



Newsletter

Oregon PERS Retirees, Inc.

Vol. 20 No. 1 Spring/Summer, 2010

Check your label Dues due? Please renew!



If your label says "09" above your name you need to renew your membership. Your membership expired at the end of last year.

\$5 will pay your dues for this year. To renew for two years, send a \$10 check made out to OPRI.

Mail to: PO Box 12945
Salem, OR 97309

P.S. If you receive this Newsletter via e-mail, please check your bank records to decide if it is time for you renew.

2010 OPR-PAC Funding needed

This issue of the OPRI Newsletter includes an insert with the request for members to once again support the OPR-PAC with a contribution. The amount needed and the importance of continuing support are spelled out in the insert.

Your contribution gains an Oregon tax credit for 2010—\$50 for a single person and \$100 for a couple. Checks should be made out to OPR-PAC, PO Box 12945, Salem, 97309.

If your membership dues are due this year, that requires a separate check made out to OPRI. These funds are maintained as separate entries in the "books" so it is important that the checks be separate — one for the OPR-PAC and one for your OPRI dues if that is needed to keep you listed as an active member.

Legislators override veto of SB 897

OPRI and the PERS Coalition won a battle during the February session of the Oregon Legislature. Despite continued opposition from the PERS board, the Senate and House voted to override the Governor's veto of SB 897. SB 897 was passed in the 2009 session by almost unanimous votes in both bodies. The vote to override was almost unanimous in the Senate, but a closer call in the House where there were 44 yes votes and 15 no votes. (A two-thirds vote is needed to override a veto.)

In a letter to members of both the Senate and House, James Dalton, who chairs the PERS board, urged members to vote against the override because, he said, "the bill could result in PERS having to pay benefits a person has not actually earned." OPRI and others had a different point of view and thanks to efforts of those who lobby for these groups, the override was accomplished.

If you wrote to your legislator urging support for the override, OPRI thanks you on behalf of future retirees from PERS agencies.

The measure provides time for PERS to gear up for implementation of its requirement to provide accurate and verified information to people about to retire. Kay Bell, whose lawsuit succeeded in bringing this problem to the forefront, was in the House gallery as the bill re-passed. That lawsuit is still pending in the Oregon Court of Appeals. Since it was not filed as a class action lawsuit, it would not help future retirees who are given incorrect information by PERS. SB 897 was needed to address that problem.

The operative date for the verification process in PERS to be in place is July 1, 2011.

SB 897 also allows one member of the PERS board to be either a current or retired public employee of an appropriate bargaining unit. Since 2003, only an actively employed public employee (no retirees allowed) could serve on the board.

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future retirees' interest."

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Board committee to review lobbying

Chair Kathleen Beaufait appointed a three-member committee of the OPRI board at the February board meeting. Its assignment is to begin a continuing review of lobbying efforts to evaluate effectiveness.

Those appointed to the committee are Pat West, chair, who is also the vice-chair of the board; Bob Oleson and Russ Gregory. West represents local government retirees on the board; Oleson, state retirees; and Gregory, local school district retirees.

Hartman reviews Kiesling "fix"

A memorandum from Greg Hartman to the PERS Coalition takes a closer look of various proposals put forth recently by former Secretary of State Phil Kiesling to "fix" PERS.

Hartman's look is not meant to be a point-by-point refutation of Kiesling's white paper but rather to focus on the remedial portion of his analysis. Hartman points out some problems with the fixes Kiesling proposes. The Hartman memo is now on the Documents Page of the OPRI web site, www.OPRI.org. It's worth the read.

PERS pension attacks resurface; may signal trouble in 2011

If you've been reading some of the state's newspapers in the last few months, you probably have detected attacks on Oregon's public employee retirement program are again popular with the press. The attacks got major headlines at least in part because of the PERB study of employer rates that began in the fall. The new employer rates were adopted by PERB late in January.

Among other things:

- A former Secretary of State Phil Keisling wrote a document pointing out what he believes are serious problems with the Public Employee Retirement System.

- Several newspapers also have delved into the issue with editorials or in-depth articles about how the system is supposedly headed for trouble.

- Local government leaders continue to express concern about increasing employer rates announced in January by the PERB, even though PERB tried to soften the blow with its final action on employer rates.

- A newspaper cited national study of state retirement programs decided Oregon PERS was one of 15 states with plans in need of help.

In early February, The Oregonian editorial board penned these words: "The elephant in the room, the Oregon public pension system, is about to swallow an

additional \$1 billion-plus from school districts and other public employers over the next two years." It went on to suggest several possible reforms, and ended with the suggestion that the governor and the Legislature "should appoint a special commission to examine PERS, study possible reforms and recommend changes. If nothing is done, then four years, six years, eight years from now, Oregonians will look back at 2010 as the time its leaders could have acted to protect PERS retirees and essential services, but chose instead to look the other way."

The editorial was printed the weekend before the House of

Representatives was to decide on overriding the Governor's veto of SB 897 and it resulted in at least some legislators, who previously were ready to support the override, to change their votes to "no."

The rhetoric is reminiscent of what was being written and said in 2002 before the 2003 Legislature overhauled the system with a series of reforms, some of the consequences of which still are being argued in the courts.

Both the PERS Coalition and OPRI are engaged in trying to set the record straight with the media and legislators.

Among other approaches, Bob Livingston, an active Salem firefighter and legislative director of the Oregon State Firefighters Council involved in the PERS Coalition, responded to The Oregonian's editorial with an op-ed piece.

Key points to keep in mind

1. The PERS system is sound and remains one of the best pension plans in the nation.

2. Short-term issues in 2008 were met by strong investment growth in 2009.

3. PERS, like other pension plans, is designed to weather an economic downturn. Investment losses are amortized over a 20-year period to limit the impact on employers.

4. The PERS board has adopted a "smoothing" approach to employer rates, cutting the expected increase in employer rates in half.

LAWSUITS IN A NUTSHELL (No end in sight)

Movement of the lawsuits still pending is about as fast as traffic in the afternoon commute. The cases have all been briefed and, as of this writing, the only recent news was a decision by the Court of Appeals to cancel a hearing that had been re-scheduled from March 3 to March 5. The appeals court also has now decided to hear arguments in both Arken and Robinson at the same time – whenever that happens.

Arken: You will remember that this is the case on behalf of window retirees arguing that they are entitled to the full benefits they were promised and, in addition, to all COLA payments. A new date has not been set at this time.

Robinson: Again, remember that in March last year Judge Kantor ruled that Section 14(b) of the 2003 reform legislation limited the ability of PERS to collect amounts overpaid to window retirees and ordered PERS to stop the process of recovery. Under the stay PERS has not attempted to collect any amounts that it believes to be overpaid but will continue to adjust pension benefits for retirees to reflect what it believes to be the correct payment with the lower earnings rate of 11.33% for 1999 earnings.

Kay Bell: Both sides have appealed this case and it still is pending in the Court of Appeals. A Marion County Circuit Court jury heard this case in July, 2008 and issued a unanimous decision in Ms. Bell's favor. This case poses the question whether an individual can recover against PERS for relying on incorrect information prior to retirement. The case is based on the argument that there ought to be some recourse to assist people who received bad advice from PERS.

Following the jury verdict, PERS filed a motion to reduce the jury

award to what PERS argues is the maximum allowable amount under the Oregon Tort Claims Act (ORS 30.260 to 30.300). After hearing oral argument, Judge Burton agreed and reduced the jury award to \$100,000. In addition, the judge refused to award interest, based on a recent Oregon Court of Appeals decision. The judge did, however, grant leave to reconsider the interest issue if the Oregon Supreme Court were to reverse the appeals court's decision on interest.

Among other things, PERS took exception to Judge Burton's finding that PERS has a special relationship with its members that is not extinguished by its disclaimer as to the accuracy of its preretirement estimate of benefits. The PERS Coalition, of which OPRI is a part, also appealed the judge's ruling limiting the amount of recovery. This case was the jumping-off point for the verification process contained in Senate Bill 897 in the 2009 session. That bill passed both the Senate and House with nearly unanimous votes, but the Governor vetoed the bill. OPRI and the PERS Coalition mounted a successful effort to override the veto this February. Mission accomplished. (See page 1)

White: Judge Kantor ruled against the PERS Coalition on all issues. The case had been reargued by lawyers representing PERS and the Coalition on June 5, 2009.

This case challenges the settlement agreement reached after the City of Eugene case was decided in Marion County Circuit Court. It also challenges several PERS administrative actions taken as a result of that agreement. The issue which will now face the appellate courts is whether there remains a fiduciary obligation to members or did the Legislature abolish that obligation in the 2003 PERS reforms.

Murray: There is nothing new on this case. This one challenged the allocation of administrative expenses to the variable account in years when that account had no earnings. The case has been argued before the Court of Appeals where the Assistant Attorney General argued that this was actually a charge against negative interest accrued in the variable account. For any of you who do not understand the concept of negative interest, counsel facetiously has offered to sell you some of the negative interest that has accrued in his own investment accounts at a very reasonable and moderate price.

Attacks resurface

(continued from page 2)

The coalition and OPRI sought a meeting with The Oregonian's editorial board and it has now taken place – the first time this has been accomplished despite repeated attempts to arrange similar meetings in the past. Those who attended left the meeting with the opinion that the newspaper representatives listened to what was said and may at least approach future editorials with a broader understanding of both sides of the argument and that it opened the door to future input.

All this is simply to warn OPRI members and especially currently active PERS members. If you were under the impression that all that could be done to PERS has already been done, think again. It looks like 2011 may be another legislative year when OPRI and its members need to be vigilant and prepared to defend, among other things, previously hard-won court decisions while continuing to seek favorable results for still-pending lawsuits stemming from the 2003 Legislature's PERS "reform."

Message to our Members

Amendments proposed to HB 3684 were heard by the House Revenue Committee on Feb. 15. The amendments would have removed the PERS pension adjustments made in 1995 from retirees who live out of state.

OPRI got word of this proposed amendment from David Reinhard who represents OPRI before the Legislature. The amendment had been presented to the Revenue Committee at a morning meeting. Reinhard brought the proposal to the OPRI board's noon meeting that day. The board expressed serious reservations about the proposed amendment. Mr. Reinhard was able to communicate to the committee at its work session later in the afternoon of the 15th. The PERS Coalition also expressed concern about the lack of time for any analysis. The committee left the bill and the proposed amendment "in committee" which was tantamount to tabling it when the short session was adjourned on Feb. 25.

Some history is in order. Oregon law initially had exempted PERS retirees from state income taxation.

However, when the U. S. Supreme Court ruled that such an exemption had to be extended to federal retirees or given to neither state nor federal retirees, the Oregon Legislature repealed the exemption for PERS retirees. OPRI was formed to resist what it believed was a contractual violation and prevailed in the courts. It took several sessions of the Legislature, but in 1995 the Legislature compromised by adjusting state retiree benefits to reflect the new tax liability.

The proposed amendment to HB 3684 would have denied that adjustment to retirees who do not live in Oregon. The rationale given was that the out-of-state retirees pay no Oregon income tax and therefore should not be entitled to the adjustment because it reflected an offset to a tax liability that the out-of-staters do not incur.

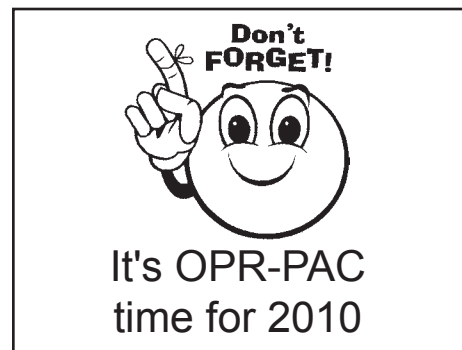
OPRI has serious reservations over both the stated rationale and about the long-term implications. Should the state a retiree chooses to live in be determinative of the benefit received? Many live elsewhere because of necessity.

Further, the tax adjustment was part of the terms of settlement of the Hughes case, a history probably unknown to most legislators today.

More importantly, if the legislature can alter retirement benefits for one group of already retired PERS members, why can it not also alter the benefits of other retirees?

We thought that the Hughes case and subsequent litigation had settled that question but we know from experience that things do not stay settled unless we stay alert. Our lobbyist caught this one and we were able to be heard. For now, that is enough. For the future, vigilance.

– Kathleen Beaufait, Chair



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