



Oregon

Tina Kotek, Governor

Public Employees Retirement System

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February 14, 2023

TO: Senate Committee on Education

FROM: Heather Case, Senior Policy Advisor, PERS

SUBJECT: SB 283 Written Testimony to accompany in-person testimony February 14, 2023

Chair Dembrow, Vice-Chair Weber, and members of the committee, thank you for the opportunity to submit testimony on the effects of portions of this bill on PERS.

The agency has identified two provisions of the -3 amendment which seem to affect PERS:

- Section 19 of the bill, which creates special work after retirement exemptions for retired members
- Section 7 of the bill, which addresses substitute teacher employment and benefits.

Regarding Section 19 of the bill- If HB 2296 passes (that allows retirees to continue working unlimited hours on a permanent basis), then the special exceptions for this specified group become unnecessary. Otherwise, the agency interprets this section as only applying to Tier One/Tier Two retired members. In order to ensure both OPSRP and Tier One/Tier Two retired licensed and classified staff members are included, there would need to be a change in language to include ORS Chapter 238A.

The agency does have concerns with the administrability of Section 7 of the bill.

Section 7 states, in amended paragraph (5), that a substitute teacher employed by a school district shall be considered an employee of the school district. However, it then goes on to state in (5)(a) that the substitute teacher is "under the management of the school district". Which, if this amendment is intended to create an employer/employee relationship between the school district and the substitute teacher, seems unnecessary.

In revised paragraph (5)(b), the amendment states the substitute teacher is "eligible for retirement benefits as an employee in a qualifying position for purposes of the public employees' retirement laws..."

This paragraph would be administratively complex for our agency, as it appears to automatically put every substitute teacher in a qualifying position for PERS. A person must be working in a "qualified position" to be eligible for PERS. A qualified position is defined as a position with one or more public employers where a person works 600 hours a year or more.

Currently, PERS does have substitute teachers who are PERS members, and their employer(s) can be multiple school districts. A PERS member can be in a qualified position even if the number of hours they work across multiple PERS-covered employers equals 600 hours. It does not have to all be for one employer.

However, this bill currently puts every substitute teacher in a qualifying position regardless of the number of hours they work across their participating public employers. To help with clarity



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and to follow the same membership rules as PERS applies to all other public employees, the language in revised paragraph (5) should read:

5) A teacher employed by a school district as a substitute teacher **in a "qualifying position" as defined in ORS 238.005 or 238A.005** shall be:

(b) Eligible for retirement benefits as an employee [~~in a qualifying position~~] for purposes of the public employees' retirement laws, and eligible for health benefit plans as an eligible employee for purposes of ORS 243.105 to 243.285.

Beyond this, the language of the current amendment makes the intent of the committee vague. If the intent is to prevent school districts from contracting with private staffing contractors for substitute teachers, then there is a lot of extraneous language in Section (5) that could be removed, as having them be employees of the school district would open them up to the same benefit eligibility criteria as all other school employees.

If the language of the current amendment is meant to give substitute teachers PERS benefits regardless of who is hiring or paying them, then this language would be incredibly administratively problematic for PERS. PERS would have to set up a new administrative mechanism to charge contributions to private staffing agencies.

Because we are a system of public employers, this would appear to go against the primary reason the plan exists. Allowing public retirement benefits for persons who are reported to the IRS on W-2 forms as employees of non-public employers could risk our qualification as a tax qualified governmental retirement plan, and we would likely need to seek tax and legal counsel, at a financial cost to the fund, to protect this qualification.

Including temporary or contracted workers hired and paid through a temporary-staffing company as PERS-eligible employees introduces uncertainty into a funding system that relies on expected contributions to ensure that enough funds are available to ultimately pay members' retirement benefits. If the contributions of these substitute teachers would be paid by one or more school districts, even while the substitute teachers are being paid through a private staffing agency, then it would increase costs to the public employer and likely negate any cost savings the district is going for by contracting with a staffing agency.

The agency looks forward to meeting with committee members to further discuss amendment language for these sections.

Sincerely,

Heather Case

Senior Policy Advisor, PERS