

February 19, 1993
ILR 93-C

Speaker Rob W. Bishop
Members of the Audit Subcommittee
State Capitol Building
Salt Lake City, Utah 84114

Subject: Public Safety Retirement

Dear Legislators:

At the request of former Representative David Ostler, we examined the cost of including non-field positions in the Public Safety Retirement System (PSR). We concluded that allowing these employees to remain enrolled in the PSR system cost the state as much as \$96,300 last year. In our survey work we found at least 66 employees in administrative, support, and clerical positions that did not require law enforcement ability, enrolled in the PSR system. However, it would be difficult to remove any of these employees from PSR enrollment because they are protected by statute. We surveyed the surrounding western states and found they have more restrictive enrollment policies regarding law enforcement retirement systems. In addition, we followed up on the legislative audit report entitled **Public Safety Retirement System #88-05** and found that some agencies continue to have employees in inappropriate positions enrolled in PSR.

Non-Field Enrollments Are Costly

Last year the state contributed \$385,500 to non-contributory Public Safety Retirement accounts of employees in administrative, support, and non-law enforcement positions. Had these employees been enrolled in the non-contributory Public Employees Retirement System (PERS), the state's contribution would have been about \$289,200. In other words, it cost the state \$96,300 last year to allow these employees to remain on the PSR system. This is because the state's contribution rate for PSR enrollments is higher than for PERS enrollments. The contribution rates are higher because only 20 years of service are required for full benefits under the PSR system, whereas 30 years of service are required for PERS. In the PSR system, there were

32 employees in positions that were clearly non-law enforcement, and another 34 employees in positions that were administrative and supportive to law enforcement. The cost last year for the state to retain on the PSR system, only those positions that were clearly non-law enforcement, was \$44,600. The cost to retain the administrative and support positions on PSR was an additional \$51,700. The combined total cost to keep all 66 of these questionable positions enrolled in PSR was \$96,300 for calendar year 1992.

Many Administrative and Support Positions Enrolled

In our review we found at least 66 employees whose enrollment in the PSR system is questionable. These are employees in administrative, clerical, and support type positions within state public safety organizations. Our interviews with the personnel managers, and our review of job specifications indicate that these positions don't require peace officer status and the employees aren't performing law enforcement duties. For example, secretary, office technician, accountant, and personnel positions clearly do not require peace officer status nor law enforcement duties. However, at the Department of Corrections we found many examples of these types of positions where some employees were enrolled while other employees in the same positions were not enrolled in the PSR system.

Of these 66 questionable enrollments, 32 are employees in positions that are clearly non-law enforcement such as secretary, office technician, accounting technician, and human resource analyst. These jobs don't require law enforcement or peace officer certification, nor do they require supervision, control, or transport of inmates. These positions could easily be filled by non-certified personnel.

The remaining 34 employees whose enrollment is questionable are in positions that are considered temporary career assignments, or they are administrative positions that are usually filled by promotion, or through career advancement. These administrative positions and career promotions could be filled by non-certified personnel, but they are usually filled by someone who is already certified and has come up through the ranks. Although these positions do not require law enforcement authority, they may have frequent close contact with offenders in confinement areas. This fact gives some justification for their enrollment in the PSR system.

Statute Protects Enrollments

Recent modifications have been made to Utah's statutes regarding public safety retirement in order to protect various positions and employees enrolled in the system. In our audit report of May 1988, we reported finding numerous questionable enrollments in the Departments of Corrections, Public Safety, and Natural Resources. These positions were clerical, administrative, and support type positions that did not require peace officer status, nor did they entail hazardous duty. Subsequently, after the audit was released, some changes were made to the statute in an effort to protect these positions.

For example, the law was modified in 1989 to say that each employing unit shall submit an annual list of covered positions to the retirement office and if there is a dispute over the eligibility of a certain position, the determination would be made by Peace Officer Standards and Training (POST) council. In addition, employees who have transferred out of a covered position into an administrative non-covered position within the same department, would continue to be eligible for the PSR system. Another modification was made in 1992 that specifically protects any employee who is transferred to the Division of Information Technology Services from the Department of Public Safety, if that employee is already enrolled in the PSR system.

The statute currently says to be eligible for membership in the PSR system, an employee must perform covered "public safety service" for an employing unit. This means full-time paid service by a peace officer, correctional officer, or special function officer. However, a grandfather clause was added to the statute in 1984. It states that employees who entered the PSR system prior to Jan. 1, 1984 are exempt from the requirement.

The definitions of peace officer, correctional officer, and special functions officer have undergone several changes over the years. The peace officer definition was most recently modified in 1990. It says a peace officer is one who has been trained and certified, and whose primary duties consist of the prevention and detection of crime and the enforcement of criminal statutes. Some positions that are specifically mentioned are commissioners of Public Safety, investigators for Motor Vehicle Enforcement Division, special investigators for the Attorney General, anyone designated as a peace officer by the Department of Natural Resources, and the Division of Wildlife Resources Law Enforcement Bureau Chief, enforcement agents, and conservation officers.

The correctional officer definition has not been changed since 1985. A correctional officer is one who has been trained and certified, and whose primary duties include activities such as controlling, supervising, or transporting of inmates, or taking offenders into custody, or providing investigative and supervisory services for parolees.

The definition for special function officers was changed as recently as 1991. They must also be trained and certified. Their primary duties include specialized investigations, service of legal process, and security functions. Some positions specifically included are port of entry officers, fire arson investigators, airport security officers, and railroad special agents.

Other States More Restrictive on Enrollment

Speaker Rob W Bishop
Members of the Audit Subcommittee
February 19, 1993
Page 4

We surveyed 10 western states and found that they all consistently enroll their state police and highway patrol in some type of PSR system . However, other states do not consistently offer PSR coverage for the same positions in other departments, and Utah covers a variety of positions in some departments that are not covered by other states, as shown in Figure I.

Figure I						
Public Safety Retirement Positions						
State	Public Safety (1)	Corrections (2)	Transportation (3)	Natural Resources (4)	Attorney General (5)	Agriculture (6)
Utah	Y	Y	Y	Y	Y	Y
California	Y	Y	Y	Y	Y	-
Idaho	Y	Y	Y	Y	Y	Y
Arizona	Y	Y	-	Y	Y	-
Nevada	Y	Y	Y	-	Y	Y
Montana	Y	-	-	Y	-	-
Wyoming	Y	-	-	Y	Y	-
New Mexico	Y	Y	-	-	-	-
Oregon	Y	Y	Y	-	N/A	-
Washington	Y	-	-	-	-	-
Colorado	Y	-	Y	-	-	-
Total	11	7	6	6	6	3
(1) Highway Patrol Peace Officers and Administration (2) Correctional Officers and Employees within Confinement Facilities who supervise, control, or transport inmates. (3) Transportation Safety Investigators (Position in Highway Patrol or Division of Motor Vehicles in states other than Utah) (4) Conservation Officers and Rangers (5) Special Agents (Oregon does not have a comparable position with the AG) (6) State Veterinarian and Brand Inspectors						

For example, the transportation safety inspection program in most other states is typically conducted by the state highway patrol instead of the transportation department. The inspectors are eligible for PSR coverage because they are full-fledged patrolmen. In some cases other states had no comparable transportation safety investigator positions because they didn't have a similar vehicle safety inspection program for non-commercial vehicles.

We found that other states do not uniformly offer special retirement coverage to the same positions in the Departments of Corrections or Natural Resources. For example, four states do not have special retirement for any positions in the Department of Corrections and five states do not have special retirement for any positions in the Department of Natural Resources. Those states that do extend PSR coverage to Corrections, Natural Resources, or other departments tend to be more restrictive about which positions are eligible for coverage. For example, in Idaho the statute says that occasional assignment to hazardous law enforcement duties is not sufficient reason for designation as a police officer for retirement purposes. It also states that for employees to be eligible for PSR in the Corrections Department, they must be responsible for the custody, safety, and supervision of prisoners, and the work station must be located within the confinement facility. The statute specifically says that employees in positions of personnel management, accounting, data processing, clerical services, and in like general classifications found throughout state government not within the scope of active law enforcement, are not eligible for police officer status. Several other states have similar statutes.

Of the 10 states surveyed, 9 of them do not allow employees to continue accruing service credits in PSR once the employee transfers out of a covered position, even if the employee stays within the same department. Only Utah and Nevada allowed employees to remain covered after they transferred out of an eligible position.

Matching these questionable positions with those in other states was a time consuming task with a lot of variables to consider. We did some additional survey work with other states to verify our initial findings. Of the ten states compared, nine had comparable special agent positions with the Attorney General's Office. The duties and law enforcement authority were similar. Half of the other states provided special retirement coverage for this position and half did not.

Some Problems Still Exist

In the previous audit, we identified about 74 employees in positions whose enrollment in PSR was questionable or inappropriate. Most of these employees (57) were in the Department of Corrections. Since the 1988 audit, there has been some reduction in the number of employees with questionable enrollment. Currently there are only 66 employees whose enrollment in PSR remains questionable. Most of the elimination of questionable enrollments has come through attrition and transfers. For example, some of the employees in questionable positions have retired, some have left employment with the state, and some have simply had job transfers back to legitimate law enforcement positions.

However, there are still some additional enrollments that are questionable and were not previously considered. For example, in Corrections there are currently 55 PSR enrollments that are in questionable positions. Of this number, 24 were included in the 1988 audit. Therefore, 31 additional enrollments at Corrections were added to the list of questionable positions for 1992. These are mostly administrative and support type positions that were filled by employees who previously were certified in other positions. For example, some human resource analysts, auditors, and other support positions at the Department of Corrections are enrolled in PSR while others are not. These positions do not require certified correctional officer status and they generally work outside the confinement facility with little or no contact with inmates. However, some of the employees in these positions were certified from previous assignments before they transferred to these positions. They remain eligible for PSR coverage not because the position

Speaker Rob W Bishop
Members of the Audit Subcommittee
February 19, 1993
Page 7

warrants it, but because they were previously covered and they transferred within the department.

We hope this letter has provided the information you need on this issue. If you have any questions or need additional information, please contact us.

Sincerely,

Wayne L Welsh
Auditor General

WLW:PAH/lm