COLORADO PERA®

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

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 has three provisions:

1. Apply the Amortization Equalization Disbursement (AED) 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 monthly 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 a retiree. To level the playing field and reduce the 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 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: Rep. Cheri Jahn (Wheat Ridge) is sponsoring SB 73 in the House). The House Finance Committee approved this bill on March 3 and sent the bill to the House Appropriations Committee.

PERA's Position: Support.

House Bill 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. The State 401(a) Plan Committee be allowed 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) and Sen. Lois Tochtrop (Westminster) are sponsoring this bill as members of the State 401(a) Plan Committee.

Status: This bill was passed by the House of Representatives on March 2 and by the Senate on March 14. Next, the bill will be sent to Governor Owens.

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 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 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:

- Maintains the annual cost of living increase for current DPSRS retirees at 3.25 percent per year (reducing cost of merger).
- Leaves current DPSRS provisions in place for refunds to current DPSRS inactive members (reducing cost of merger).
- Transfers 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.
- Authorizes 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.

Status: Testimony was taken at the Senate Finance Committee hearing on February 17, and the bill was laid over for Committee action at a later date. DPSRS, PERA, and DPS have submitted an amendment to the Office of Legislative Legal Services, and the amendment should be ready for a hearing on the bill by mid-April.

PERA's Position: Support.

Senate Bill 05-93: Attachment of Public Pension Benefits

Sen. Mark Hillman (Burlington) and Rep. Michael Garcia (Aurora) are sponsoring this bill. 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. The bill also would allow attachment 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.

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: Senate Bill 93 was signed by the Governor on March 25 and will be effective for court orders on or after August 10, 2005.

PERA's Position: Support as currently amended.

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.

Sen. Grossman added an amendment at PERA's request that would allow public pension plans to access a credit report "to determine the consumer's eligibility for plan benefits or payments authorized by law or to investigate fraud." PERA uses consumer reporting agencies to locate inactive members, to obtain current address information for mailings, and to check against databases listing deaths. The Senate added several other amendments that PERA and other groups are assessing.

Status: This bill was approved with amendments by the full Senate on Second Reading on March 1 and then was sent to the Appropriations Committee. On April 1, the Appropriations Committee sent the bill back to the full Senate with no further amendments.

PERA's Position: No position. PERA will continue to monitor the bill.

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. 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 PBMs 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. 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: The House Health and Human Services Committee defeated the bill on March 14 on a 7-6 vote.

PERA's Position: No position. PERA had serious concerns with HB 1300 and supports the Committee's decision.

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 Colorado Supreme Court.

Status: The bill was passed by the Senate on March 1 and by the House on March 30. Next, the bill will be sent to Governor Owens.

PERA's Position: No position.

Senate Bill 05-10: Administration of Local Government Pension Plans

This bill is sponsored by Sen. Norma Anderson (Lakewood) and Rep. Fran Coleman (Denver). It was initiated by the Legislative Audit Committee following its audit of the Colorado County Officials and Employees Retirement Association (CCOERA). SB 10 allows the State Auditor's Office to audit CCOERA every three years, revises the composition of the CCOERA board, and establishes clear fiduciary duties for board members. A Senate amendment entitles each CCOERA board member to $100 for each board meeting attended, in addition to reimbursement for actual and necessary expenses.

Status: The House passed SB 10 on March 21. On March 29 the Senate concurred with the House's amendments. The bill now will be sent to Governor Owens.

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.

Rep. Berens' intent when introducing the bill was to provide a retirement alternative to large state employee layoffs that might result if no budget fix were enacted. However, PERA explained to him that a window would have resulted in far more retirements than he anticipated, and that it would have added a large amount to PERA's actuarial liabilities, and for those reasons he asked the Committee to defeat the bill.

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. PERA had serious concerns with HB 1117 and supports the Committee's decision.

Commission on PERA

Co-chairs Dick Lamm and Hank Brown kicked off the Treasurer's Commission on PERA at a meeting on March 4. After a brief statement by the Treasurer, the Commission heard a presentation by PERA's executive staff. The presentation covered PERA's history, benefit program, investments, funding, and recent legislation. Each of the 10 Commission members received a large binder of information and publications from PERA to study for future meetings.

The Commission asked many good questions, including questions about the following:

- PERA's funding goals and steps taken in 2003 and 2004 to improve funding
- PERA's plan design and funding status compared to other public and private plans
- Investment objectives, asset allocation, performance, and time horizon for PERA
- PERA's actuarial funded ratio projections
- Events and legislation that resulted in PERA going from overfunding in 2000 to an unfunded liability in 2003
- What trends or legislation might improve PERA's funded ratio in the future.

Governor Lamm requested that PERA respond to written questions from the Commission to expedite the Commission's work, and PERA agreed. PERA also agreed to share information from the 2004 actuarial valuation as well as the actuarial review that PERA will be initiating within a few months.