

HOUSE COMMITTEE ON
GENERAL GOVERNMENT AND REGULATORY REFORM

March 3, 1995 Hearing Room 357
1:00 PM Tapes 59 - 60

MEMBERS PRESENT:

Rep. Bob Tiernan, Chair
Rep. Mike Lehman, Vice Chair
Rep. Jerry Grisham
Rep. Cedric Hayden
Rep. Bryan Johnston
Rep. Barbara Ross
Rep. Charles Starr
Rep. Ken Strobeck

MEMBER EXCUSED:

Rep. Sharon Wylie

MEMBER ABSENT:

Rep. Bev Clarno
Rep. Bill Markham
Re. Lonnie Roberts

STAFF PRESENT:

Greg Moore, Committee Counsel
Kay C. Shaw, Committee Assistant

MEASURES HEARD:

HB 2819 Public Hearing & 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 59, A

006 CHAIR TIERNAN: Calls the meeting to order at 1:07 pm. REP. WYLIE IS EXCUSED. REPS. BEV CLARNO, BILL MARKHAM and LONNIE ROBERTS ARE ABSENT. Introductory comments. The work sessions on HB 2477, HB 2655, HB 2398, HB 2421 and HB 2554 are carried over.

CHAIR TIERNAN: Opens public hearing on HB 2819.

HB 2819 - PUBLIC HEARING

Witnesses: Rep. Mike Lehman

Fred McDonnal, Public Employes Retirement System
Bob Andrews, Public Employes Retirement System

The Preliminary Staff Measure Summary is hereby made a part of these Minutes (EXHIBIT A).

029 REP. MIKE LEHMAN (D - District 47): Testifies in support of HB 2819. Explains that the intent of the bill is to authorize legislative employees to "opt out" of PERS.

044 REP. HAYDEN: Asks whether there is a fiscal impact on the General Fund in lieu of the fact the State will not have the 6% that employees are now contributing toward their retirement fund?

REP. LEHMAN: Explains the "double plus" for the Fund: (1) the State's share is not going out of the General Fund into PERS and (2) very minutely the employees will have a higher taxable income and will pay a higher amount of State income tax (i.e., a smaller share of income tax revenue will come into the State).

065 REP. LEHMAN: Continues testifying in support of HB 2819. Says that the net effect is a savings to the General Fund for everybody opting out of the system.

REP. HAYDEN: Comments that when anyone opts out of PERS they receive a 6% salary increase.

REP. LEHMAN: Explains there is a 6% increase in take-home pay. The salary doesn't change.

074 REP. STARR: Is it correct that the 6% that is paid to the employee alludes the Federal income tax?

REP. LEHMAN: Defers to Rep. Bryan Johnston.

REP. JOHNSTON: Explains the theory that the money is available to employees after July 1 so it could be pre-tax dollars.

083 REP. LEHMAN: Says there is some confusion, because under the old system and before the pick up, the money was treated as after- tax dollars and taxed. Agrees with Rep. Johnston that the money is treated as pre-tax dollars. The benefit is that the Federal Government receives more money.

REP STROBECK: Do you know of any other category of state employee that has the option to choose whether or not they want to be in PERS?

REP. LEHMAN: Doesn't know.

REP. JOHNSTON: One other class that has the option to choose are employees of the Oregon State Bar Association.

104 FRED MCDONNAL, Director, Public Employes Retirement System: Introduces Bob Andrews, Legislative Liaison, Public Employes Retirement System.

CHAIR TIERNAN: Who else has an option whether or not to join PERS?

MR. MCDONNAL: Says that employees of the Oregon Star Bar have the option to choose.

CHAIR TIERNAN: Anybody else?

MR. MCDONNAL: Explains that some employers have various classifications of people who can opt in or opt out.

112 CHAIR TIERNAN: Requests an example.

MR. MCDONNAL: Says that Metro has certain classifications that are in the system and others that are not.

BOB ANDREWS, Public Employes Retirement System: It is optional to the entire collect of elected officials at the state or local level within the State of Oregon whether or not they opt to participate.

121 CHAIR TIERNAN: Requests history for the option as well as why the Oregon State Bar has the option.

MR. ANDREWS: Explains that his recollection is that in the evolution of the Oregon State Bar and it being a "quasi-governmental organization" rather than a "state agency", there was a provision at onetime when the Bar was not in the system. Subsequent legislation allowed employees of the Bar, as a quasi-governmental organization, the option of participating in PERS; however, members of the legal community who are members of the Bar have no membership in PERS. The law that pertains to the Oregon State Bar excludes them from the definition of "employees" regardless of whether it is the PERS law, compensation, or any other benefits of a state employee unless an individual for PERS purposes elects to become a member of the system.

145 CHAIR TIERNAN: What is PERS' position on this bill?

MR. MCDONNAL: FOR THE RECORD: No position.

CHAIR TIERNAN: Does the bill impact PERS in any significant manner?

MR. MCDONNAL: No. Expresses concern about the long-range impact upon funding (i.e., there could be a long-range impact on the funding due to more groups opting out of the system) when groups of members talk about opting out. Suggests that on page 3, line 29, the addition of "for people in the employ of the Legislature for eight months or less" thereby not making it an indeterminate period of time. Says that it is not a significant point, because there are not that many people involved. Adds that "from a precedent setting standpoint, I think, we would like to see it."

169 CHAIR TIERNAN: Expresses difficulty with the proposed language, because of PERS' definition. Illustrates the concern.

MR. ANDREWS: Adds further clarification/history to support PERS' suggestion as to the possible base. Cites ORS 237.019 that protects the membership of the Legislative Assembly with eight or more months aggregate.

193 CHAIR TIERNAN: Would this also apply to someone who had worked for the state three or four years, left state service and then returned two years later to work for a state representative/senator for 9 or 10 months? Could

that person opt out of PERS under the suggested language?

MR. ANDREWS: Yes. Refers to "member" on Line 30 of the suggested amendment. Explains that PERS has qualified what is a member (i.e., an active member and inactive member). Explains that if an individual had been an active member, terminated from service and returned to this employment, then that individual could opt not to become an active member for that short-term duration.

214 CHAIR TIERNAN: Suggests a possible compromise that on Line 30 after "committees" to insert "a person employed by Legislative Assembly of either of its houses or any of its committees for a legislative session".

MR. ANDREWS: Says the reason for selecting eight months was it "ties in to where there is a protection for employees of the Legislative Assembly."

226 MR. MCDONNAL: Refers to a previous question about the 6%. Comments that everybody realizes that presently when legislators or staff participate their 6% goes in to PERS after six months of service. Once that individual terminates, they receive the full 6% plus interest and it is taxable.

REP. HAYDEN: Asks Rep. Lehman why the bill is needed, because there is only a withhold for six or seven months and the money accrues with interest?

REP. LEHMAN: Explains that the only difference is that the State has "kicked in a share into the system as well" and that stays in the system.

REP. HAYDEN: What happens to that?

MR. MCDONNAL: Confirms that the money is "kicked in by the state" (i.e., the state's contribution) and that money stays credited to the state. When the employee leaves, that money is forfeited and that forfeited money would apply to future contributions from the state. Explains that the advantage of the employee is the employee doesn't have to pay the 6% every payday so there is 6% more money "in their pocket".

CHAIR TIERNAN: Is it correct that a previous state or public employee who has been in the system for six or seven years and comes back to work now will not have the ability to opt out, but the money just goes toward their crediting?

261 MR. MCDONNAL: Responds that they will not have the ability to opt out and they are still in the system.

CHAIR TIERNAN: Comments that the employee would have to terminate to get all of the money back.

MR. MCDONNAL: Agrees they would have to terminate or retire.

271 REP. ROSS: Is there any other group that is similar to this that if legislative employees were allowed to opt out then there are other temporary or short-term employees from some other agency who may say "the Legislature's people are getting special treatment, we'd like that special treatment too"?

MR. MCDONNAL: Points out PERS' concern and why the suggestion for the amendment. Does know that in the past there have been employers who have approached PERS about allowing a certain group of members to opt out of the system as a means of a cost-reduction. That is where the impact on the funding may be detrimental in the long-term if groups elect to opt out.

REP. ROSS: What is the determination on the legislative staff, not the people hired by specific legislators, but the ongoing staff in the administrative offices, who actually are here for a long time? Would they also have an opportunity to opt out if a time limit is placed in the bill?

300 MR. MCDONNAL: Yes, full-time legislative staff would also have the ability to opt out.

REP. ROSS: Unless there is a time limit?

MR. MCDONNAL: Agrees. Adds that realistically, not many would probably opt out.

306 REP. JOHNSTON: Shares that the genesis for the optional status of the Oregon State Bar in PERS was because the Bar wasn't originally included in PERS; however, when a current lobbyist was hired, who wanted to remain in PERS, the Bar lobbied the Legislature to allow that option. That was approved and now all Bar employees are currently members of PERS; therefore, if that optional status was removed, it wouldn't affect anybody, because everybody is in PERS.

323 REP. HAYDEN: What happens to the person who comes in as a temporary worker and has opted out of the system, and then decides to remain full time?

MR. MCDONNAL: Responds that under such a scenario that the employee would be able to enter into the system after the completion of a six-month period. Raises the question of whether the bill covers such a scenario.

355 CHAIR TIERNAN: When somebody opts out, can they opt back? Illustrates an example.

MR. ANDREWS: Says an election remains for the entire "term of office" for an elected official who elects not to participate. It is not until the next "term of office" that the person is eligible to reconsider that election. Explains there is no application under the statute to address the issue as raised.

REP. HAYDEN: Suggests that anytime a person wanted to opt back in that the "clock starts to run and they do another six months temporary and then they can opt in".

MR. ANDREWS: If it kept to the legislative employees and followed the concept that, if the employment is only for a "session", then until the next session occurred and unless they took some other employment, the election would stay. Illustrates the example of a legislator in the second term who has elected in the first term of office not to participate.

398 REP. HAYDEN: Discusses problems that develop by creating exemptions. Concludes that PERS "isn't broken so why fix it".

REP. JOHNSTON: Would a onetime waiver for up to eight months of employment do what PERS wants?

TAPE 60, A

003 CHAIR TIERNAN: Illustrates if somebody worked for the Legislative Assembly, the legislative session is over and then that person is hired as a Legislative Administrator. Asks whether, since that's a new job, shouldn't the person have the opportunity to make an election?

MR. ANDREWS: After six months it would be a condition of employment.

021 CHAIR TIERNAN: There are employees who worked for the state a long time, are vested, don't want to be in the system, are only working for the Legislature for eight months without contributing to PERS, and don't want to close out the money that is vested. Is it correct that the 6% is being deducted from their checks and they will be unable to ever get that back unless they completely withdraw for all the years they put in?

MR. ANDREWS: That is correct unless they retire. Suggests clarifying the word "member" on Line 30 and say "may elect to not become an active member".

046 CHAIR TIERNAN: Asks for Rep. Lehman's position regarding the two proposed amendments (i.e., limit to a legislative session and defining an "active member").

REP. LEHMAN: Says any combination of those proposed amendments will meet.

REP. HAYDEN: If someone works for six months and two weeks with \$50 out of their paycheck, how long does it take them to get the \$50 back?

060 MR. MCDONNAL: After termination notification is received it would take two to three weeks, normally.

REP. HAYDEN: Is it correct that if session is adjourned in June that nobody working for the session would have any deductions at all?

MR. MCDONNAL: That's correct.

REP. JOHNSTON: Do you mean any deductions kept?

MR. MCDONNAL: There are no PERS deductions during that period.

068 REP. ROSS: Would this legislation as it stands cover all those people who work in this building that are ongoing and give them a special right to opt in and out that other state employees don't have? If we add the eight months, would that be the case?

CHAIR TIERNAN: It would depend on the wording.

REP. ROSS: That would be unfair for long-term employees who work for the Legislative Assembly, but who are like other state employees in terms of being ongoing. Doesn't feel they should have a right to choose to be out of it. Legislative employees would have a special privilege that other state employees don't have. Eight months is fine.

CHAIR TIERNAN: If the limit is to a legislative session, that cuts everyone off at that point and time. The problem is to try to make something that is a law for a long time.

REP. LEHMAN: Suggests the amendment read "A person employed by the Legislative Assembly for the legislative session, either of its houses or any of its committees may elect not to become an active member of the system during the legislative session by giving the board written notice of the election within 30 days after becoming eligible to become a member".

108 CHAIR TIERNAN: Closes the public hearing on HB 2819 and opens the work session on HB 2819.

HB 2819 - WORK SESSION

MOTION: REP. LEHMAN moves that HB 2819 as hand engrossed be sent to the Floor with a DO PASS recommendation.

116 CHAIR TIERNAN: Requests Rep. Lehman read the change in the hand engrossed bill.

REP. LEHMAN: FOR THE RECORD: Page 3, Line 29 "A person employed by the Legislative Assembly for the legislative session, either of its houses or any of its committees may elect not to become an active member of the system during the legislative session by giving the board written notice of the election within 30 days after becoming eligible to become a member" -- the rest of the language in the paragraph is the same.

125 REP STROBECK: Agrees with Rep. Hayden that "we are legislating for the 'knats eyebrows' and exceptions." If the intent of having PERS (i.e., having a retirement system setup) is to include all state employees, the situation is now under control with the current system and it is of no harm

to the staff once six months has past. Expresses concern that every time an exception is created that somebody else will not fit into the category.

142 REP. JOHNSTON: Provides an example of a 72-year-old secretary who retired from a 30+ year state government career and works every session. As soon as she starts working, does she pay back into the system or does she too wait the six months?

MR. MCDONNAL: Someone can work up to 600 hours.

REP JOHNSTON: Without paying back into the system?

MR. MCDONNAL: Without paying back into the system and without endangering their PERS pension. If they work more than 600 hours, then they have to do one thing or the other.

158 REP. LEHMAN: Tends to agree somewhat with Reps. Hayden and Strobeck. Explains there are two important considerations (i.e., this was offered with several bills affecting PERS and how it affects legislators).

163 CHAIR TIERNAN: Says the scenario does not address the person who is a vested member, will only work for six months, is forced to contribute, and will not get their dollars back.

REP. HAYDEN: Refers to the earlier example of a Committee Administrator

who pays nothing for the first six months, but in the seventh and eighth month might pay \$300 or \$400. Remarks that perhaps more money is spent to pass the bill than is being saved for the employees.

188 REP STROBECK: Explains that if an individual returns to a private corporation employment with the same type of mandatory retirement participation system, it would result in the same situation described.

CHAIR TIERNAN: Announces that the work session on bill HB 2819 is to be set over for further consultation and then perhaps later consideration.

205 CHAIR TIERNAN: Adjourns the meeting at 1:50 pm.

Submitted by, Reviewed by,

Kay C. Shaw Gregory G. Moore
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Preliminary Staff Measure Summary -- staff -- 2 pages