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MEMORANDUM

April 19, 2006

TO: Richard Westfall and Robert Hoban

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2005-2006 #106, concerning the PERA Reform Initiative

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Earlier versions of this initiative were the subject of memoranda dated February 10, 2006, and March 5, 2006. Proposal 2005-2006 # 81 was discussed at a hearing on February 13, 2006, and proposal 2005-2006 #93 was discussed at a hearing on March 17, 2006. The double underlining in the purposes section of this memorandum shows the difference between this proposed measure and proposed measure 2005-2006 #93. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions addressed at the earlier hearings unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment appear to be:

1. To include amounts deducted from pay for a cafeteria plan or transportation costs in the definition of salary for purposes of the statutory provisions governing the public employees' retirement association (PERA);
2. To specify that PERA is a special purpose authority pursuant to section 24-77-102 (15) (b) (IX), Colorado Revised Statutes.
3. To create the following exceptions to the existing statutory provision specifying that PERA shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state:
 - The office of state planning and budgeting shall perform administrative oversight of the association that shall include an annual report regarding the association's performance.
 - The association shall make an annual presentation of its budget to the joint budget committee.
4. To specify that the general assembly shall appropriate funding for the administrative oversight of PERA;
5. To abolish the existing PERA board of trustees on January 1, 2007, and terminate the terms of its members serving immediately prior to the date;
6. To create a new PERA board of trustees in the governor's office of state planning and budgeting that shall consist of nine trustees as follows:
 - a. The state auditor and the state treasurer;
 - b. Three trustees appointed by the governor. With respect to the governor's three appointees:
 - i. They shall be professionally credentialed or have recognized competence in investment management, finance, banking, economics, accounting, pension administration, or actuarial analysis.
 - ii. They shall not hold another state office or position and shall not be members or beneficiaries of the association.
 - iii. One trustee shall be a member of the Colorado society of actuaries, one trustee shall be a member of the society of certified public accountants who is an expert in pensions, and one shall be a member of the Colorado bar

association who is an expert in the federal "Employee Retirement Income Security Act of 1974", as amended. The Colorado society of actuaries, the society of certified public accountants, and the Colorado bar association shall each submit a list of recommended people from their respective organizations to serve on the board. In appointing the trustees from the Colorado society of actuaries, the society of certified public accountants, and the Colorado bar association, the governor shall appoint a person from the recommendations of each respective organization;

- c. Two trustees shall be members or retirees of the defined benefit plan managed by the board and shall be elected by members of the association; and
 - d. Two trustees shall be members or retirees of the defined contribution plan managed by the board and shall be elected by members of the association.
7. To specify certain requirements regarding the staggering of the terms of the appointed and elected members of the PERA board of trustees, the removal of trustees for cause, the filling of vacancies on the board, the existence of a quorum for the transaction of business, and the compensation and reimbursement of expenses for trustees;
 8. To specify that the PERA board of trustees shall provide annual training to trustees on pension management and investment;
 9. To require the PERA board of trustees to submit an initial report to the general assembly within one hundred twenty days of the start of the first term of the board with a preliminary assessment of PERA's financial status, including the defined benefit plan, and preliminary recommendations for improving PERA's financial stability;
 10. To require the PERA board of trustees to contract with a private auditor to conduct an independent financial and performance audit every two years for all transactions and accounts kept by or for PERA, to be staggered with the audit conducted by the state auditor;
 11. To require the PERA board of trustees to determine the appropriate investment objectives for the defined benefit plan and, after reviewing recommendations from two financial institutions, adopt investment policies for each of the funds entrusted to the board;
 12. To reduce the maximum amortization period that is deemed actuarially sound for the defined benefit plan trust funds from forty to thirty years and to specify that an actuarial necessity shall exist when the defined benefit plan is not actuarially sound;
 13. In the event of an actuarial necessity, to authorize the general assembly to modify the member and employer contributions and the benefits allowed to members of the defined benefit plan, so long as the benefits of members who are eligible for a service retirement benefit or a reduced service retirement are not modified;
 14. To prohibit the attorney general from delegating his or her responsibilities as legal advisor

- to the PERA board to any legal advisor or in-house counsel hired by the association;
15. To require the association to hire legal advisors to serve as in-house counsel for the association's staff;
 16. To repeal the authority for a member that has forfeited service credit to re-purchase the service credit upon resumption of membership with PERA;
 17. To repeal the provision that allows members in the defined benefit plan to purchase service credit for service credit forfeited with a refund;
 18. To increase the number of years of service credit required for full retirement benefits for any person who became a member before January 1, 2007, but who is less than forty years of age on January 1, 2007, and whose retirement benefits have not vested on or before such date;
 19. To require the general assembly, before increasing benefits for the defined benefit plan, to conduct an actuarial study to ensure that the increases in benefits would not cause the actuarial value of assets of the association to decline below ninety percent of the actuarial accrued liabilities of the association;
 20. To eliminate PERA's existing defined contribution plan and create a new defined contribution plan on January 1, 2007;
 21. To specify that all members of the existing defined contribution plan shall become members of the newly established defined contribution plan;
 22. To require employees hired on or after January 1, 2007, to become members of the new defined contribution plan;
 23. To allow eligible members of the defined benefit plan to elect to become members of the new defined contribution plan;
 24. To require each member of the new defined contribution plan to contribute an amount equal to two percent less than the employer contribution rates specified for the defined benefit plan;
 25. Beginning January 1, 2007, to increase contributions by employees in the defined benefit plan by one-half of one percent of the employee's salary annually until the amount of the employee contribution is equal to the amount of the employer contribution;
 26. To authorize members in the defined contribution plan to make additional contributions to the member's individual account, and to specify the methods of transmitting and crediting contributions to a member's individual account for those enrolled in the defined contribution plan.
 27. To require an employer of a member of the defined contribution plan to contribute the following percentages of the member's salary to the member's individual account:

- a. 8% for members of the state, school, and local government divisions;
 - b. 10% for members who are state troopers; and
 - c. 11% for members of the judicial division;
28. To require the difference between the employer contribution rates specified in statute and the contribution rate paid by the employer into the defined contribution plan be directed to pay off unfunded liabilities in the association's defined benefit plan;
 29. To state that if the administration of the defined contribution plan creates savings, any savings will be directed toward paying the unfunded liability in the defined benefit plan;
 30. To reduce the employer contribution rate to the new defined contribution plan to a rate two percent less than the division membership employer rate for the defined benefit plan and cap employer contributions at that rate when the new pension plan has eliminated unfunded liabilities and is fully funded so as to meet the federal guidelines for state pension plans of funding one hundred percent of liabilities over a thirty-year period;
 31. To limit annual additions to each member's individual account in the defined contribution plan to the amount permitted under federal law;
 32. To allow a member of the defined contribution plan to elect to have all or part of an eligible direct rollover distribution paid directly into the member's individual account;
 33. To provide that members in the defined contribution plan shall be immediately and fully vested in their own contributions as well as the employer contributions to the plan, together with accumulated gains or losses;
 34. To allow each member of the defined contribution plan to exercise control of the investment of the member's account;
 35. To require the PERA board of trustees to select at least five investment alternatives for members, to allow members to change investments regularly, to provide members with information describing investment alternatives, and to designate, subject to certain conditions, the companies from which investment products shall be purchased;
 36. To specify that PERA and the employer shall not be responsible or liable for financial losses experienced by members of the defined contribution plan;
 37. To specify that members of the defined contribution plan may participate in PERA's optional life insurance, long-term care insurance, voluntary investment program, and health care program;
 38. To specify that the PERA board of trustees shall determine distribution options by which a

member of the defined contribution plan may elect to receive the distribution of his or her individual account;

39. To require the PERA board of trustees to provide members with quarterly reports regarding the members' accounts and administrative fees charged to members;
40. To authorize members of PERA's defined benefit plan to make an irrevocable election to participate in the defined contribution plan in lieu of the defined benefit plan, subject to certain eligibility requirements;
41. To provide for the transfer to the defined contribution plan of the member's individual account and the matching employer contributions to which the member would be entitled at the time of the transfer;
42. To specify the requirements for the transfer, including a requirement that the PERA board of trustees inform the member of the effect of moving to the defined contribution plan; and
43. To make conforming amendments to certain statutory definitions and other provisions in accordance with the proposed statutory changes.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Substantive questions:

1. If the proposed initiative becomes law, can the proponents explain the relationship between PERA and the office of state planning and budgeting (OSPB)? What authority, if any, will OSPB have over the association? Will OSPB have any authority to control, direct, or modify the actions of the PERA board or employees of the association? Will OSPB have the authority to regulate any policies, personnel decisions, management decisions, or investment activities of the board or other employees of PERA?
2. Will OSPB or the state exercise any control over the assets of PERA? Is it the proponents' intent that the revenues, assets, expenditures, or liabilities of PERA become those of the state?
3. The existing statutory definition of a special purpose authority in section 24-77-102 (15) (a), Colorado Revised Statutes, states that a special purpose authority "is not subject to administrative direction by any department, commission, bureau, or agency of the state." Section 24-77-102 (15) (b) (IX), Colorado Revised Statutes, currently lists PERA as one of the recognized special purpose authorities in the state. Given that the proposed initiative provides the office of state planning and budgeting (OSPB) with administrative oversight of PERA, does this conflict with the existing definition of special purpose authority? Are

administrative oversight and administrative direction distinct concepts? What is the proponents' intent in making a cross reference to the current statutory designation of PERA as a special purpose authority?

4. With respect to the annual report required by the proposed initiative:
 - a. Is PERA or OSPB responsible for preparing the annual report? Would the proponents consider clarifying who would prepare the report?
 - b. What documents and disclosures regarding the association's performance would need to be addressed or included in the report? How would the report assess how well the association is performing its mission in furtherance of the policy changes implemented in accordance with the proposed initiative? Would the information in the report be different from the information found in existing reports and audits currently produced regarding the association?
 - c. Besides requiring an annual report, are there any other specific actions the proponents intend for the OSPB to take that relate to PERA?
5. Is it the intent of the proponents that PERA make an annual presentation of its budget to the joint budget committee? What information would be included in the presentation? What, action, if any, could the joint budget committee take in response to the presentation? Does the proposed initiative give the joint budget committee, OSPB, or any other entity any control over PERA's budget?
6. In the new paragraph (a.7) to section 24-51-602, Colorado Revised Statutes, this version of the proposed initiative makes reference to any person whose "retirement" benefits have not vested on or before a specified date. What is the purpose of this change?
7. Section 1 (5.5) of the Colorado constitution prohibits a measure proposed by petition from containing more than one subject, which shall be clearly expressed in its title. What is the single subject of the proposed measure?