

Legislative *UPDATE*

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

Several issues affecting PERA will be on the Legislature's agenda within the next few weeks, from work after retirement to the possibility of DPSRS merging into PERA. This update will outline each issue at this early stage of the session.



House Bill 05-1117: PERA Early Retirement

Introduced by Rep. Bill Berens (Broomfield), HB 1117 would create a retirement window for state employees.

The bill states that any member who is a state employee and who first retires between July 1, 2005, and July 1, 2006, may, at no cost to the member, elect to add up to three years to the member's age and up to three years to the member's service credit for purposes of calculating service retirement eligibility and service retirement benefits.

At the PERA Board's January meeting, they voted to oppose HB 1117.

If all of the state employees who could benefit from the window retired during the window, then the unfunded liability of PERA would increase by over \$1 billion dollars. Early retirement enhancements enacted in 1998 and 2000 increased PERA's liabilities and have resulted in record numbers of retirements.

The goal of Rep. Berens was to allow state employees to leave state employment with an enhancement if large reductions in the number of employees were necessary. However, he did not realize that PERA has an unfunded liability that would make this window a financial burden. In addition, a large reduction in the number of state employees is not being seriously considered at this time, as the Legislature and the Governor are working to come up with a solution to the state's fiscal problems.

Over 1,100 state employees are projected to retire in 2005 under current law. PERA continues to have excellent early retirement benefits and believes that additional retirement incentives are not needed.

Senate Bill 05-54: Conversion of Pinnacol Assurance to Non-Profit Status

Primary sponsors of SB 54 are Sen. Norma Anderson (Lakewood) and Rep. Andrew Romanoff (Denver). This bill would make Pinnacol Assurance a nonprofit insurance company subject to generally applicable insurance laws. This bill would also require Pinnacol to pay premium taxes on its workers' compensation insurance business in Colorado.

Pinnacol Assurance is the largest provider of workers' compensation insurance in Colorado. Pinnacol is currently a political subdivision of the state. Prior to becoming Pinnacol, this entity was the Colorado Compensation Insurance Authority and prior to that, it was a state agency. While its legal status and operations have changed over the years, employees of Pinnacol have continued to be members of PERA, as required by legislation whenever the name or duties of the organization have changed.

As of December 31, 2003, Pinnacol had 546 employees, and there were 159 PERA retirees who retired from Pinnacol. The number of vested inactive members was 60.

The State Treasurer has consistently said that if Pinnacol wants to be a different entity than a political subdivision of the state, then its employees should not be members of PERA. Under the bill, Pinnacol would be more independent from the state, but not structured completely like a private company. Pinnacol is proposing to PERA and to the Legislature that its membership in PERA be frozen as of June 30, 2006. Employees hired prior to July 1, 2006, would continue to be covered by PERA after that date, and employees hired on July 1 or later would be covered by a different retirement plan which would be developed.

PERA has told Pinnacol that it would want to be assured under the bill and accompanying membership freeze agreement that Pinnacol and its continuing members of PERA pay their appropriate cost for benefits earned under PERA. Also, PERA would want to be assured that the other 54,000 State Division members of PERA and the State Division Trust Fund are not harmed financially as a result of a membership freeze.

Senate Bill 05-73: Work After Retirement by PERA Retirees for PERA Employers

Sen. Dave Owen (Greeley) introduced a bill that would count work under any arrangement by a PERA retiree for a PERA employer toward the 110-day per calendar year limit. This would close a loophole some PERA retirees are using to circumvent the 110-day limit on work after retirement.

Under current state law, PERA retirees have been allowed to work after retirement for a PERA employer up to 110 days per calendar year, without any reduction in the PERA retirement benefit. Employment in excess of 110 days results in the retirement benefit being temporarily reduced by 5 percent for each day worked over 110. No PERA contributions are currently paid by the retiree or employer on the salary paid to the retiree. To level the playing field and remove any incentive employers might have to hire retirees instead of new employees, PERA urged the Legislature in 2004 to require employers to pay contributions to PERA on salary that they pay to PERA retirees. Senate Bill 04-257 as enacted requires employers to pay employer contributions beginning July 1, 2005, on salary paid to PERA retirees.

However, some retirees and employers have entered into agreements where the retiree attempts to work as an independent contractor or consultant and perform basically the same duties for the employer as when they were active PERA members. The result is that the “retiree” begins receiving PERA benefits earlier than if he or she had continued as an active member until terminating work with the employer. This early retirement costs PERA, while the “retiree” receives his or her PERA benefit at the same time he or she receives full pay while continuing to work for the employer on a full-time basis.

Sen. Owen’s proposed legislation would require that any paid work that a PERA retiree performs for a PERA employer would be subject to the 110-day limit, and that employer and employee contributions would be paid to PERA on the compensation paid to the retiree. PERA’s actuary does not believe it is justified to charge more than the employer contribution and the AED in order for PERA to recoup the cost of employees retiring earlier than expected. However, PERA supports the provisions which would close the “independent contractor” loophole.

Related to this bill is a technical fix to legislation passed in 2004 that would allow the AED (the Amortization Equalization Disbursement) to apply to salaries paid to PERA retirees. The AED is a payment by employers toward PERA unfunded liabilities that is scheduled to begin January 1, 2006, and increase gradually. The language on the AED contained within SB 04-257 says that the AED applies “to the payroll of all employees working for the employer who are members of the association or who were eligible to elect to become members of the association on or after January 1, 2006.” Since PERA retirees are not “members,” the AED will not apply to salary paid to them. The bill by Sen. Owen would apply the AED to “any amounts paid in connection with the employment of a retiree by an employer.”

PERA supports this change and has met with representatives from the Governor’s Office, the Colorado Education Association, and the Colorado Association of School Executives, related to this adjustment.

Senate Bill 05-93: Attachment of Public Pension Benefits

Sen. Mark Hillman (Burlington) introduced a bill that would allow for attachment of a public pension participant’s pension benefits if the participant is required to pay restitution for theft, embezzlement, misappropriation, or wrongful conversion of public property, or if the participant is in a fiduciary position with the public pension plan and has violated his or her fiduciary duties to the plan.

Under current law, distributions from public pension plans are not subject to legal process except for limited reasons: to pay federal tax liens, to satisfy garnishments to pay child support, and pursuant to DROs (domestic relations orders).

In talking with the State Treasurer’s Office, which initiated the bill, the example given where this bill might have an

effect would be an employee who embezzles money from a local government and the individual’s bank account could not be attached because the source of payments into the account is the public pension.

The Senate Judiciary Committee amended the bill on January 26 at the request of PERA and the Fire and Police Pension Association (FPPA). The amendment removed the portion that would have allowed attachment or garnishment of the pension or refund in event of a fiduciary violation. PERA and FPPA are concerned that this provision could have been used as a tool to push pension plan trustees to make decisions that may not be in the best interest of the plan.

Technical Changes to SB 04-257

The State Deferred Compensation/401(a) Plan Committee has worked with PERA to develop legislation that would correct some parts of SB 257 regarding the DC plan option available for new hire state employees in 2006. The bill would provide that:

1. The election by new state hires between the various plans (PERA DB, PERA DC, or State DC) is available to those employees who have not been active participants in any of the three plans in the prior 12 months.
2. Employees who have less than a 12-month break in service will be required to return to the plan they were in prior to the break.

3. PERA retirees who return to state employment may suspend their benefit and add to their PERA DB plan service credit as under current statutory provisions if they wish, but may not elect to participate in the PERA DC or State DC plans.
4. Neither State DC participants nor participants in the PERA DC plan may continue coverage in those plans if they transfer to a job in higher education. They would begin coverage under the statutory plan provided for them as new employees in higher education.

Rep. Ted Harvey (Highlands Ranch), a member of the Committee, is expected to sponsor the bill.

Senate Bill 05-171 DPSRS Merger Authorization

A bill to authorize the merger of the Denver Public Schools Retirement System into PERA was introduced on February 1 by Senator Paula Sandoval (Denver) at DPS' request. PERA's actuary finalized a "price list" of the costs attached to each provision that could be included in the merger of the Denver Public Schools Retirement System (DPSRS) into PERA. These numbers were not finalized as of June 2004, when the PERA Board exercised its right under the 2003 merger legislation to terminate the merger.

Denver Public Schools (DPS) and DPSRS met with PERA staff and said that DPS is willing to pay the costs required to accomplish a merger on an actuarially neutral basis without adversely affecting PERA's funded status. The legislation would authorize a merger that would be effective January 1, 2007, and contains the following elements:

- Maintaining the annual cost of living increase for current DPSRS retirees at 3.25 percent per year (reducing cost of merger by \$42.1 million).
- Leaving current DPSRS provisions in place for refunds to current DPSRS inactive members (reducing cost of merger by \$6.3 million).
- Transferring all DPSRS assets to PERA on the merger date and full payment by DPS for liabilities resulting from the

merger. DPS as an employer would then pay the regular school district employer contribution rate to PERA.

- Authorizing DPS to raise, through the sale of PCOPs (Pension Certificates of Participation-bonds), the necessary moneys to pay to PERA.

DPS, DPSRS, or PERA would be able to terminate the merger prior to October 1, 2006, and only for specified reasons:

- Assets of DPSRS and moneys from DPS are not sufficient to pay the amount required.
- A material change has occurred in the plan provisions or earnings assumptions of DPSRS or PERA after the date of the most recent valuation.
- Litigation has been commenced against any of the parties relative to the merger.
- PERA is not successful in obtaining an IRS determination letter stating that PERA continues to be a qualified plan based on the merger agreement.

The estimated total cost to DPS, based on December 31, 2003, valuation data, might be as high as \$130 million.

Details of the merger agreement are currently being worked out by the parties involved.

During the 2005 Legislative session, PERA also plans to assure that employer payment increases provided by SB 04-257 are funded as planned for implementation in January 2006.



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