



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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March 28, 2008

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator
SUBJECT: Adoption of Administrative Review and Appeal Processes Rules
OAR 459-001-0030, *Review of Staff Actions and Determination*
OAR 459-001-0035, *Contested Case Hearing*
OAR 459-001-0040, *Petitions for Reconsideration*

MEETING DATE	3/28/08
AGENDA ITEM	B.1. Review/Appeal Processes

OVERVIEW

- Action: Adopt modifications to Administrative Review and Appeal Processes Rules.
- Reason: The rule modifications clarify employer grievance procedures.
- Subject: PERS administrative review and appeal processes.
- Policy Issue: *Should employers have a specific process to follow to seek review or appeal of staff actions and determinations?*

BACKGROUND

Last year, PERS began rulemaking on OAR 459-001-0030, -0035, and -0040 relating to reviews of staff determinations, contested cases, and petitions for reconsideration. Those original rule modifications were proposed to conform to DOJ model rules and eliminate overlap and duplicative authorities.

During that rulemaking, the Employers PERS Alliance raised several concerns relating to these processes as they applied to PERS employers. After further development and consideration, parallel rulemaking was started to better address the issues raised. Agenda items B.4. and B.5. are related rulemakings that have been started to allow for rule modifications that create a different dispute review and resolution process for employers from that used for member disputes.

SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST READING

As a result of moving some related issues to parallel rulemaking processes, the modifications to these rules have been scaled back. A separate rule was proposed to address employer disputes and the scope of OAR 459-001-0030 was restored back to only cover non-employer disputes. The issues that the Employers PERS Alliance raised related to prior period contributions were moved to yet a third rulemaking.

The draft modifications to OAR 459-001-0030 reflected in the attachment to this memo represent staff's recommended changes in light of the shift of issues to other rules. What's

remained in this rulemaking, then, are in substance the originally proposed changes to conform to DOJ's model and other process improvements.

PUBLIC COMMENT AND HEARING TESTIMONY

The public comment received through the process to this point has principally addressed issues now covered in the other two agenda items (B.4. and 5.). A rulemaking hearing was held on January 22, 2008. No one attended. Public comment closed on February 22, 2008, at 5:00 p.m. One comment was received.

PERS received a memo from Lori Sattenspiel with the Oregon School Boards Association dated January 22, 2008 on behalf of the Employers PERS Alliance. Both this rule and OAR 459-001-0032 address how the review process is initiated by the respective parties. The deadline for initiating that process runs from when the affected party is mailed an explanation of the action or determination, which sets forth appeal rights. Interested parties can intervene in any resulting contested case under the Attorney General's model rules. The language change on "shall" was made consistent; no further changes appear to be warranted.

Regarding OAR 459-001-0035, the language on informal conferences has been restored. As to how a person intervenes as a party, that process is spelled out in the model rules, which PERS has expressly adopted. Lastly, there are purposefully no specific content requirements for a "written argument" to allow flexibility in addressing issues and whether a late petition should be considered is already addressed in PERS' rules in general on when documents can be considered to be timely submitted.

LEGAL REVIEW

The rules were submitted to the Department of Justice for legal review. Any comments or changes are incorporated in the rules as presented for adoption.

IMPACT

Mandatory: No, the Board need not adopt the rules.

Impact: Clarification of the process in light of DOJ model rules.

Cost: There are no discrete costs attributable to the rules.

RULEMAKING TIMELINE

April 13, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2007	<i>Oregon Bulletin</i> published the Notice.
May 18, 2007	PERS Board notified that staff began the rulemaking process.
May 22, 2007	Rulemaking hearing held at 2:00 p.m. in Tigard.
June 15, 2007	First Reading of the rules.
June 22, 2007	Initial public comment period ended at 5:00 p.m.

September 21, 2007 Second Reading of the rules.
September 30, 2007 Re-opened public comment period expired at 5:00 p.m.
October 19, 2007 Third Reading of the rules was postponed to November 16, 2007.
November 16, 2007 Third Reading of the rules was postponed to February 15, 2008.
December 15, 2007 Rule Re-noticed to Secretary of State.
January 22, 2008 Rulemaking hearing held in Tigard.
February 15, 2008 Third Reading of the rule.
February 22, 2008 Public comment period ended at 5:00 p.m.
March 28, 2008 Board may adopt the permanent rules.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-001-0030, 459-001-0035 and 459-001-0040, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: The rule modifications clarify employer grievance procedures.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if the Board determines that a change is warranted.

B.1. Attachment 1 - OAR 459-001-0030, Staff Actions & Determinations Regarding Persons
B.1. Attachment 2 - OAR 459-001-0035, Contested Case Hearing
B.1. Attachment 3 - OAR 459-001-0040, Petitions for Reconsideration
B.1. Attachment 4 – Sattenspiel letter dated January 22, 2008