is clear there are votes in committee to pass this out but will be voting no because of the original bill, no other reason.
		VOTE: 6-1 AYE: 6 - Gardner, Hill, Montgomery, VanLeeuwen, Whelan, Strobeck NAY: 1 - Schrader
	Chair Strobeck	The motion CARRIES.
157	Chair Strobeck	Adjourns meeting at 2:54 p.m.

Submitted By, Reviewed By,

Annetta Mullins, Jeri Chenelle,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2034, HB 2034-3 amendments, staff, 2 pp

B - HB 2034, HB 2034-4 amendments, staff, 18 pp

C - HB 2034, HB 2034-5 amendments, staff, 3 pp

D - HB 2034, prepared statement, Fred McDonnal, 14 pp

E - HB 2034, Legislative Fiscal Statement, staff, 1 p