

## 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.

The bill was amended by the Senate Finance Committee on February 8. The Committee deleted the provision that would have added the member rate to the rate that employers will contribute beginning this July on salaries paid to PERA retirees. The bill now has three provisions:

1. Apply the AED (employer contribution increases) on contributions paid by PERA employers on salaries paid to PERA retirees.
2. Require each PERA employer to provide PERA a copy of any agreement, contract, letter of understanding, or other arrangement whereby the employer will receive services in any form.
3. Count work after retirement for a PERA employer under any arrangement toward the 110-day per calendar year limit, as well as for employer contributions. This would make it clear that work by a PERA retiree for a PERA employer as an independent contractor would count, and so would work for any entity owned or operated by the retiree or an affiliated party, if engaged by a PERA employer. Employment for a company not owned or operated by the retiree or an affiliated party would not be subject to the 110-day limit or employer contributions.

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.

Also included in 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 does not apply to salary paid to them. SB 73 would apply the AED to "any amounts paid in connection with the employment of a retiree by an employer."

**Status:** The Senate passed SB 73, and it is scheduled to be heard by the House Finance Committee on March 3.

**PERA's Position: Support.**



## HB 05-1231: 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.
5. Allows the State 401(a) Plan Committee to retain professional advisers and independent consultants or experts to advise it regarding the proper discharge of the Committee's fiduciary duty "if necessary."

Rep. Ted Harvey (Highlands Ranch) is sponsoring this bill.

**Status:** This bill was passed by the House State, Veterans, and Military Affairs Committee on February 22 and sent to the full house.

**PERA's Position: Support.** PERA has worked to help develop this piece of legislation.

## Senate Bill 05-171: DPSRS Merger Authorization

A bill to authorize the merger of the Denver Public Schools Retirement System (DPSRS) into PERA was introduced on February 1 by Senator Paula Sandoval (Denver) at the request of Denver Public Schools (DPS). 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 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.

DPS and DPSRS met with PERA staff and indicated 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 additional moneys to pay into PERA.

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

- Assets of DPSRS and moneys from DPS are not sufficient to pay the amount required, or cannot be transferred to PERA.
- Litigation has been commenced against any of the parties relative to the merger.
- DPS has not approved the issuance of PCOPs.
- PERA cannot obtain a letter from the IRS in favor of the merger.
- A material change has occurred in either PERA's or DPSRS' plan provisions or assumptions after actuarial valuations as of December 31, 2005.

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

**Status:** This bill was assigned to the Senate Finance Committee.

**PERA's Position: Support.** The PERA Board authorized continued discussions between PERA staff and DPS and DPSRS to develop necessary language for the legislation as well as a merger agreement. Counsel for PERA is reviewing the language. The Board expressed concerns in certain areas and there probably will be significant amendments prepared by the Senate Finance Committee.

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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## Senate Bill 05-93: Attachment of Public Pension Benefits

Senator Mark Hillman (Burlington) and Representative Michael Garcia (Aurora) are sponsoring this bill. As introduced, the bill would allow for attachment of a public pension participant's benefits if the individual 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.

The Senate Judiciary Committee amended the bill on January 26 at the request of PERA and the Fire and Police Pension Association. The amendment removed the portion that would have allowed attachment or garnishment of the pension or refund in event of a fiduciary violation. PERA General Counsel Greg Smith testified on the bill, and explained why the potential to attach a trustee's public pension benefits could be used by any plan member or other person as a tool to try to push pension plan trustees or employees to make decisions that may not be in the best interest of the plan.

On Second Reading on February 11, Sen. Hillman offered an amendment providing that pension benefits or refunds may be attached "in the event of a judgment for a willful and intentional violation of fiduciary duties...where the offender or a related party received direct financial gain." This

language was drafted by PERA for the Judiciary Committee hearing, in case the Committee could not be persuaded to remove the attachment language altogether. The Senate adopted Sen. Hillman's amendment.

Section 24-51-207 of the Colorado Revised Statutes specifies the standard of conduct that PERA trustees are held to, mentions that the trustees "shall carry out their functions solely in the interest of the members and benefit recipients..." and provides that trustees "shall not engage in any activities which might result in a conflict of interest with their functions as fiduciaries for the association." The standard is similar for trustees of other plans.

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). The statutes for public and private pensions have not been designed to allow attachment of pension benefits to pay for other debts, fines, or obligations.

**Status:** The Senate passed SB 93 and the bill is scheduled to be heard by the House Judiciary Committee on March 3.

**PERA's Position: Support as currently amended.**

## House Bill 05-1300: Increased Regulation of Pharmacy Benefit Managers

This bill is sponsored by Rep. Jack Pommer (Boulder) and Sen. Lewis Entz (Hooper) and is designed to require public disclosure of confidential terms negotiated by a pharmacy benefit manager (PBM) and the health care plans with which it contracts. PBM's, including Caremark for PERA's self-insured health plans, administer prescription drug benefits by developing networks of retail and mail-order pharmacies and negotiating discounts with drug manufacturers. Mandating public disclosure of terms, such as negotiated discounts, would damage competition. Drug manufacturers would be less willing to give pricing concessions to any PBM, and premiums and copays for consumers would move higher.

RxPlus, an association of independent retail pharmacies, initiated HB 1300. RxPlus has lobbied for bills in previous years that would have hindered the effectiveness of mail-order pharmacies. A 2004 report by the Colorado Department of Regulatory Agencies studied RxPlus' far-reaching proposal for increased state regulation of PBM's and concluded that

"Given the clear lack of demonstrated harm, the regulation proposed by the Applicant (RxPlus) is not only overly broad and unwarranted it is also protectionist with respect to pharmacies." The 54-page report can be viewed at: [www.dora.state.co.us/opr/archive/2004PharmacyBenefitManagers.pdf](http://www.dora.state.co.us/opr/archive/2004PharmacyBenefitManagers.pdf). The report notes that the legislation originally proposed by RxPlus last fall would have included two elements that PERA and other groups have long opposed: An "any willing pharmacy" provision that would hamper competitive bidding among pharmacies and harm health plans and consumers, and a ban on lower copays for consumers who fill a prescription using a mail order pharmacy rather than a retail pharmacy.

**Status:** A hearing on HB 1300 was held by the House Health and Human Services Committee on February 23, and the Committee will vote on the bill at a later meeting.

**PERA's Position: No Position.** PERA has serious concerns with HB 1300 and the Board may decide to take a position soon.

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

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

Pinnacol Assurance is the largest provider of workers' compensation insurance in Colorado. Pinnacol is currently a political subdivision of the state.

Under the bill, Pinnacol would have been more independent from the state, but not structured completely like a private

company. Pinnacol proposed 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.

**Status:** SB 54 was postponed indefinitely by the Senate Business, Labor, and Technology Committee at its hearing on February 7.

**PERA's Position: No Position.**

## House Bill 05-1117: PERA Early Retirement

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

The bill stated 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.

If all of the state employees who could have benefitted from the window retired during the window, then the unfunded

liability of PERA would have increased by over \$1 billion. Early retirement enhancements enacted in 1998 and 2000 increased PERA's liabilities and have resulted in record numbers of retirements.

**Status:** The House State, Veterans, and Military Affairs Committee defeated the bill on February 8 at the request of Rep. Berens.

**PERA's Position: Oppose.**

## Senate Bill 05-163: Senior Judges Program

This bill is sponsored by Sen. Shawn Mitchell (Broomfield) and initiated by the State Judicial Department. SB 163 would allow a retired judge in the "senior judge" program to participate longer than the 12-year limit that now exists.

This program has been in place since the 1970s, and it provides that PERA will pay a retired judge an increase in his retirement benefit as long as he is working as a judge in temporary duties. The PERA Judicial Division Trust Fund is reimbursed through the Long Bill each year for payments made. The appropriation in the Long Bill is to the Judicial Department, which reimburses PERA.

The Judicial Department believes the program is a cost-saver for the judicial system because a retired judge gets paid an amount equal to 20 percent of salary (in the form of an addition to the retirement benefit) for working 60 days (25 percent of a year). SB 163 allows a retired judge to serve as a senior judge for more than the current 12-year limit, with approval by the Chief Justice.

**Status:** The bill was passed by the Senate Judiciary Committee on February 16.

**PERA's Position: No Position.**

## Senate Bill 05-137: Identity Theft

Sponsors of this bill are Sen. Dan Grossman (Denver) and Rep. Angie Paccione (Ft. Collins). The bill is designed to allow a consumer to put a security "freeze" on his or her credit report in the absence of any indication of identity theft.

As sent to the full Senate, the bill would restrict consumer reporting agencies from providing Social Security numbers or other nonpublic information to any company or agency unless it is for purposes permitted under the federal Fair Credit Reporting Act. However, there are many legitimate purposes that such personal information is used that are permitted

under federal or state law. PERA uses consumer reporting agencies to locate inactive members, to obtain current address information for mailings, and to check against databases listing deaths. PERA will work with Sen. Grossman to amend SB 137 so that use of this information by PERA or other agencies is allowed for specific purposes as outlined above.

**Status:** SB 137 was approved with amendments by the Senate Business, Labor and Technology Committee on February 16.

**PERA's Position: Seek Amendments.**

## Commission on PERA

The first meeting of a Commission on PERA will be held on Friday, March 4, at 2:00 p.m., at the Denver Metro Chamber of Commerce, 1445 Market Street in Denver. The Commission was formed by Colorado Treasurer Mike Coffman.

From information distributed by the Treasurer's Office: "This kick-off meeting will focus on providing background on PERA to the Commission members and attendees. The Commission hearings are open to the public and the media. Subsequent hearing dates will be announced at this meeting. Those interested in presenting at a future Commission hearing should contact Bill Ray with the Department of Treasury.

The Commission will be co-chaired by former Governor Dick Lamm and former Senator Hank Brown, and eight additional members have been appointed.

The PERA Board has expressed concern that there is no statutory authority for the Treasurer to establish a commission, and questioned the designee who serves in his place on the Board (Deputy Treasurer Ben Stein) about the Commission.

The Board expressed concern that the Commission would not be objective if staffing for the Commission comes from the

Treasurer's Office. The Treasurer has told the press that PERA's actuarial condition is a "ticking time bomb," and has also told the press that he believes an actuarial emergency exists in PERA that would justify changing (reducing) benefit provisions for current PERA members.

PERA has been asked to make a presentation to the Commission at its March 4 meeting in order to establish a base of knowledge about the plan. The Board agreed that PERA will do this and furnish public reports on PERA's financial condition such as those provided to legislators. Board Chair Jim Casebolt stated the Board's intent to work directly with Commission members, and for PERA's information and perspectives not to be filtered or controlled by the Treasurer's Office. When asked how the Treasurer's Office would be able to afford to assist the Commission, Mr. Stein said that the Office would not seek an appropriation from the Legislature, but believes the time and expenses would be legally incurred pursuant to a letter from the Attorney General's Office.