

Legislative *UPDATE*

February 2004

from the Colorado Public Employees' Retirement Association
Legislative Update is published periodically to keep interested persons informed on legislation affecting PERA

On January 15, PERA made its annual presentation to the House and Senate Finance Committees on PERA benefits, funding, and legislation proposed by the Board. The Committee members made no promises to support the legislation to help improve PERA funding, but they listened carefully, asked questions, and heard the same facts that PERA delivered to the JBC last November.

PERA Executive Director Meredith Williams explained that the preliminary investment return for PERA for 2003 is about 20 percent. While PERA's assets-to-liabilities ratio still will decline for the next few years, the good investment return in 2003 is a welcome boost. PERA told the Committees that gradual increases in employer contributions are needed and will be included as part of the legislative package being proposed in 2004. PERA urged that the legislation be adopted and all the elements be allowed to take effect. Full implementation of PERA's legislative package, coupled with continued recovery in the investment markets, will help ensure that PERA will remain soundly funded.



Legislation of Interest to PERA

PERA Benefit and Contribution Changes

This bill will have several elements that were approved by the PERA Board to help preserve PERA's financial soundness via a package of moderate, balanced changes. Senator Dave Owen (Greeley) intends to sponsor the bill.

Status: PERA continues to be in discussion with Senator Owen and the Governor's Office. The provisions for a defined contribution plan option are still being formulated.

PERA's Position: Support. This bill would:

- Require PERA contributions on Cafeteria Plan (IRC Section 125), Transportation Equity Act (IRC Section 132), and Retirement Health Savings Plan deferrals so that they will be included in salary for PERA benefits.
- Reallocate 0.08 percent of salary of future employer contributions to the PERA pension trust funds rather than to the PERA Health Care Trust Fund.
- Require employer contributions on salary paid to PERA retirees who return to work for PERA employers.
- Provide that members hired on or after July 1, 2005:
 - Would not be eligible for full retirement benefits at age 50 with 30 years service
 - Would receive annual post-retirement increases of 3 percent or the actual change in the consumer price index, whichever is lower
- Increase employer contribution rates starting in 2005, phasing in increases of 0.5 percent of salary per year for a total of 3 percent by 2010.
- Provide choice between a defined contribution plan for state employees in certain higher education and other positions.

Senate Bill 04-132. Suspension of MatchMaker Contributions

This bill is sponsored by Senator Ken Arnold (Westminster) and Representative Brad Young (Lamar). Cosponsors include Reps. Diane Hoppe (Sterling), Suzanne Williams (Aurora), Tambor Williams (Greeley), and Frank Weddig (Aurora). The bill would make no changes that would require increased appropriations, and its provisions would help improve the funding of the PERA trust funds. The PERA Board of Trustees initiated this bill.

Status: SB 132 was approved by the Senate State Affairs Committee on February 3 and was sent to the full Senate.

PERA's Position: Support. The provisions of this bill would:

- Suspend MatchMaker contributions no later than July 1, 2004.
- Reduce interest credit on member contributions to a maximum of 5 percent per year.
- Set the due date for PERA contributions at five business days after payroll date.

House Bill 04-1011. Alternative Personnel System for Institutions of Higher Education

Sponsored by Representative Keith King (Colorado Springs) and Senator Norma Anderson (Lakewood), the bill would allow colleges and universities to drop the state classified personnel system for their employees and adopt an alternative personnel system.

Status: House Bill 1011 has passed the House and has been referred to the Senate State, Veterans and Military Affairs Committee. Senator Anderson talked with the Colorado Commission on Higher Education and with some of the universities and they agreed to ask the State Affairs Committee to remove any retirement provisions from the bill. That would leave in the law the requirement for PERA membership for state employees in higher education, whether they are under the alternative personnel system or the classified system.

PERA's Position: Support. Senator Anderson does not favor a defined contribution option, and the institutions do not want the retirement issue to affect passage of HB 1011.

The retirement issue for higher education is being discussed by PERA and other parties and may be included in Senator Owen's bill that is being developed.

PERA believes that if HB 1011 is enacted, other legislation to allow employees in higher education institutions in positions covered by the state classified system or by an alternative personnel system to join an ORP is feasible only under these conditions:

- The institution adopts an ORP for these employees;
- The ORP has the same contribution rates as PERA;
- The employee's election to join the ORP is irrevocable;
- PERA is able to offer a DC plan alternative to the employees; and
- The institution makes payments, out of employer contributions designated for employees who become covered by the ORP, toward amortizing PERA's unfunded liability.

Senate Bill 04-165. Fiscal Analysis of Changes in the Employer Contribution Rate to PERA

Sponsored by Senator Mark Hillman (Burlington), the bill, as introduced, would require that any fiscal note that the Legislative Council prepares on legislation that concerns a change in the PERA employer contribution rate include an estimate of the fiscal impact on the total state budget each year for 10 years after the change. Senator Hillman's goal is to ensure that the Legislature considers the long-term impact on PERA and the state of any benefit or contribution change.

Status: PERA testified on SB 165 on February 5, in the Senate Finance Committee. The bill is scheduled for action by the Committee on February 12.

PERA's Position: No Position. Whenever legislation is contemplated regarding PERA benefits or contribution rates, PERA asks the actuary for an estimate of the long-term impact. The results are communicated to Legislative Council for preparation of fiscal notes on such legislation. Each year, an actuarial valuation is conducted to examine PERA's current and projected actuarial status. PERA also has a long-standing

practice of limiting the contract with the independent private firm that provides actuarial services to PERA to five years. A separate actuarial firm is hired to review the retained actuarial firm's work every five years. PERA is proposing an amendment to SB 165 that would put these policies and practices in statute.

Senate Bill 04-90. Confidentiality of Certain Information on PERA Private Equity and Other Alternative Investments

Sponsored by Senator Norma Anderson (Lakewood) and Representative Gayle Berry (Grand Junction), this bill was developed by the venture capital industry. The purpose of the bill is to clarify the confidentiality of information regarding PERA's private equity, private debt, and timber investments until the transaction is completed if PERA determines that disclosing such information would jeopardize the value of the investment.

Status: The full Senate passed SB 90 unanimously on January 26. The bill has been assigned to the House Finance Committee.

PERA's Position: Support. PERA's "alternative investments" include investments in venture capital, leveraged buyout funds, timber, and "special situation" investments that include mezzanine debt. Alternative investments currently constitute about 10 percent of the total PERA trust funds. The total market value of PERA trust funds was \$28.5 billion as of December 31, 2003.

PERA discloses information such as the name of each fund in which the pension plan invests, the amount invested, and the rate of return to date of each fund. This information enables employees, retirees, and citizens to assess the performance of each separate venture capital fund or leveraged buyout fund.

What is kept confidential is information on the individual private companies in which the venture capital or buyout fund invests. This proprietary information on such items as prototypes, market studies, company financial condition and company management is needed by PERA to evaluate whether or not to make an investment in a particular fund. However, if that information were made public, the company's ability to develop its prototypes, obtain additional financing, or maximize its financial performance could be harmed.

Disclosure of private information would likely preclude PERA from investing in high-quality venture capital or leveraged buyout funds in the future. Representatives from the private equity industry testified convincingly before the Senate Finance Committee on this point on January 20.

Over the 10-year period ending December 31, 2002, PERA's alternative investments earned a compounded annualized return of 13.68 percent per year, compared to 9.33 percent for the S&P 500.

Investment experts expect alternative investments to outperform the public equity investments in the future. If the S&P index will earn a 2 percent lower return per year than alternative investments, on average, then PERA could lose about \$5.6 million in investment return in 2004 if the proposed legislation is not enacted. This loss of investment earnings would grow as PERA's alternative investments shrink in the future. By 2014, the loss of investment return to PERA would be \$56 million per year.

Other Bills That PERA is Following

Senate Bill 04-107. State Deferred Comp Plan and Public Officials' DC Plan

This bill is sponsored by Senator Mark Hillman (Burlington) and Representative Dale Hall (Greeley). Hillman and Hall are the legislators appointed by the President of the Senate and the Speaker of the House, respectively, to sit on the state committee that administers both plans. This bill would ensure confidentiality of financial information for participants in those two plans, and would make other technical changes to the plans. The bill has a very broad title, however, so PERA will want to monitor it. The title of SB 107 is "Concerning Public Employee Retirement Plans."

Status: SB 107 was passed by the Senate on January 26, and has been assigned to the House Finance Committee.

House Bill 04-1007. Obligations of Higher Education Governing Bodies that Have ORPs

Representative Tambor Williams (Greeley) and Senator Stephanie Takis (Aurora) are the sponsors. For colleges and universities that established Optional Retirement Plans (ORP's) for their faculty and top administrators in the early 1990s, the bill would upgrade the responsibilities and fiduciary duties of the governing boards concerning the ORPs. The bill arose from a performance audit of the ORPs by the State Auditor's Office in 2002, and is being proposed by the Legislative Audit Committee.

Status: HB 1007 was passed by the House on January 15 and was passed by the Senate Education Committee on January 28.

House Bill 04-1171. Retirement Health Savings Trust

Sponsored by Representative Frank Weddig (Aurora) and Senator Bob Hagedorn (Aurora), this bill would allow the State Personnel Director to set up a trust arrangement in which an active state employee could elect to make voluntary contributions to an account that would be used for his or her future retiree health care expenses. The account would consist of after-tax contributions, if allowed, plus any investment income earned. According to testimony, a state employee could make tax-deductible contributions to the trust only if he or she made an irrevocable election to contribute a certain amount to the trust each month for the duration of his or her employment with the state.

Status: HB 1171 was passed by the House State Affairs Committee on February 3 and sent to the House Appropriations Committee.¹

