PERS-Sponsored Bills for 2011 Legislative Session

HB 2113 (PERS' housekeeping bill covers four concepts)

1. Legislator Retirement

Summary: Amends current statutes to resolve statutory conflicts governing retirement plan choices for legislators and conform to federal retirement plan laws. Removes incongruous requirements or incompatible elections, consistent with the repeal of "Break in Service." This concept is retroactive to August 29, 2003, provides a remedy for invalid elections, and provides a default in lieu of a legislator's election.

Background: Under ORS 237.650, an elected or appointed legislator must make a retirement plan election for their legislative service. In certain cases, a legislator who is already a member of the system could make an election that would result in that legislator receiving credit in two programs for the same service. That result is inconsistent with federal tax law governing retirement plan qualification and with the elimination of "Break in Service" by HB 2285 (2007).

Solution: This concept amends ORS 237.650 to better clarify the elections available to a legislator based on their membership status when they take office. If the legislator fails to make an election, the bill provides for defaults that are consistent with federal tax law. As with the elimination of "Break in Service," the concept is retroactive to August 29, 2003. It also provides that any legislator's election made after August 29, 2003 that is inconsistent with those provided in this concept is void (less than 10 elections are expected to be voided). The concept requires PERS to notify those legislators whose elections are voided and provide them 90 days to make a new election. Though extensively rewritten for clarity and simplicity, the substantive changes in ORS 237.650 are few. The primary change is that a Tier One or Tier Two member may not elect the Oregon Public Service Retirement Plan for their legislative service. Also, the provision permitting a member to roll over their regular account to the IAP is eliminated. Other statutory sections are amended to clarify their interaction with the amended ORS 237.650.

2. Retirement Credit Purchases

Summary: Amends current statute to include the retirement credit purchases omitted in SB 399 (2009). This concept would be operational September 1, 2011, the operative date of SB 399.

Background: SB 399 (2009), codified as ORS 238.222, permits retirement credit purchases via a pre-tax, trustee to trustee transfer from certain other retirement plans beginning September 1, 2011. The bill inadvertently omitted three retirement credit purchases: service as a professional wildland firefighter, service as a public safety officer in another state, and service while on loan to the federal government.

Solution: Amends ORS 238.222 to include the omitted purchases. ORS 238.222, as amended, would still be operational September 1, 2011.

3. OPSRP Vesting

Summary: This concept allows a member to vest in the OPSRP Pension Program and in an IAP employer account if the member is an active member on or after the date the member reaches normal retirement age.

Background: An OPSRP Pension Program member must be vested to receive a service retirement benefit. OPSRP Pension vesting statutes provide that a member may vest in one of two ways:

- Working 600 or more hours in each of five calendar years, or

- Reaching normal retirement age (65) if the member is an active member on that date.

As written, the current statutes do not allow active members who begin employment after normal retirement age to vest in OPSRP Pension by age. This produces anomalous results: i.e., an active member first employed after reaching age 65 works four years and is not vested, but an active member first employed at age 64 will vest upon reaching age 65 one year later. These same vesting standards apply to the optional employer additional IAP contributions under ORS 238A.340.

Solution: This concept amends current statutes to allow a member to vest in the OPSRP Pension Program and in an IAP employer account if the member is an active member on or after the date the member reaches normal retirement age. Because this anomaly has existed since the inception of the OPSRP Pension Program and the IAP, this concept is retroactive to August 29, 2003.

4. Re-codify Invalid Statutory Sections (Crediting of Tier One Accounts)

Summary: This concept would re-codify ORS 238.255 and 238.258 to remove statutory sections that were invalidated by the Oregon Supreme Court in the *Strunk* case.

Background: In the *Strunk v. PERB* case, the Oregon Supreme Court invalidated certain statutory provisions in ORS chapter 238. Those provisions need to be recodified or amended, as applicable, to reflect the Court's decision.

Solution: This concept would amend ORS 238.255 and repeal ORS 238.258 to remove invalidated statutory provisions.

NOTE: House Bill 2113 contains an emergency clause. It is effective upon passage.

HB 2114 Withdrawal of IAP/Return to Membership

Summary: Amends current statutes to prevent dual membership status upon reemployment of a member who withdrew from the Individual Account Program (IAP) but was unable to withdraw from the OPSRP Pension Program. Provides common start date for active membership in both programs upon reemployment.

Background: An OPSRP Pension Program member may withdraw only if the member is vested and the present value of the member's benefit is $5,000 or less. That member, however, is also a member of the IAP and may withdraw from that program without any restriction. That dynamic sets up a potential inconsistency if that person subsequently returns to PERS-covered employment: the employee needs to serve another waiting time to reestablish membership in the IAP, so IAP employee contributions cannot start until the end of that waiting time, but that same employee retains their OPSRP Pension Program membership, so employer contributions should start immediately. Having the same employee be a member in one program and not the other presents irreconcilable administrative challenges for PERS' operating and employer reporting systems. The "employee in dual status" problem is specific to the OPSRP Pension Program. It does not exist in the Tier One/Tier Two program because there is no similar restriction on withdrawal.

Solution: The concept provides that an OPSRP Pension Program member who withdraws from the IAP but is not eligible to withdraw from the pension program need not serve another IAP waiting time upon returning to PERS-covered employment. Upon reemployment:

- The employee would immediately return to active membership in the IAP, coinciding with the employee's return to active membership in the pension program;
- Both IAP employee contributions and OPSRP Pension Program employer contributions would begin.

The "employee in dual status" problem is eliminated, along with the associated administrative and employer reporting problems. Minor clarifying citations are made in ORS 169.810

NOTE: HB 2114 contains an emergency clause. It is effective upon passage.

HB 2115 Repeal of Guarantee of Inaccurate Benefits

Summary: This concept would repeal the provisions of SB 897 (2009) that prohibit PERS from revising a member's benefits to accord with their work history. It permits PERS to accurately administer benefits in accordance with the provisions of the plan.

Background: SB 897 (2009) passed into law February 8, 2010 (Chapter 1, Oregon Laws 2010). The bill permits a member of the system to request a verfication of certain retirement data elements. Once PERS issues a data verification to the member, the employer may not change the information verified, nor may PERS use data elements to calculate the member's retirement benefit that are less than those verified. If the information verified is incorrect and results in an overpayment of benefits, the bill requires PERS to continue to pay benefits to a member in excess of the benefits the member actually accrued under the provisions of the plan and prohibits PERS from collecting overpayments from the member. It provides PERS may charge off the uncollected amounts to the Contingency Reserve or administrative expense. Payment of benefits in excess of those actually earned by the member is inconsistent with the policy recommendation from the PERS Board.

Solution: This concept would repeal the provisions of SB 897 that prohibit PERS from revising a member's benefits to accord with their work history. PERS should be permitted to recalculate benefits to accurately reflect the member's entitlement. Prudent, responsible trust adminstration under the Board's statutory directive to "…create and maintain long-term stability and and viability in the system…." (ORS 238.601) is not consistent with an obligation to ignore and continue overpayments from the Fund for benefits to which a member is not entitled.

Under this concept, PERS could adjust benefits prospectively only and would not be permitted to recover overpayments made prior to the recalculation of the benefit. This would eliminate the unexpected financial burden imposed on a benefit recipient when invoiced for previous overpayments. The recipient would not be burdened with a repayment obligation, but would receive the correct benefit from that point forward. This concept permits PERS to accurately administer benefits in accordance with the provisions of the plan.

NOTE: HB 2115 contains an emergency clause. It is effective upon passage.