

Select Committee on Pension Policy

Late Employer Reporting/Dolan

Aaron Gutierrez, JD, MPA
Senior Policy Analyst

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"Securing tomorrow's pensions today."

Overview

- In 2011 a State Supreme Court decision added employees to PERS
- This created an unknown cost
 - Potentially large enough to increase contribution rates
- The practicalities are under appeal
 - Who pays contributions, etc.
- The cost may be passed to other members and employers in PERS



Today's Presentation

- Late reporting in general
- *Dolan*
 - Decision
 - Settlement
 - Appeal
- Legislation



Washington Funding Policy Requires Prefunding

- Flashback to Pensions 101
 - Ongoing contributions over time
 - Contributions are invested
 - Investment returns help offset large portion of benefit cost
- Generally, shortened prefunding reduces offset to plan costs



Late Reporting Shortens Prefunding

- Employer must report service monthly
- Contributions are made when service is reported
- If reported or paid late, then prefunding time is reduced
- Generally a cost to the plan (due to smaller offset)



Size Of Cost May Depend On Several Things

- Examples
 - How late the service is reported
 - How late the contributions are made
 - How many employees are impacted
 - Salaries of impacted employees



Who Pays That Cost?

- Absorbed by the system
 - In other words, paid by
 - All employers
 - Plan 2 members
 - If cost is large enough, can result in larger contribution rates
- Can be offset by additional employer contributions



Case History Has Three Main Parts

- Decision
- Settlement
- Appeal



Dolan v. King County (2011)

- Contract employees sued for PERS membership
 - Worked for private non-profit corporations
 - Contracted with King County to provide public defense services
- In brief, Court said they were eligible for PERS
 - Court cited county's greater and greater control over these private entities
 - Essentially made those entities an agency of the county



Parties Reached A Settlement On Practical Impacts

- Court just decided the main question
- Two parties agreed to a settlement of remedies
 - Set amount of contributions owed by King County
 - Waived the interest to be paid on those contributions
 - Required the PERS trust fund to pay the attorney's fees
 - Alternatively
 - King County can pay using a reduction in contributions
 - DRS would then deduct small amounts from monthly benefits for public defender members when they retire
- Settlement bound DRS, even though DRS not a party to the suit



DRS Filed Appeal (2013)

- “Intervention” - used by someone who has a stake in the outcome of a lawsuit, but was not named as a party
- Case is currently before Court of Appeals
- Key question for the court
 - Can a settlement agreement bind DRS when DRS was never a party to the suit?



Potential Fiscal Impacts Of The Case

- Unknown, due to lack of data
- Potential cost to PERS
- May be large enough to increase rates
 - Around 900 - 1000 employees
 - May include retroactive service back as far as the 1970s
 - No prefunding or investment returns earned to date



Two Bills Related To Dolan

- EHB 2771 - Aimed at preventing similar outcomes
- SHB 2018 - Addressing cost of late reporting



Legislature Passed Law To Prevent Similar Outcomes

- EHB 2771 (2012 c 236)
- Employees of corporations providing services under government contracts are not eligible for membership in Washington's retirement systems
- While the bill states that it is “curative and remedial,” it explicitly has no impact on the *Dolan* decision



Legislature Proposed Bill To Address Cost

- SHB 2018 - Made it to Senate Rules but did not pass.
- Would have shifted material costs back to the responsible employer
- More specifically
 - Would have required PFC to adopt additional employer-specific rates whenever late reporting increases contribution rates for other employers or members within a retirement system
 - Additional rates must be high enough to ensure cost is not passed to other employers or members
- Please see the briefing paper for details

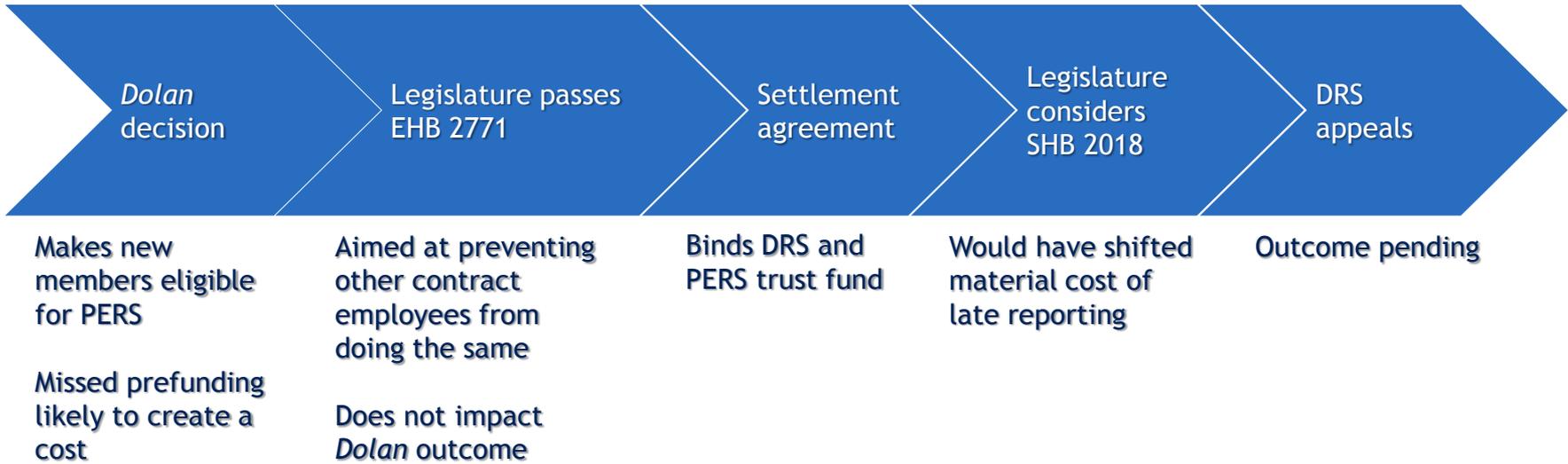


Actuarial Fiscal Note For SHB 2018

- Indeterminate impact
 - Bill covers more than just the *Dolan* impact, and we lack data on
 - *Dolan* impact specifically
 - How often late reporting of sufficient magnitude will happen in future
 - Used hypothetical example to illustrate potential impact
- Shift in cost-sharing
 - Savings to retirement plan generally
 - Cost to individual employer responsible for late reporting



Summary And Timeline



Possible Next Steps

- Nothing more at this time
- Study policy for when late reporting/contributions create a material cost
- Study the potential direct impacts from *Dolan* once the appeal and impacts are finalized

