



**March 15, 2013**

## Schools budget gets hearing; board members testify on need for increased investment in schools

Beginning March 12, the Ways and Means Subcommittee on Education held three days of public hearings on the proposed budget of \$6.75 billion for K-12 education; this funding level will be considered for inclusion in **Senate Bill 5519**. Public education advocates, including three OSBA members, packed the hearing room to testify about the importance of boosting school funding.

Under the budget proposal by the Ways and Means Co-Chairs (Sen. Richard Devlin and Rep. Peter Buckley), Oregon would spend \$6.75 billion on schools in 2013-15, provided that \$200 million in savings can be found by reforming the Public Employees Retirement System.

Oregon School Boards Association President and Oregon Trail School Board member **Terry Lenchitsky** testified that OSBA members are “extremely encouraged” by the co-chairs’ proposal, which targets \$375 million more for education than the budget proposed by Gov. Kitzhaber.

“Without this level of investment, too many districts and schools in our state will have to go through yet another painful round of budget reductions,” Lenchitsky said.

He also said that as a business owner he has been dismayed to see middle and high schools cut career and technical programs – offerings that prepare young people to join the state workforce.

OSBA Secretary-Treasurer and Portland Public Schools Board member **Bobbie Regan** said she is grateful that the co-chairs’ proposal would allow Portland schools “to discuss and prioritize what works rather than to discuss and prioritize what to cut.” But she also said that her hopes for the future are being tempered by how far districts have to go to recover from years of budget cuts.

Eugene School Board member **Beth Gerot** said her district has been drawing on reserves, losing enrollment and seeing tax compression – a result of Measure 5 tax limits and decreasing property values – reduce funds available from a local option levy. She urged legislators to act quickly to approve at least \$6.75 billion for education so that districts can plan for the coming school year.

“Anything less than \$6.75 billion will mean a significantly greater disinvestment in our students,” Gerot said. “We can’t allow that to happen.”

Capitol observers believe that the budget for the State School Fund will be the first budget sent to the House and Senate for a vote, perhaps as early as the end of March or the beginning of April. Contact Morgan Allen at [mallen@osba.org](mailto:mallen@osba.org) for more information.

View Senate Bill 5519 here:

<http://www.osba.org/Resources/Article/Legislative/BillTracking.aspx?s=13&t=&r=&q=5519&c=50&key=SB%2055190&ptadd=:%20SB%205519%20Details>

## Legal opinion issued on OSBA’s PERS reform bill

One of the biggest concerns surrounding any reform or modification to the Public Employees Retirement System (PERS) is, “Will it withstand a legal challenge?” Any discussion surrounding modifications to PERS with legislators or any policy maker eventually leads to this question, too.

OSBA has proposed legislation, **Senate Bill 754**, that would make major modifications to PERS. Some of the proposals – COLA cap on retiree benefits, eliminating the out-of-state tax benefit – in SB 754 have been proposed by either the governor or the co-chairs of the Ways and Means committee through their budget development process. However, there are other elements of SB 754 that have **not** been proposed by other entities for the 2013 session. These elements include:

- Redirecting the six-percent member contribution back into the pension;
- Limiting what is included in the definition of “final average salary;” and
- Lowering the annuity rate for “Money Match” retirees.

OSBA, working with its coalition partners, sought a legal opinion on the various proposals in SB 754. The coalition retained Bill Gary of Harrang Long Gary Rudnick, P.C. Gary, a former Deputy Attorney General of Oregon and former Solicitor General of Oregon, has represented the interest of public employers in PERS litigation since 1999. Gary was the lead counsel in the *City of Eugene v. PERB*, and was also counsel in the litigation surrounding modifications made to PERS in 2003 and the cases that followed (*Strunk, White and Arken*). His knowledge and expertise related to Oregon’s PERS is well established.

In a very detailed analysis, Gary concluded that the concepts contained in SB 754 would survive a constitutional challenge and, under the Oregon Supreme Court's decision in the *Strunk* case, would be upheld and not be found to violate any contract related to PERS.

OSBA has shared Gary's opinion with the governor's staff and all legislators. It is likely that public employees will also have an analysis done by their legal counsel, and it is widely assumed the analysis will state that many of the modifications contained in SB 754 are unconstitutional and would not be upheld by the Oregon Supreme Court.

This is not unlike the situation in 2003 when the legislature was contemplating making changes to PERS. Ultimately, the Supreme Court in the *Strunk* case upheld most of the 2003 reforms.

OSBA Deputy Executive Director Jim Green stated, "We have an excellent legal analysis of what we are proposing and it appears that the modifications we are asking the Legislature to consider are constitutional. It is one lawyer's opinion, and I am sure other lawyers may disagree, but it does provide the legal pathway to make the necessary modifications we are seeking. By no means is it the final word on the matter – that is left to the justices on the Oregon Supreme Court to decide. The Legislature should act on the proposed PERS modifications and let those individuals on the Court decide."

To read a copy of the legal analysis, go to:

[http://www.osba.org/~media/Files/Resources/Legislative/SB754\\_Gary\\_Letter-3-11-13.pdf](http://www.osba.org/~media/Files/Resources/Legislative/SB754_Gary_Letter-3-11-13.pdf)

View Senate Bill 754 here:

<http://www.osba.org/Resources/Article/Legislative/BillTracking.aspx?s=13&t=&r=&q=754&c=50&key=SB%2007540&ptadd=:%20SB%200754%20Details>

## House tackles open enrollment; board member shares impacts on Tigard-Tualatin

On March 13, the House Education Committee held a public hearing on several bills related to open enrollment. When House Bill 3681 was signed into law as part of the 2011 session's education package, students in Oregon were allowed to transfer into another school district if the receiving district was willing to enroll them and had opened their borders to non-resident students.

The committee took testimony on several bills to expand, retract or put new limits on open enrollment. **House Bill 3012** would allow school districts to enroll non-resident students at any time. **House Bill 3008** would sunset the current open enrollment law in 2014 and replace it with a transfer policy that would require both districts to consent to the transfer and create an appeals process for transfer requests that were denied by the resident district.

There was passionate, and at times contentious, testimony and discussion about the open enrollment law

as proponents and opponents debated the merits of the proposed legislation. Supporters of open enrollment touted the ability for parents and students to choose educational opportunities that better meet their needs. Opponents lamented the use of marketing plans and student recruitment by some districts to encourage transfers to their district.

Tigard-Tualatin School Board member **Jill Zurschmeide** came to Salem to share the impact of the open enrollment law on one elementary school in her district. She told the committee some districts were too strict when denying transfers under the previous interdistrict transfer policy and that she believes parents should be able to transfer their child to another school if it is a bad fit or not meeting their educational needs. But despite this, she shared what she believes are the unintended consequences of the open enrollment law in this excerpt from her testimony:

*"Bridgeport Elementary (Tigard-Tualatin School District) is an excellent, diverse school with a substantial Latino enrollment. About 60% of the students qualify for free or reduced lunch, but many students come from middle- and high-income families...It is a great school: it has been recognized by the Oregon Department of Education as both a "Closing the Achievement Gap" and a "Continuing Success" school. Its OAKS scores have been significantly above the state average.*

*Stafford Primary, in the West Linn-Wilsonville School District, is a predominantly white and higher income school that has also demonstrated impressive academic success. The Stafford boundary backs up to the Bridgeport boundary.*

*In the first year of open enrollment, a total of 17 students from within the Bridgeport boundary transferred to Stafford. None of the students who transferred qualified for free and reduced lunch and none were Latino. I believe this is because such families are not able to provide transportation for their children during the day due to work or family commitments...*

*Why would parents choose out of an award-winning school that does such a great job of educating kids? I fear the answer is ugly. Some in our community now view Bridgeport as the "poor" school or the "Latino" school..."*

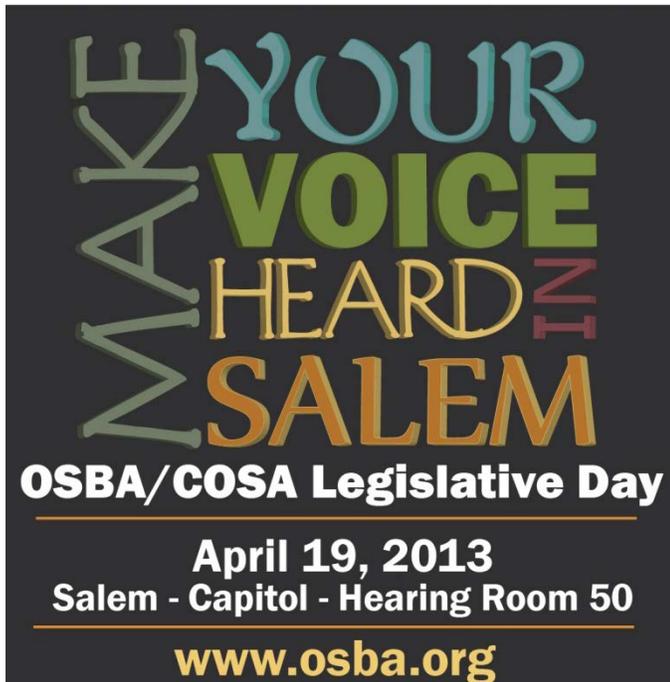
None of the bills discussed have been scheduled for a vote, but the committee is expected to discuss open enrollment further. Contact Morgan Allen at [mallen@osba.org](mailto:mallen@osba.org) if you have additional questions.

View House Bill 3008 here:

<http://www.osba.org/Resources/Article/Legislative/BillTracking.aspx?s=13&t=&r=&q=3008&c=50&key=HB%2030080&ptadd=:%20HB%203008%20Details>

View House Bill 3012 here:

<http://www.osba.org/Resources/Article/Legislative/BillTracking.aspx?s=13&t=&r=&q=3012&c=50&key=HB%2030120&ptadd=:%20HB%203012%20Details>



### Teacher competency bill debated in House committee

This week, the House Business and Labor Committee heard public testimony on **House Bill 2692**, which would direct school districts to consider competence as one of the criteria used when determining which teachers will be retained when school districts must reduce staff. The bill is sponsored by Rep. Mitch Greenlick (D-Portland) and Rep. Chris Harker (D-Washington County); it was introduced due to concerns within the Beaverton School District community about the way the district handled staffing reductions under its collective bargaining agreement with its teachers.

Rep. Greenlick supported the bill to help Beaverton and other districts in situations where reductions in the number of teachers are required due to budget issues. Greenlick stated, "It's not enough to keep a teacher who is technically licensed in a position, but doesn't really know how to teach it."

Under current law a school district must determine the teacher's seniority status and whether a teacher holds a proper license to teach. Current law also allows districts to use competence and merit of teachers in certain circumstances. Collective bargaining agreements almost always spell out the process and the criteria to be used by districts in reducing their teacher forces. Some school

districts have used competence in their determinations, but it is not a universal practice across all districts.

Parents from Beaverton testified in support of the bill. One parent, Lloyd Bernstein, told the committee that under the lay-off provisions in the Beaverton contract, his daughter's fourth-grade class was taught by a middle school art teacher earlier this year. "She was a wonderful lady, but not qualified to teach fourth grade. It went so badly that the district had to bring in a substitute teacher for a while and now has hired an actual fourth-grade teacher who originally had been laid off. It has made a tremendous difference having a teacher experienced in the grade level she is teaching."

The Oregon Education Association (OEA), with support from two teachers in the Beaverton School District, testified in opposition to the bill. Their testimony confirmed that the district had a huge task to implement in a short time period which resulted in some classroom interruptions, upsetting parents in the community. The OEA and Beaverton teachers consistently testified that the bill as written has unintended consequences and is not necessary, given that Beaverton School District administrators have worked hard to adjust teachers' duties to make appropriate teaching assignments.

The committee chair, Rep. Margaret Doherty (D-Tigard), closed the hearing with no indication of whether the committee would take any further action on the bill.

View House Bill 2692 here:

<http://www.osba.org/Resources/Article/Legislative/BillTracking.aspx?s=13&t=&r=&q=2692&c=50&key=HB%2026920&ptadd=:%20HB%202692%20Details>

### Health care cost containment bill heard

Earlier this week, the Senate General Government, Consumer and Small Business Protection Committee, chaired by Senator Chip Shields (D-Portland), held a public hearing on **Senate Bill 498**.

Senate Bill 498 is an attempt to help local governments with skyrocketing healthcare costs. Specifically, this bill would repeal ORS 243.303. This statute requires local governments, which include school districts, to provide retirees health insurance coverage under the local governments' active employees pooled health insurance program. To be eligible the retiree must have worked for a local government, retire and be receiving a retirement benefit. The statute does not require the local government to pay for the cost of the health insurance, but there is still a cost for local governments to provide this benefit.

The cost issue occurs for school districts when retirees are added to the active employee pool for risk assessment and ultimate premium rating. The retired employees pay the full premium, but because the population is older, school districts incur higher health

premiums for all their employees, and this is called an “implicit subsidy.”

The true health care costs for retirees are, on average, greater than active employees’ health care costs. Thus, if both subgroups pay the same per-capita premium for their benefits, retirees are paying less than they would if their premiums were calculated solely based on retiree-only expected health care costs. With an implicit rate subsidy, the active employee premiums are subsidizing the retiree premiums, and that subsidy creates a liability that needs to be recognized.

Some employers may think they do not have a liability because, although they offer post-employment benefits, the retirees pay the full cost of those benefits. If a retiree pays the full cost of benefits (100 percent of the premium), it might seem that there is no liability for the employer; however, there may still be a liability because of an implicit rate subsidy.

OSBA Deputy Executive Director Jim Green testified in support of the bill stating, “Cost containment for schools has to be part of the equation to balance our school district budgets. This bill attempts to help us in the area of containing costs.” Green also noted that OSBA had drafted the same bill (HB 2539), which is awaiting a hearing in the House Business and Labor Committee.

No further action is currently scheduled on SB 498.

View Senate Bill 498 here:

<http://www.osba.org/Resources/Article/Legislative/BillTracking.aspx?s=13&t=&r=&q=498&c=50&key=SB%2004980&ptadd=:%20SB%200498%20Details>

View House Bill 2539 here:

<http://www.osba.org/Resources/Article/Legislative/BillTracking.aspx?s=13&t=&r=&q=2539&c=50&key=HB%2025390&ptadd=:%20HB%202539%20Details>

## **Contact your legislator**

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Find your legislators’ contact information on the Oregon Legislature’s website:

- House - <http://www.leg.state.or.us/house/>
- Senate - <http://www.leg.state.or.us/senate/>

To contact your legislator by phone, call the Capitol Switchboard at 1-800-332-2313.