PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM
BOARD OF TRUSTEES

EORP SUBCOMMITTEE WORKING GROUP MEETING

September 5, 2017

MINUTES

Present: Mr. Brian P. Tobin, Chairman, Trustee
         Mr. William C. Davis, Trustee
         Mr. Dean M. Scheinert, Trustee
         Mr. Donald A. Smith, Jr., Trustee

Others Present: Mr. Jared A. Smout, Vice Chairman, Administrator
               Mr. Dave DeJonge, Deputy Administrator
               Ms. Ivy Voss, Assistant Attorney General
               Mr. Christian Palmer, Communications Director
               Mr. Matt Clark, State Policy Advisor, PSPRS Advisory Committee Member
               Mr. Craig Sullivan, Executive Director, County Supervisors Association of Arizona,
PSPRS Advisory Committee Member
               Mr. Bennett Cooper, Steptoe & Johnson, LLP
               Ms. Diane McAllister, Public Policy Partners
               Mr. Doug Cole, HighGround
               State Representative Don Shooter
               The Honorable Norman J. Davis (retired)
               The Honorable Bradley Astrowsky
               Mr. Nick Ponder, Pension Policy Analyst, Arizona League of Cities
               Mr. Jeff Kros, Senate Republican Assistant General Counsel and Policy Advisor
               Ms. Linsey Goodwin, Assistant Policy Advisor, Arizona House of Representatives

1. Call to Order, Roll Call, Opening remarks

   The meeting was called to order at 1:00 P.M. by Chairman Tobin and he thanked the attendees for
   their participation.

2. Presentation and discussion of legal challenges in EORP

   Mr. Cooper has represented PSPRS since 2011 regarding either EORP or PSPRS. There have
   been three waves of litigation regarding EORP. The first was Fields vs. EORP on behalf of retired
   judicial members which became effective as of 2011 by changing the formula mechanisms for PBI.
The court said for those already retired in 2011 that changes made by the legislature to the PBI
formulas violated the pension clause of the Arizona constitution article 29 sec. 1c and that
legislation regarding pensions may not be diminished as to public retirement systems. Another
wave of litigation, at the same time as the Fields case, was Hall vs. EORP which was brought on
behalf of active judges, not those who were retired, regarding the legislation as of 2011 which
was stayed pending results of the Fields case. The Hall case challenged not only the PBI formula, but
also the increase in the employee contribution rate. The case then went up to the Arizona Supreme
Court where one justice remained on the case but four others had to be replaced by people from lower courts since the four were members of EORP at that time. Five held in a three to two vote that the changes to the PBI mechanism and the employee contribution rate were also unconstitutional. The court said you do not need to look at the contract clause, this is a flat rule you cannot change. In a third wave of cases, Fields II challenged the 2013 reform legislation that closed the EORP plan and created the Elected Officials Defined Contribution Retirement System (EODCRS). The legislation created a new funding mechanism of 23.5% static employer rate based on the aggregate of EORP existing members. The new EODCRS and these new judges who went to trial and Maricopa Court ruled this case was unconstitutional. The court said you do not need to look at the contract clause, this is a flat rule you cannot change.

In a third wave of cases, Fields II challenged the 2013 reform legislation that closed the EORP plan and created the Elected Officials Defined Contribution Retirement System (EODCRS). The legislation created a new funding mechanism of 23.5% static employer rate based on the aggregate of EORP existing members. The new EODCRS and these new judges who went to trial and Maricopa Court ruled this case was unconstitutional. The theory was that since EORP plan closed, this would create a stable foundation over time to fund all of the systems. In a one day trial the Maricopa Superior Court ruled this funding mechanism was unconstitutional and that the legislature's order of 2013 is not sufficient to meet actuarial demands of EORP and that the court will not get involved as to how to fix it. As of now it has not been appealed. Discussion is still on-going with the court and plaintiffs.

We are left with nowhere to go and Superior Court has not ordered us to do anything. At this time we need clarification as to direction. The case is not yet appealable and we do not yet have a judgement. Discussion was held between the committee members and Mr. Cooper. We have said we are neutral as to the constitutional issue between the state and the plaintiffs. Actuarial numbers have been given to the court along with clarification of facts. Questions were asked through the Chairman with responses by Mr. Cooper and clarifications by the Administrator.

3. Discussion with Stakeholders and possible Action regarding the sustainability of the Elected Officials’ Retirement Plan.

Mr. Brian Tobin

Those speaking during the meeting included State Senator Debbie Lesko. Mr. Craig Sullivan, the Honorable Bradley Astrowsky and Chairman Tobin. Chairman Tobin stated we want to accomplish something that gives us peace of mind going forward, to do something to avoid the fund from going to zero and the judges want the deal that was available when they applied for a judicial position.

4. The Subcommittee of the Board of Trustees may vote to go into Executive Session (which will not be open to the public) to discuss matters pursuant to A.R.S. §§ 38-431.03(A)(3), including to obtain legal advice from the Board’s attorney on any matter listed on the agenda, including:

a. Discussion and consultation with legal counsel and Staff regarding matters arising from Items 2 and 3 above, as authorized by A.R.S. §§ 38-431.03(A) (3).

An Executive Session was not held.

5. Call to the Public.

This is the time for the public to comment. Members of the Subcommittee may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01 (H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for a later date for further consideration and possible recommendations to the Board of Trustees.

6. Schedule future meeting date(s).

No future date was determined at this time.
7. Adjournment.

The meeting was adjourned at 1:53 P.M.

Mr. Brian P. Tobin, Trustee, Chairman of the EORP Subcommittee Working Group