COBACO
GOVERNMENT RELATIONS

Testimony in Support of -3 amendments to SB 1522

February 4, 2020

Good afternoon Chair Wagner and members of the Senate Education Committee, I am Marshall Coba representing the Insight School of Oregon, Painted Hills, an Oregon public charter school partnered with the Mitchell School District. I am testifying in support of the -3 amendments to SB 1522

The -3 amendments fix a problem for out of state employees for charter schools just like SB 201 in the 2017 session did for out of state employees of the higher education system. The -3 amendments are the same as Senate Bill 634-A in the 2019 session. SB 634-A passed the Senate Workforce Committee unanimously and was sent to Ways and Means where it died.

The -3 amendments replicate the fix for higher education in 2017. This bill ensures that contributions made to the pension program and for the Individual Account Program by Oregon's charter schools would be credited to the employees for whose benefit the contributions were made. The common thread defining this group of charter employees are contributions made on behalf of employees by their employer charter schools during a period that these employees and their employers believed they were able to participate in both the pension program and the Individual Account Program. The -3 amendments will ensure that certain charter school employees, like the higher education employees in 2017, will be treated fairly and in good faith.

PERS is supportive of the -3 amendments and has been very helpful in helping us find the appropriate fix for this issue.

We urge your support of the -3 amendments to SB 1522.

Thank you for your consideration.

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PERS Oregon Public Employees Retirement System

Employer Announcement #92
Salary Not Includable as Taxable Income and OPSRP Benefits

Under PERS statutes, eligible employees of PERS participating employers may establish membership in OPSRP Pension and IAP Programs. Once membership is established the active member may be eligible for retirement benefits based upon the salary paid to them as an active member, to the extent the salary is includable in the employee's taxable income under Oregon law.

General Membership Requirements

An eligible employee must establish OPSRP membership to qualify for OPSRP Pension benefits, and to establish an IAP account. OPSRP membership is established by:

•being an "eligible employee,"

•working in a "qualifying" position for a PERS-participating employer,

•completing a waiting period consisting of six full months of service performed in period of qualifying service with one employer with no break greater than 30 working days, and

•continuing the employer-employee relationship with the same waiting time PERS-participating employer past the end of the waiting time.

General Salary Requirements

The wages paid by the PERS participating employer must qualify as "salary" for PERS purposes as defined in ORS 238A.005(17)(a), which provides:

"Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law.

Unless specifically included under ORS 238A.005(17)(b), only compensation that is taxable in the state of Oregon and paid by a PERS employer during a period of qualifying service would be considered as a basis for PERS contributions for the OPSRP Pension Program or the OPSRP IAP, and as a basis for "final average salary" for purposes of computation of pension program retirement benefits. Salary that is not includable in the employee's taxable income under Oregon law is "Non-Subject Salary" for PERS purposes.

Example 1: Maria is a Spanish citizen working in Madrid, Spain, on behalf of the University of Oregon foreign academic exchange program in Spain. Maria performs all of her work duties in Spain. Maria is not subject to income tax under Oregon law for the wages she receives from the

University of Oregon; therefore, Maria does not have subject salary for PERS purposes under OPSRP.

Example 2: David is a full-time resident of Idaho working remotely from Boise, Idaho, on behalf of the Portland Community College as an online instructor. David performs all of his work duties in Idaho. David is not subject to income tax under Oregon law for the wages he receives from the Portland Community College; therefore, David does not have subject salary for PERS purposes under OPSRP.

If you have (or had) an employee whose salary is not includable as taxable income under Oregon law, please contact your ESC Account Team representative for assistance on how to report their data.

Employers should direct all questions concerning employee compensation and Oregon tax status to their finance office or to a qualified tax specialist of their choice.

Senate Bill 201
Oregon Public Retirement Service Retirement Plan
Out-of-State University Employees

Overview & Background:

SB 201 resolves an implementation error from 2003 related to public university out-of-state employees' participation in the Oregon Public Service Retirement Plan (OPSRP/Tier 3).

The Oregon Legislature has amended the PERS statute several times since its inception, thereby creating three membership "tiers."

- Tier 1: Employees hired before Jan. 1, 1996
- Tier 2: Employees hired on or after Jan. 1, 1996, and before Aug. 29, 2003
- Tier 3: Employees hired on or after Aug. 29, 2003

PERS Tier 3 is also referred to as the Oregon Public Service Retirement Plan ("OPSRP").

Public employees who participate in PERS receive retirement benefits that are calculated as a percentage of their salary. Under PERS Tiers 1 and 2, "salary" is defined as including all compensation, **regardless of whether the compensation is taxable in Oregon,** paid to an employee in cash out of the funds of a public employer.

The Oregon Legislature changed the definition of "salary" when it enacted OPSRP. Under OPSRP, salary includes only compensation that is includable in the employee's taxable income under Oregon law. This definition excludes compensation paid to Oregon public employees who reside and work outside Oregon ("out-of-state employees"), thus potentially preventing out-of-state employees from receiving PERS retirement benefits.

Implementation of 2003 Reforms:

In 2003, when the OPSRP statutes became effective (including the new definition of salary), the universities centrally administered their employee benefits under the Oregon University System ("OUS"), including determining employees' eligibility for PERS membership.

OUS provided OPSRP-eligible employees with generalized information regarding retirement benefits, but never clarified that compensation not taxable in Oregon would not be counted for purposes of calculating OPSRP retirement benefits.

Over the years, the universities continued to provide the same generalized retirement information regarding OPSRP. Additionally, the universities continued making contributions to PERS based on all OPSRP members' salaries, regardless of whether salaries were taxable in Oregon.

Affected employees mistakenly believe they have earned and will continue to earn benefits under OPSRP and are expecting to receive those benefits when they retire.

Proposed Solution:

SB 201 would retroactively include in OPSRP's definition of salary compensation that is not taxable in Oregon for all Oregon public university employees hired between August 29, 2003 and December 31, 2016.

The universities' primary goal is to ensure that any employees affected by this issue are made whole.

This statutory amendment would be the most cost-effective and least burdensome way to resolve this issue because the universities have already been making contributions to the pension plan and the IAP based on affected employees' total compensation, including compensation that is not taxable in Oregon. Any other solutions would require PERS to refund the universities' contributions to enable the universities to make the affected employees whole outside PERS via private settlements.

Effect of the -1 Amendment:

The amendment makes the following changes to the bill:

1. Replaces "university with a governing board" with "public university listed in ORS 352.002," because "universities with governing boards" were not in existence during the entire relevant period.

2. Changes the relevant period from 8/29/03 through 12/31/2017 to 8/29/03 through 12/31/2016.

3. Changes "lives" to "resided" because residency would be easier to administer as it provides a more objective, legal standard that can be linked to existing required documentation such as tax filings.

4. Adds language to clarify that periods of employment that begin on and after 1/1/2017 won't be covered by SB 201. In other words, only periods of "continuous employment with a public university" that begin on or before December 31, 2016, will be covered by the bill. "Continuous employment" will be defined in OAR.