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## ANALYSIS OF “PERS SOLUTIONS”

On behalf of the PERS Coalition of Unions, we reviewed the “PERS Solutions” being proposed by the Oregon corporate community. Most of the “solutions” appear to be variations on legislative concepts which have been previously proposed and rejected because they: (1) raise legal concerns in light of the *Moro* case’s command that benefits attributable to service already performed must be protected;<sup>1</sup> (2) do nothing or little to reduce the unfunded actuarial liability (UAL) of the system; and/or (3) cut benefits again for workers who are not the source of the unfunded liability and who are already receiving lower benefits.<sup>2</sup> We discuss some of these concerns in greater detail below.

### Reinstate Employee Contributions to the Pension Plan

- Many employees pay the 6% contribution to the Individual Account Program (IAP) themselves. All state employees do, as do educators working in a quarter of the school districts. To the extent the 6% contribution is picked-up by some employers, it is something which employers have bargained into collective bargaining agreements because it served their financial interests. It cost less than salary increases.
- The reason that the 6% employee contributions go to the IAP instead of the old employee regular account to pay for the pension is because of the 2003 PERS cuts championed by Gov. Ted Kulongoski.
- Now, the Oregon corporate community, supported by Gov. Kulongoski, is asking the legislature for further cuts—i.e., the creation of a new 401K type defined contribution plan (See “Alternative Individual Account Program” in SB 148) and redirection of the 6% employee contribution<sup>3</sup> back to pay for the cost of future pension accruals (See “Contribution Account” provisions in SBs 148, 531, and 533).
- Regarding the new “Alternative Individual Account Program,” it would have the unintended consequence of granting a new benefit for vested Tier 1 and Tier 2 money match retirees,

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<sup>1</sup> See *Moro v. State*, 357 Or 167, 351 P3d 1 (2015).

<sup>2</sup> As a result of the 2003 and 2013 legislative changes, the majority of active Tier 1 and Tier 2 members now retire on a Full Formula pension and will be receiving a lower COLA, and OPSRP members, who now comprise a majority of the active members of the system, receive a lower formula at a higher retirement age and a reduced COLA. See [PERS By the Numbers October 2018](#).

<sup>3</sup> In 2017, actuarial analysis of the impact of SBs 559 and 560 diverting the 6% from the IAP accounts of OPSRP members showed a projected loss at retirement for OPSRP members in the range of 48% to as high as 75%.

because they would get their full money-match pension benefit, their traditional IAP account balance, and now their new Alternative IAP benefit.

- Regarding diversion of the 6% employee contribution from the traditional IAP to some "contribution account" which pays for future pension cost accruals (i.e., "normal cost"), the PERS Actuary has previously explained that it does nothing directly to reduce the UAL,<sup>4</sup> the vast majority of the UAL is related to pensions for those who have already retired or are inactive. The Legislative Counsel has also previously explained that you cannot charge active members for this UAL.<sup>5</sup>
- Also, although the Supreme Court in *Strunk*,<sup>6</sup> approved the diversion of the 6% contribution to the IAP account for Tier One and Tier Two members, that diversion moved the money to an account that accrued earnings as a new benefit for members. The diversion of the 6% from the IAP to the new "contribution account" comes with no new benefit to members. Whether that is legal is a question that the Supreme Court has not addressed.
- Also, any savings from future normal cost payments would be reduced by salary increases which would inevitably be bargained by employees to make-up for the diversion of the 6% contribution from their IAP.
- Finally, any savings from new hires electing only the "Alternative Account Program" (i.e., a purely 401K account) would be based on poor employee choices. Oregon can do better than lead employees into making poor choices to get some short-term savings.

#### **Create a New OHSU Style Defined Contribution Plan**

- According to the Corporate community, this proposal would call for a 12 percent employer contribution to the new 401K style, defined contribution plan.
- The current normal cost for OPSRP to a public employer is only 8.49 percent, and a PERS Policy Paper<sup>7</sup> determined that change to a 401K style defined contribution plan would not produce significant savings unless the contribution to the new plan were significantly less than the OPSRP normal cost.
- The savings for Tier 1 and Tier 2 members would also not be as significant if the correct approach is taken to protect benefits attributable to service already provided under *Moro*. These active members don't have many years left to work, and within the meaning of the majority opinion in *Moro*, the PERS Actuary would still have to account for increases in salary through the date of retirement.
- The proposal also does nothing to reduce the UAL.

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<sup>4</sup> [Steve Rodeman, PERS Director, Presentation, Senate Committee on Workforce, February 8, 2017, p. 34.](#)

<sup>5</sup> [August 31, 2016 Letter from Legislative Counsel to Sen. Johnson.](#)

<sup>6</sup> *Strunk v. PERB*, 338 Or 145, 108 P3d 1058 (2005).

<sup>7</sup> [PERS Policy Paper—Defined Contribution Plans.](#)

- Finally, the PERS Policy Paper explains all the policy reasons why a switch to a DC plan is not as efficient and creates workforce problems and retirement insecurity. Oregon PERS is already one of the most complex systems in the country, and lawmakers should pause before adding another layer of complexity to address an issue they have already resolved with the creation of OPSRP.<sup>8</sup>

### **Correct the Excesses of the Older Pension Plans**

- Moving Tier 1 and Tier 2 members into the OPSRP plan, even prospectively, eliminates core benefits which are either "expressly" or "impliedly" irrevocable which even the Legislative Counsel has previously explained give rise to a "significant" possibility of invalidation by the Supreme Court.
- Again, this change does nothing to reduce the UAL and even the savings on future pension accruals (i.e. "normal cost") would not be as great as the Corporate community estimates because to fully protect benefits based on service performed before the change, within the meaning of the majority opinion in *Moro*, the PERS Actuary would still have to account for increases in salary through the date of retirement.
- This proposal also has the unintended consequence of granting vested Tier 1 and Tier 2 money match retirees an additional pension benefit, because they would get their money match pension benefit, their IAP account balance, and then their new OPSRP pension benefit.
- There are also problems with reducing the formula, final average salary, and salary cap proposals in SB 531.
  - *Reducing the Formula*
    - Eliminates core benefits which are either "expressly" or "impliedly" irrevocable which even the Legislative Counsel has previously explained give rise to a "significant" possibility of invalidation by the Supreme Court.
    - Legislative Counsel has also previously explained that depression of the Full Formula could push more Tier 1 and 2 active members into retiring on Money Match, reducing the potential savings.
  - *Capping Final Average Salary*
    - Benefits attributable to service already provided" is a broader concept and would require application of the full uncapped salary to that portion of service already

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<sup>8</sup> In this regard, we agree with the [February 20, 2019 response of PERS Director, Kevin Olineck](#), to this committee, in which he noted, "Employers, members, legislators, the public, media, and other stakeholders suggest a variety of "PERS solutions" on a regular basis. They may do so with good intention, but generally without a comprehensive understanding of the impact their proposals have on the system, members, or employers. Many proposals are complicated ideas that require thoughtful actuarial and legal analysis to ensure they match the intent of the proponents, are implementable from a legal perspective, as well as provide long-term sustainability to the system."

- provided. Legislative Counsel has previously agreed that cap which impacts accrued benefits "would likely be unconstitutional."
- A proposal consistent with the *Moro* majority opinion would result in significantly less savings than estimated.
  - *Using a Five-Year Average Salary*
    - Impacts core benefits which are either "expressly" or "impliedly" irrevocable.
    - Legislative Counsel has previously acknowledged that protecting "accrued benefits" could be complicated under this type of proposal
    - This is particularly true if you use a method for protecting benefits attributable to past service in a manner consistent with the majority opinion in *Moro*, which the SB 531 proposal does not do.

Finally, it is important to note that in both *Moro v. State*, 357 Or 167, 230-31, 351 P3d 1 (2015) and *Strunk v. PERB*, 338 Or 145, 207-08, 108 P3d 1058 (2005), the Oregon Supreme Court rejected the argument that "economic necessity or hardship" required the State of Oregon to reduce promised retirement benefits to public employees in order to fund other services like public safety and education. In both cases, the court cited Oregon's overall low tax burden in comparison to the national average and in *Moro*, noted that the State had failed to demonstrate that any deficiencies in funding for public safety and education "could not be remedied through funding from other sources." 357 Or at 231. The Oregon legislature, therefore, must be cautious of the Oregon Corporate community's invitation to misuse our shared public responsibility to properly fund schools and public safety as an excuse for why PERS benefits "must" be cut.