

# GFOA Annual Conference Spring, 2010



## *Minding the Store: An Overview of Fiduciary Responsibility*

Presented by:  
Michael J. VanOverbeke,  
VanOverbeke, Michaud & Timmony, P.C.

# Who is a Fiduciary?

The term “fiduciary is derived from early Roman law and means “ a person having the character of a trustee; one who has a duty to act *for another’s benefit.*”





# What Laws Establish Fiduciary Responsibilities?

**Definition of “Investment Fiduciary”;** is a person who:

- 1. exercises any discretionary authority or control in the investment of a system’s assets, and/or**
- 2. renders investment advice for a system for a fee or other direct or indirect compensation.**



# Delegation of Responsibility

- Fiduciaries generally not liable for breach of duty if such duty has been specifically allocated to another qualified fiduciary.
- Fiduciaries must exercise reasonable prudence in delegating.
- Designees must be qualified, competent, and capable.
- Delegation may only be to another recognized fiduciary



# Delegation of Responsibility

- Typically, the plan provisions empower trustees with the authority to retain investment and all other services necessary for the proper administration of the system and to pay reasonable compensation for such services.
- It is essential that the qualification status and written acknowledgement of the fiduciary is well documented in official records.
- Prudence requires fiduciaries to actively monitor the activities of all appointed fiduciaries.



# Support Services

- Many administrative functions performed by service providers or employees whose level of responsibility do not make them fiduciaries.
- Selection of support personnel should be carefully considered and all service providers should have clearly defined responsibilities and written contracts.
- Trustees should adopt clearly defined administrative policies and procedures to monitor support personnel.



# Fiduciary Liability

Fiduciaries who breach their responsibilities shall be . . .

**“personally liable”**

. . . for any losses to the plans which they administer and shall be subject to other equitable or remedial relief, including removal from their positions.



# Fiduciary Best Practices

## Fiduciary Standards

- Duty of Loyalty – Must always act in the best interest of plan participants and beneficiaries
- Care, Skill, and Diligence – Prudent Person/Expert



# Fiduciary Best Practices

## Fiduciary Standards

- Diversification
- Plan Authority (Statute, Charter, Ordinance)
- Prohibited Transactions
- Conflicts of Interest



# Fiduciary Standards

**“It is not sufficient that a trustee has a pure heart and an empty head.”**



# Conflicts of Interest

- Always act in the best interest of the plan participants and beneficiaries.
- Ensure that decisions are fair and that such fairness is well documented.
- Retain independent advisors. Consider them the experts.
- Avoid self-dealing at all costs.

*Putting the pieces together in tough economic times...*

# Plan Preservation

*“Latest Trends”*



A photograph showing a person's hand placing a puzzle piece onto a larger board of puzzle pieces. The board is light-colored, and the hand is positioned over a dark-colored piece.

# Latest Trends

## Board Governance

### Re-examination of Governance Provisions and Policies

- Separation of Policy Making from Implementation
- Board Composition
- Ethics/Code of Conduct
- Education/Travel
- Due Diligence
- Transparency



# Latest Trends

## Education Revisited

- Board Composition
- Actuarial Funding Methodologies and Assumptions
- Refocusing Investment Objectives with a Greater Understanding of Investment Risk and Matching Liabilities
- Long Term Plan Viability
- Understanding and Reducing Investment and Management Costs
- Scrutiny of Investment Professionals
- Pro-active vs. Re-active





# What to Look For? Supervision of Management

- To establish a system for reviewing the performance of the management of the Fund.
- To review financial reports and be knowledgeable about the condition of the Fund.
- To maintain an adequate system for auditing the records of the Fund.
- To scrutinize management's performance.



# What to Look For?

## Supervision of Management

- To examine the background and qualifications of management to ensure they are suited for their roles.
- To maintain a proper division of authority and responsibility among the Fund officers so as to prevent any one officer from dominating its business and affairs.
- To manage, conduct and direct the business and affairs in accordance with applicable law, regulations, and policies.
- Not to allow any officer, director or employee of the Fund to violate any law, regulations, plan document or policy applicable to the Fund.



# Questions/Comments

**Michael J. VanOverbeke, Esq.**

VanOverbeke, Michaud & Timmony, P.C.

79 Alfred Street

Detroit, Michigan 48201

313 / 578-1200

[mvanoverbeke@vmtlaw.com](mailto:mvanoverbeke@vmtlaw.com)





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# Minding the Store: An Overview of Fiduciary Responsibility

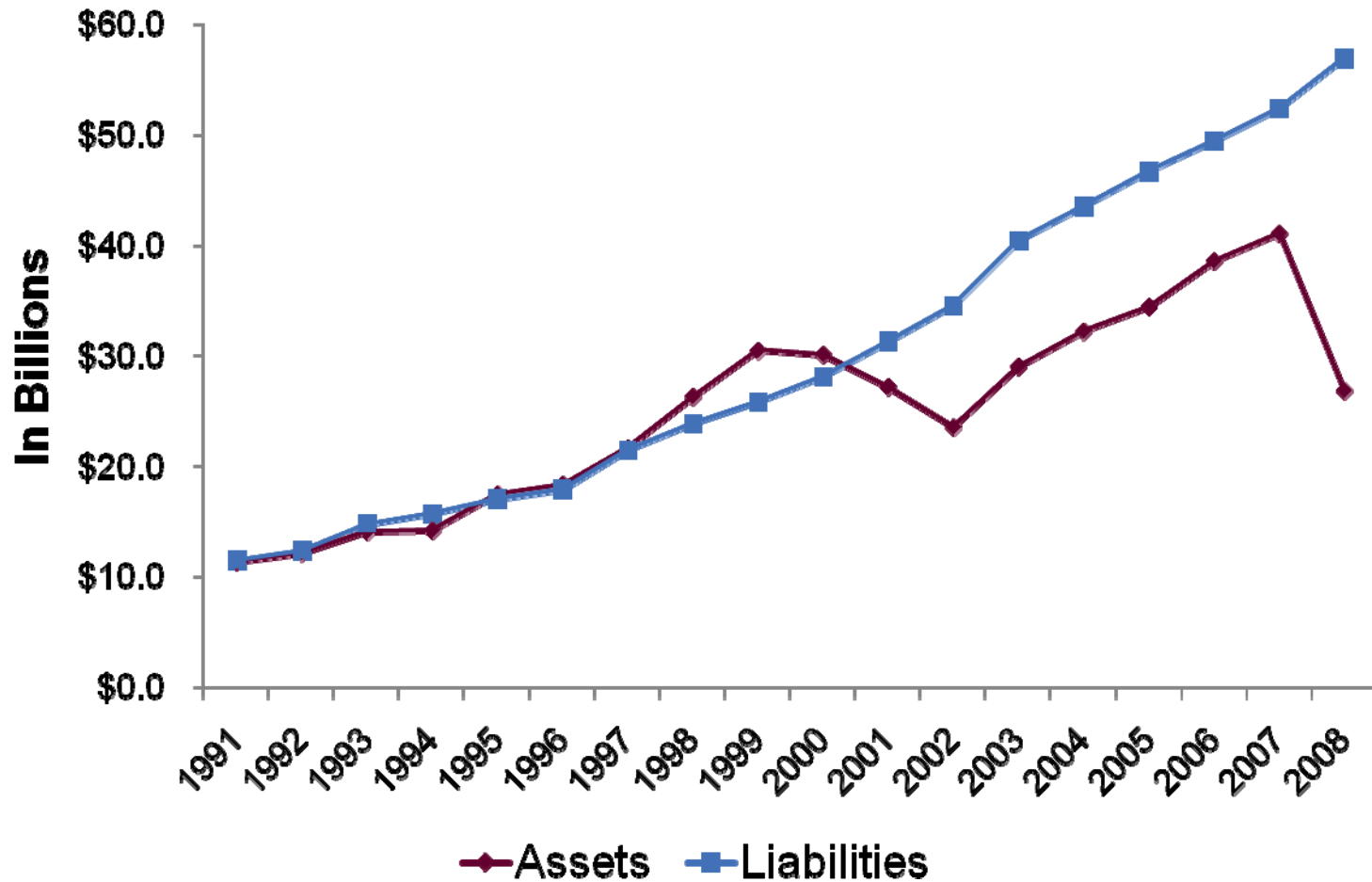
*GFOA Annual Conference  
June 6, 2010*

Gregory W. Smith

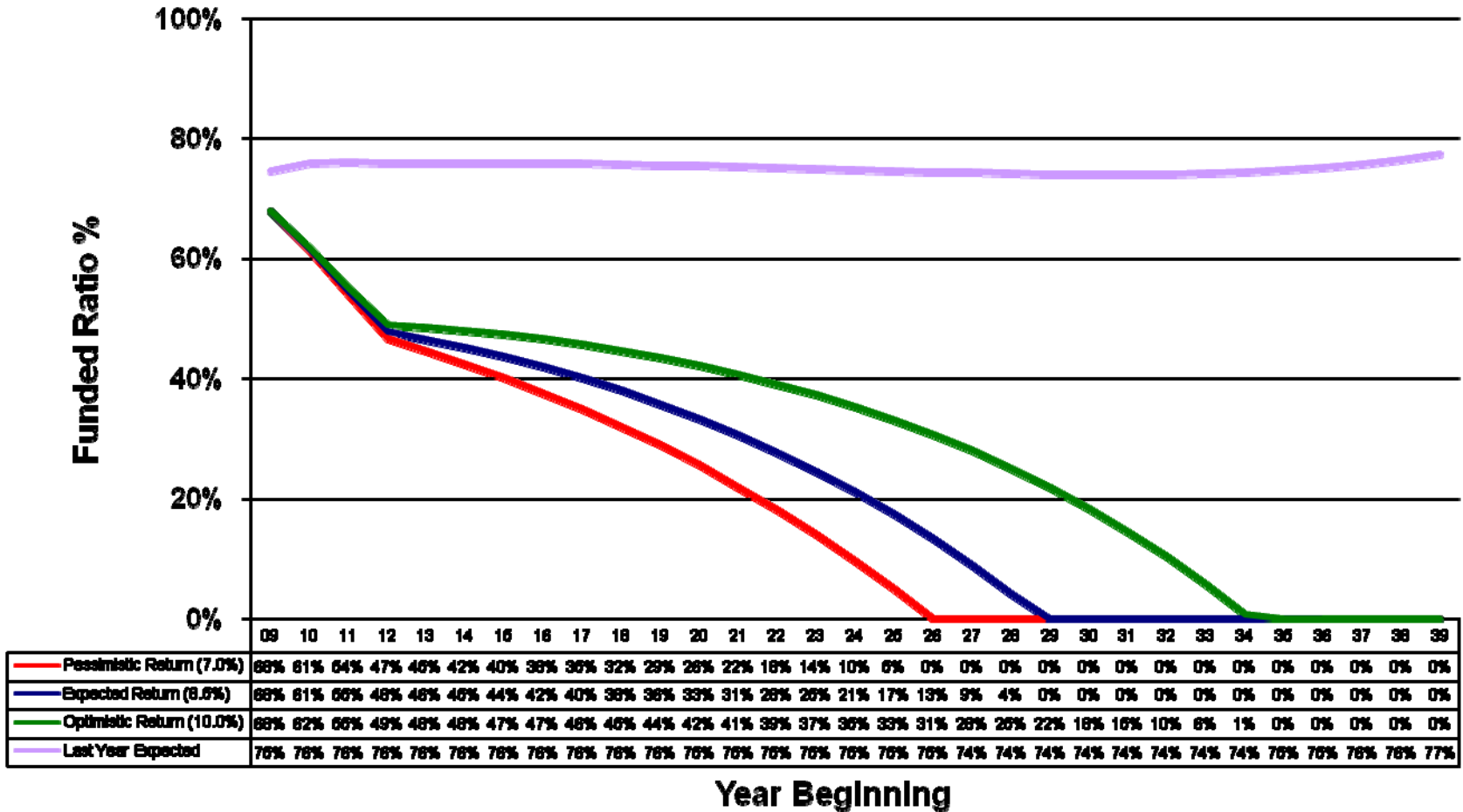
*Chief Operating Officer/General Counsel*

# PERA Assets vs. Liabilities

*Market Value as of December 31 for each year*



# State Division Actuarial Projection



— Pessimistic Return (7.0%) 
 — Expected Return (8.5%) 
 — Optimistic Return (10.0%) 
 — Last Year Expected

# Putting Together a Comprehensive Proposal

$$C+I=B+E$$

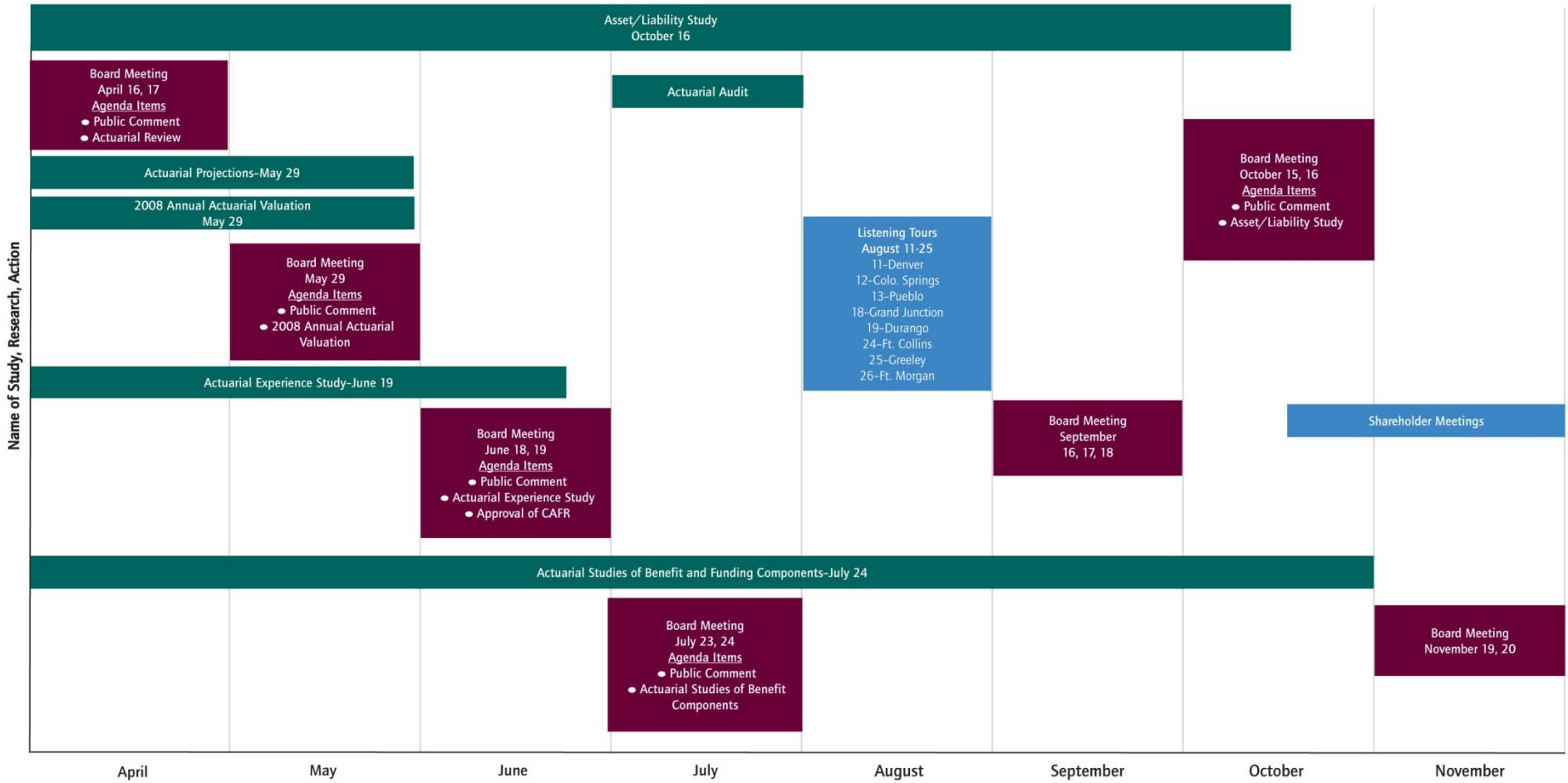
- In the long run, since contributions and investment income must equal benefits and expenses all four of these categories have been carefully considered. The comprehensive proposal for legislative action in 2010 is based on thorough calculations and on a thorough picture of how the various possible changes impact Colorado PERA's funded status and its members

# Establishing a Framework

- Shared responsibility among members, retirees and employers
- Intergenerational equity
- Long-term sustainability
- Preservation of the defined benefit plan
- Maintaining the same benefit structure for PERA's different divisions
- Recommendations are designed to have little or no short-term impact on member behavior



## Timeline for Development of PERA's Comprehensive Legislative Proposal



2009

# Senate Bill 1

- Modifies COLA – 2010 COLA based on CPI-W, future years COLA equal to 2 percent unless PERA has negative return year which triggers three-year period with COLA tied to CPI-W
- Requires a 12-month wait for receipt of COLA with age and service requirements
- Requires a 3-year HAS with 8 percent spike cap
- Eliminates the 0.4 percent employer contribution for School Division in 2013

# Senate Bill 1

*(continued)*

- Phases in Rule of 90 with minimum age 60 for new hires in 2017, increases age and service requirement for unvested members
- Modifies the corridor to be between 90 percent and 103 percent funded
- Increases working after retirement limit to 140 days for School, DPS, and higher education employers (limited to 10 retirees per employer)
- Requires PERA to report to General Assembly every five years on the impact of the COLA related to inflation

# Senate Bill 1

*(continued)*

- PERA's actuaries certify attainment of 30-year amortization period for all divisions
- Introduced as bipartisan bill with Senate President and Senate Minority Leader as prime cosponsors

# State Division 30-Year Funded Ratio Projection of Board's Recommendation

*Based on 2008 Valuation Results and 8.0% Expected Return*

