

HOUSE COMMITTEE ON
GENERAL GOVERNMENT AND REGULATORY REFORM

Hearing Room
Tapes -55

MEMBERS PRESENT:

Rep. Bob Tiernan, Chair
Rep. Jerry Grisham
Rep. Cedric Hayden
Rep. Bryan Johnston
Rep. Bill Markham
Rep. Lonnie Roberts
Rep. Barbara Ross
Rep. Charles Starr
Rep. Ken Strobeck
Rep. Sharon Wylie

MEMBER EXCUSED:

Rep. Bev Clarno
Rep. Mike Lehman, Vice-Chair

STAFF PRESENT:

Greg Moore, Committee Counsel
Annetta Mullins, Committee Assistant

MEASURES HEARD:

HB 2558 - Public Hearing and Work Session
HB 2476 - Public Hearing and Work Session

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

007 CHAIR TIERNAN: Calls meeting to order at 1:13 p.m. and opens the public hearings and work session on HB 2558 and HB 2476.

HB 2558 AND HB 2476 - PUBLIC HEARING AND WORK SESSION

Witnesses: Fred McDonnal, Oregon Public Employees Retirement System
Bob Andrews, Oregon Public Employees Retirement System
Bob Muir, Assistant Attorney General
Joe Benninghoff, Confederation of Oregon School Administrators
Mari Anne Gest, Oregon PERS Coalition
Don Satchell, Oregon Education Association
Kenneth Fitsimon, Oregon Nurses Association
The Legislative Fiscal Impact Statements on HB 2476 (EXHIBIT A) and HB 2558

(EXHIBIT B) are hereby made a part of these minutes.

014 FRED MCDONNAL, Director, PERS: Introduces Bob Andrews, PERS, and Bob Muir, Attorney General's office.

030 BOB ANDREWS, Legislative Liaison, OPERS: Submits and reviews a prepared statement proposing amendments to HB 2476 (EXHIBIT C).

080 MR. ANDREWS: Continues his statement.

122 MR. ANDREWS: Continues his statement.

145 REP. MARKHAM: Is the purpose of the amendments to clean up the bill? Are you suggesting any substantive changes?

145 MR. ANDREWS: No. That would come out in future resolution of the issues we are raising.

154 MR. ANDREWS: Continues his statement on page 2, proposing amendments to Section 5 (2) of the bill.

200 MR. ANDREWS: Continues his statement on the amendments to Section 12 of the bill.

212 CHAIR TIERNAN: (In response to Mr. Andrews statement on receiving advice from the IRS) asks if we have legal counsel that can accurately predict what the IRS would do if we had a defined benefit or defined contribution program.

215 BOB MUIR, Attorney General's Office: Yes, we do. On this specific question I asked Tom Deering, Counsel, and his estimate of the timeline is what you just heard.

CHAIR TIERNAN AND MR. MUIR: Discuss the time frame for getting an opinion from legal counsel on a defined benefit versus a defined contribution plan.

250 CHAIR TIERNAN: I would hope to get a quick response from you on any plan the committee may come up with and any problems it may have with the IRS.

270 MR. MUIR: We will give you the fullest cooperation and we are happy to hear you thinking that way because now is the time to deal with it--before we enact the law.

277 CHAIR TIERNAN: Requests that Mr. Muir contact Mr. Deering before the end of the week to find out what kind of lead time he will need in order to give an opinion on a plan from the committee.

284 MR. MUIR: Mr. Deering is out this week, but I will contact him on Monday.

274 REP. ROBERTS: Why does it take so long for the federal government to respond?

290 MR. MUIR: They don't say why, but the fact of the matter is they have a large volume of work to do and this subject is a technical one that requires them to study all the provisions of the plan they are going to

pass on. It is a combination of volume of work and the complexity of the issue and the resources they have to apply to it.

298 MR. ANDREWS: Continues reviewing his statement on the amendments to Section 12.

318 CHAIR TIERNAN: Why couldn't we make it effective January 1, 1996?

MR. ANDREWS: I am following the theme of the bill as it was introduced. We are saying if we were to amend the bill, then I think you have answered our question of extending an implementation date.

323 CHAIR TIERNAN: Assuming we are going to make the operative date January 1, 1996 and if we are out of here by July 10, is that enough time for you to explain what the benefit is or is not?

344 MR. ANDREWS: Yes, that gives us the opportunity to do the educational things. We do have some administrative things I would want to review with staff.

335 MR. MUIR: I recommend you do have a date certain as an alternative for your current wording of Section 12. Bob Andrews has outlined the fundamental problem. January 1, 1996 would not be 12 months following passage. You need to allow enough time to get the approving letter back. We are estimating six months to a year. We recommend a date certain at least a year out so you don't have an obligation to implement the plan before you get the approving letter.

363 CHAIR TIERNAN: Is there a problem with stating either separately or in this bill to let all employees know. Let's say we are going to wait for the approving letter, although some other states have not, and the letter doesn't come for a year and one half, is there a problem with telling all employees before they are hired that as part of the hiring package they will be on a Tier II system as proposed by the 1995 legislature?

375 MR. MUIR: There is a practical problem, perhaps a legal problem. You would be committing contractually that they will be on a defined contribution plan which might be determined in the end by the IRS as non-qualifying. Then you would have them on a taxable plan. You can do that, but their benefits will be taxable. The policy question is whether you want to take that approach.

385 CHAIR TIERNAN: Then we modify the approach and say as of this date you will be on Tier II, however, if the plan does not qualify, you will be on Tier I.

390 MR. MUIR: There is a solution to this problem. The exact language has to be worked out. We will work with your counsel and submit some language to address your concern.

409 MR. ANDREWS: Continues his statement on page 3 about concerns with the bill.

441 REP. STROBECK: What do you mean by non-discrimination?

443 MR. ANDREWS: Rules are currently being developed by the IRS which we understand will be imposed upon public systems in 1996 which deal with highly compensated employees and the level of benefits they get in comparison to employees who are not highly compensated. We may have people

in plans be seen as highly discriminating against and those that are not. As HB 2476 evolves we would want to review the evolution of the bill and the benefit structure to avoid that non-discrimination issue which could put the plan in jeopardy of its tax qualified status at some future point.

It needs to be a point of the on-going discussion.

TAPE 55, A

024 CHAIR TIERNAN: Other states save money by enticing people from one tier

to the other. There are incentives to entice those people. The question is of having someone with 10 years on one system and five years on one system and someone who is starting on the second tier. The testimony was that we should decide they are going to be all on one or the other. That is by nature what happens when you entice people from one to another. What

is the problem with having people have 10 years on one system and 10 years on another system?

043 MR. MCDONNAL: I think you can see where having an individual participating in both tiers administratively will be a significantly different kind of workload than just having a person in one tier. We kind of have that now, or will have that with the tax remedy. We will have to calculate a benefit partially for that person's length of service one way and we will calculate it another way for the rest of his/her benefits. Also, it means additional counseling. It is more complicated for the individuals who will be participating in both tiers to understand and it is more complicated for our staff to learn to be able to explain it.

055 You are correct about enticing members from one tier to another. However, one of the main methods to entice people from one tier to the next

is lower costs for the employee as well. But we are precluded from doing that because public employees have to contribute six percent. We can't go down to four or three percent. That has been one of the main reasons people have been enticed to go from a richer benefit level to a less rich benefit level. There may be other methods to incent people to go to the new tier--maybe a larger COLA perhaps.

061 CHAIR TIERNAN: Can you cash someone out of Tier I and convert the dollars contributed for the employee and on behalf of the employee into the second tier?

074 MR. MUIR: Rollovers do occur; I am not familiar with the technicalities.

077 CHAIR TIERNAN: That would be one way to solve your problem because you would have it all in one or the other. At the same time it would be a more significant more benefit to the state to convert prior years into a Tier II.

081 CHAIR TIERNAN: What are some of the enticements? I am aware of COLA, wage increases--but are there other benefits or hooks that have been used?

082 MR. MCDONNAL: Not that I am aware of any right at this moment, but we can do some research.

087 CHAIR TIERNAN: Requests that Mr. McDonnal research other states to find out has and has not been successful in enticing members from one tier to another.

095 REP. ROBERTS: Does employees pay the tax, then the six percent or do they pay the six percent and then pay taxes on the balance?

MR. MCDONNAL: The employer must declare which way they are going to handle it, whether it is on a pre-tax or after-tax basis. We have communicated with each of our employers and they have elected the way they wanted to go and the majority was to go with the pre-tax basis so their employees do not pay federal and state tax on the contribution.

107 REP. JOHNSTON: Are you suggesting the six percent limitation in Measure 8 was a bit of a mistake?

114 MR. MCDONNAL: I am not going to say it was a mistake. Perhaps this was not considered with regard to establishment of new tiers because if a new tier was going to be established, it might well be wise to have it at a lower employee contribution rate.

120 REP. JOHNSTON: Would it be your suggestion, or should we be considering referring something to the people to alleviate the problem that we have now discovered?

123 MR. MCDONNAL: With regard to perhaps making the constitution allow a reduction in employee contribution rates in the second tier?

127 REP. JOHNSTON: I was wondering if you were suggesting or if we should be thinking about trying to remove the blocks on good management we may have inadvertently constitutionally created.

130 MR. MCDONNAL: The only way I can answer that is from the standpoint of the pension plan. We as the pension plan administrators are concerned that we get the necessary contributions in from the employee or employer. As long as that continues we maintain our funding status and we can pay our benefits. I think that is a policy decision that this body will have to make.

144 MR. ANDREWS: Summarizes a prepared statement proposing amendments to HB 2558 (EXHIBIT D).

169 CHAIR TIERNAN: There appears to be fewer problems with HB 2558. Is that correct?

168 MR. ANDREWS: That is correct.

173 CHAIR TIERNAN: Is there anything in HB 2558 that looks like a glaring error or an important problem versus something that needs more of a clerical change?

173 MR. ANDREWS: Yes.

>Item 7 on page 2 of statement, concerning repeal
>Section 5, item 9 on page 2 of statement
>Section 4, item 6 on page 2 of statement

222 CHAIR TIERNAN: I have been told IRS has much fewer problems with defined benefit programs and defined benefit plans that also somewhat mirror the defined benefit plans that are already in place. Do you anticipate less of a problem with IRS in a defined benefit plan versus a defined contribution plan?

246 MR. MUIR: I discussed this with Tom Deering as well. There should be substantially less of a problem. It may not even be necessary to submit HB 2558 to the IRS for a ruling. The issue has to do with substantiality. If this is substantially a new plan we probably should submit it just to get a ruling on it. But if it is not substantially a new plan, but just a modification of a plan, it may not be necessary. One of the questions if you decide to pursue the HB 2558 concept, that we should ask Tom Deering is, "is it going to be necessary." Even if it is necessary he assures me that it should be substantially simpler to present and get a turnaround on HB 2558 because it is basically a limitation on a current plan, rather than a new plan.

265 MR. MUIR: Submits a prepared statement (EXHIBIT E), and questions language in HB 2476, page 1, Section 2(4). This would deprive those members of the repurchase options under current law. I don't have a definitive opinion, but it is a substantial question: Do the existing members have a contract right to repurchase under existing law which would survive notwithstanding the passage of this law. This law would cut them off that contract right if a contract right exists and result in a breach. The legislature, as the Supreme Court said in the Hughes decision, has the power to breach contracts, but you may not wish to do that. You may want to think about the consequence.

286 CHAIR TIERNAN: One of the options could be as we mentioned earlier, make them opt for Tier I or Tier II; they can make that decision.

289 MR. MUIR: Assuming the other technical issues are satisfied, yes, an employee who voluntarily switches from one tier to the other tier would be waiving the existing contractual right and that would not be a problem. But the way it is worded now, is that this is not a voluntary process. And if there is a contract right, this provision probably would breach that contract right.

327 JOE BENNINGHOFF, Confederation of Oregon School Administrators: Submits and reads a prepared statement asking for clarification of language in to HB 2476 and HB 2558 (EXHIBIT F).

TAPE 54, B

019 REP. JOHNSTON: The interplay between the percentage of replacement income that PERS has designed to try to achieve and the IRS regulations about working--do we have to be concerned with all that or can we just make the change?

MR. BENNINGHOFF: I don't know.

027 REP. MARKHAM: What was the penalty if we had not bailed out some principals out last session? Would they have lost their PERS benefits?

032 MR. BENNINGHOFF: That is my understanding but I am not that familiar with it.

CHAIR TIERNAN: How many hours is full time for a teacher?

035 MR. BENNINGHOFF: Generally it is 1,600 hours, 200 contract days times eight hours, but it would vary district to district.

055 MR. BENNINGHOFF: Agrees to provide information on bailing the principals out last session.

062 MARI ANNE GEST, Oregon Public Employees Union: On behalf of the PERS Coalition, submits and reads a prepared statement in opposition to HB 2476 and HB 2558 (EXHIBIT G).

111 DON SACHELL, Oregon Education Association: If we are concerned about the excessive payment of PERS benefits, I believe we should look at what causes those excessive payments and address that. We could resolve this by

passing legislation that none would receive pensions coupled with social security that would exceed 85 percent of their final salary. That would be

the end of it. We could also look at what causes it in three areas: the one percent plus annuity which is already terminated, some was caused by the final average salary and the unused sick leave which also has been eliminated because of Ballot Measure 8, but to throw out disability doesn't

make any sense.

136 Our understanding is that HB 2558 and HB 2476 apply only to new hires and not current employed members.

138 REP. ROSS: Would you talk about the relationship between the goal that was stated of obtaining 75-85 percent of the person's wages and the long-term life of the pension if the person lives 15 or 20 years. What is the relationship between that and inflation in the formulas.

149 MS. GEST: The adequacy goal was set for the time of retirement that the cost of living after retirement continues to increase. PERS has a two percent cap on cost of living. Our retirees have not kept up with the cost of living. Currently all PERS retirees only have about 84 percent of the purchasing power they had when they retired.

151 REP. MARKHAM: You people don't want to follow any of the studies, is that right?

162 MR. SACHELL: Most of the studies were done prior to Ballot Measure 8 and with benefits on an average of 22 percent higher than they are today.

We don't accept the reports. We would be happy to look at certain items.

168 REP. WYLIE: Given economic and political realities today, does your

group have a position on where would be the good place to be in terms of current compensation being at market, rather than having the total package being weighted toward the retirement benefit?

MS. GEST: We are not opposed to restructuring within the total package. The Governor's Task Force did come to the conclusion when they studied state employee salaries, retirement and health insurance that they were right at market. If you took retirement out and compared it, they were at the high end. But if you took salaries, we were low. But all together we were right at market. Ballot Measure 8 passed which put us behind market.

According to Legislative Fiscal state employees are now 13 percent behind the market for comparable jobs.

199 REP. JOHNSON: Did I hear you say if we capped retirement at 85 percent of pre-retirement income, that would both be workable and resolve what you perceive to be the dilemma?

204 MR. SATCHELL: I believe that would address what I interpret the Chair's position to be in regards to this, yes.

213 REP. HAYDEN AND MR. SATCHELL: Discuss insurance benefits.

260 CHAIR TIERNAN: I am surprised you don't support the Tier II concept after the Governor and other people have come out in support of it. Both concepts as presented here represent a 75-85 percent of final average salary which is the highest standard in the entire United States, private or public. Brent Wilcox, author of the Governor's Task Force report, said he still believes we need to have pension reform because the core of Tier I is flawed. Too, the House Task Force restated the same thing, regardless of Ballot Measure 8. If you read the Governor's Task Force report you will find it says that if Ballot Measure 8 passes, it is still on market for overall market compensation.

273 KENNETH FITSIMON, Oregon Nurses Association: Submits a prepared statement in opposition to HB 2476 and HB 2558 (EXHIBIT H).

Statements submitted but not presented are hereby made a part of these minutes:

Marjorie Lowe, Department of Administrative Services (EXHIBIT I)
Pat West, Oregon State Fire Fighters Council (HB 2476) (EXHIBIT J)
Pat West, Oregon State Fire Fighters Council (HB 2558) (EXHIBIT K)
Jim Whitty, Associated Oregon Industries, HB 2476 (EXHIBIT L)
James Larson, Oregon Association of Private Retirees, HB 2476 and HB 2558 (EXHIBIT M)

293 CHAIR TIERNAN: We are putting together an informal working group and I rescind what I stated last Friday regarding the working group. I want to put together an informal working group. Mr. Telfer will be the head of the group and will put together a coalition of volunteers including Bill Cross, Brian Delashmutt, Marie Keltner, Brent Wilcox, Ken Sutherland, Jim Whitty, Fred McDonnal to the extent he can advise, and/or attorneys as necessary. From this committee on a volunteer basis, Rep. Johnston and/or Rep. Grisham, and Rep. Strobeck. The group will report back in 10 days.

363 CHAIR TIERNAN: Declares meeting adjourned at 2:34 p.m.

Submitted by, Reviewed by,

Annetta Mullins Gregory C. Moore
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

- A - HB 2476, Legislative Fiscal Statement, staff, 2 pp
- B - HB 2558, Legislative Fiscal Statement, staff, 2 pp
- C - HB 2476, prepared statement, Bob Andrews, 3 pp
- D - HB 2558, prepared statement, Bob Andrews, 2 pp
- E - HB 2476 and HB 2558, prepared statement, Bob Muir, 3 pp
- F - HB 2476 and HB 2558, prepared statement, Joseph C. Benninghoff, 2 pp
- G - HB 2476 and HB 2558, prepared statement, Mari Anne Gest, 4 pp
- H - HB 2476 and HB 2558, prepared statement, Kenneth M. Fitzsimon, J.D., 2
pp
- I - HB 2476 and HB 2558, prepared statement, Marjorie Lowe, 1 p
- J - HB 2476, prepared statement, Pat West, 1 p
- K - HB 2558, prepared statement, Pat West, 1 p
- L - HB 2476, prepared statement, Jim Whitty, 3 pp
- M - HB 2558, prepared statement, James E. Larson, 1 p