

# OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

**Friday**  
**February 15, 2008**  
**1:00 P.M.**

**PERS**  
**11410 SW 68<sup>th</sup> Parkway**  
**Tigard, OR**

	<b>ITEM</b>	<b>PRESENTER</b>
<b>A. Administration</b>		
1.	November 16, 2007 Board Meeting Minutes	CLEARY
2.	Director's Report	
	a. Forward-Looking Calendar	
	b. OIC Investment Report and Variable Account Restructure	SCHMITZ
	c. Employer Reporting and Outreach Program	
	d. Budget Report and Budget Note Progress Report	
	e. Retirees Health Insurance Update	
	f. Administrative Procedures Act Amendments	
<b>B. Consent Action and Information Items</b>		
1.	Third Reading of Administrative Review & Appeal Processes	
2.	First Reading of Employer Contributions for Prior Periods	
3.	Notice of Review of Staff Actions Regarding Employers	
4.	Second Reading of ETOB	
5.	Notice of Definition of Salary	
6.	Notice of Selection of Benefit Option & Commencement of Allowance (Disability)	
7.	Notice of Unforeseeable Emergency Withdrawal Committee	
<b>C. Action and Discussion Items</b>		
1.	2007 Preliminary Earnings Crediting	ORR / RODEMAN
2.	Preliminary 2009 Legislative Concepts - Review	RODEMAN
<b>D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225</b>		
1.	Litigation Update	LEGAL COUNSEL

Note: There will be an Audit Committee meeting immediately following the regular Board meeting.

**Note:** *If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.*

Michael Pittman, Chair \* James Dalton \* Thomas Grimsley \* Eva Kripalani \* Brenda Rocklin  
 Paul R. Cleary, Executive Director

Level 1 - Public

MEETING	2-15-08
DATE	
AGENDA	A.1.
ITEM	Minutes

## PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting  
1 P.M., November 16, 2007  
Tigard, Oregon

### MINUTES

**Board Members:**

Mike Pittman, Chair  
Brenda Rocklin, Vice-Chair  
James Dalton  
Thomas Grimsley  
Eva Kripalani

**Staff:**

Paul Cleary  
Donna Allen  
Patrick Teague  
Zue Matchett  
Susan Riswick

Gay Lynn Bath  
Jeff Marecic  
Helen Bamford  
Dale Orr  
David Crosley  
Dave Tyler

Steve Rodeman  
Stephanie Vaughn  
Beth Porter  
Tom Anderson  
Steve Delaney  
Joe DeLillo

**Others:**

Deborah Tremblay  
Matt Larrabee  
John Borden  
E. Marie Laird  
Bill Hallmark

Craig Stroud  
Blake Johnson  
Dallas Weyand  
Karen Artiaco  
Erica Hagedon  
Steve Manton

Greg Hartman  
David Wimmer  
Linda Ely  
Bruce Adams  
Michael Adams  
Barbara Sandoval

Keith Kutler  
Lori Sattenspiel  
Duane Bales  
Scott Winkels

Chair Mike Pittman called the meeting to order at 1:00 P.M.

### ADMINISTRATION

#### B.1. BOARD MEETING MINUTES OF SEPTEMBER 21, 2007

The Board unanimously approved the minutes of the September 21, 2007 Board meeting.

#### B.2. DIRECTOR'S REPORT

Director Cleary presented the Forward-Looking calendar and said there is no meeting scheduled for December. Cleary reviewed the Oregon Public Employees Retirement Fund investment report ending September 30, 2007 showing regular account returns were 10.44% year-to-date. Cleary noted that employer reporting continues to improve and 2007 performance targets are on schedule. Cleary said that the agency will close the 05-07 budget with a positive variance. He noted budget estimates for staff and management salary adjustments are complete and anticipates that DAS will request funding for the related COLAs that will create a positive budget variance for the 07-09 biennium. Cleary presented the results of 2007 customer satisfaction surveys which indicated substantial improvement in ratings by both members and employers in all service factors. Cleary provided a memo on the legislative concept schedule for the 2009 session and anticipates there will be no PERS related legislation in the February 2008 supplemental session.

### CONSENT ACTION AND INFORMATION ITEMS

#### C.1. ACTION ON CONTESTED CASE HEARINGS

Steve Rodeman, Policy, Planning, and Legislative Analysis Division (PPLAD) administrator presented the staff recommendations in the contested case hearings of Lynn Topp, Betty Britt, James Wallace, Deanna Gary, Jan Karius and Susan Aronson.

Vice-Chair Rocklin summarized the issues discussed at the morning session hearings.

It was moved by James Dalton and seconded by Eva Kripalani to approve the staff recommendations as presented. The motion passed unanimously.

Under that motion, the Board acted on each contested case item as follows:

ITEM A.1. CONTESTED CASE HEARING FOR LYNN TOPP

Postponed for further consideration.

ITEM A.2. CONTESTED CASE HEARING FOR BETTY BRITT

Postponed for further consideration.

ITEM A.3. CONTESTED CASE HEARING FOR JAMES WALLACE

Postponed for further consideration.

ITEM A.4. CONTESTED CASE HEARING FOR DEANNA GARY

Adopted the draft final order as presented in the contested case hearing of Deanna Gary.

ITEM A.5. CONTESTED CASE HEARING FOR JAN KARIUS

Adopted the draft final order as presented in the contested case hearing of Jan Karius

ITEM A.6. CONTESTED CASE HEARING FOR SUSAN ARONSON

Adopted the draft final order as presented in the contested case hearing of Susan Aronson

C.2. ADOPTION OF WITHDRAWAL RULES

Rodeman presented the proposed adoption of the new and modified Withdrawal Rules to establish and clarify procedures for withdrawals permitted under the Oregon Public Service Retirement Plan (OPSRP) pension and Individual Account Program (IAP) programs and PERS Chapter 238 Program.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the Chapter 238 rule modifications as presented to OAR 459-010-0055, and the new OPSRP and IAP rules OAR 459-075-0020 and 459-080-0020. The motion passed unanimously.

C.3. ADOPTION OF CREDITING EARNINGS TO EMPLOYER LUMP-SUM PAYMENTS RULES

Rodeman presented the proposed adoption of Crediting Earnings to Employer Lump-Sum Payments Rules that would allow for the implementation of payroll-to-payroll amortization of side accounts as opposed to the current annual basis.

It was moved by Tom Grimsley and seconded by Brenda Rocklin to adopt the rule modifications as presented to OAR 459-007-0530. The motion passed unanimously.

**C.4. ADOPTION OF LUMP-SUM PAYMENTS BY EMPLOYERS RULES**

Rodeman presented the proposed adoption of Lump-Sum Payments by Employers Rules that would conform these rules to payroll period-based application of side account funds.

It was moved by Tom Grimsley and seconded by Brenda Rocklin to adopt the rule modifications as presented to OAR 459-009-0084, 459-009-0085, and 459-009-0090. The motion passed unanimously.

**C.5. ADOPTION OF ELIGIBILITY RULES**

Rodeman presented the proposed adoption of modified Eligibility Rules to clarify current practice and administration of membership eligibility standards, accrual of creditable service, and the effect of reaching earliest retirement age.

It was moved by Brenda Rocklin and seconded by Mike Pittman to adopt the rule modifications as presented to OAR 459-010-0003, 459-010-0014, 459-010-0035, and 459-013-0110. The motion passed unanimously.

**C.6. ADOPTION OF EARNINGS CREDITING AT LOSS OF MEMBERSHIP RULES**

Rodeman presented the proposed adoption of new and modified Earnings Crediting at Loss of Membership Rules that conform to changes required by Section 5 of HB 2619 which require PERS to credit net earnings to Loss of Membership accounts when a former member re-establishes active membership.

It was moved by Eva Kripalani and seconded by James Dalton to adopt the rule modifications as presented to OAR 459-007-0110 and 459-007-0290, and adopt the new rule OAR 459-007-0160. The motion passed unanimously.

**C.7. ADOPTION OF ELIMINATION OF BREAK IN SERVICE RULES**

Rodeman presented the proposed adoption of modified Elimination of Break in Service Rules to comply with HB 2285 changes to ORS Chapter 238A regarding "Break in Service" and the full-time equivalency (FTE) accrual method for OPSRP Pension Program retirement credit.

It was moved by Tom Grimsley and seconded by Brenda Rocklin to adopt the rule modifications as presented to OAR 459-011-0050, 459-070-0001, 459-075-0010, and 459-075-0150. The motion passed unanimously.

**C.8. ADOPTION OF ALTERNATE PAYEES RULES**

Rodeman presented the proposed adoption of modified Alternate Payees Rules necessary to comply with federal statutory changes to governmental deferred compensation plan regulations enacted pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 that allow an alternate payee to take a distribution without a qualifying event, if allowed in a Qualified Domestic Relations Order.

It was moved by Tom Grimsley and seconded by Mike Pittman to adopt the rule modifications as presented to OAR 459-050-0080 and 459-050-0220. The motion passed unanimously.

#### C.9. ETOB RULES UPDATE

Rodeman updated the Board on rule modifications that have been drafted to administer the requirements of HB 2280 which changed the timing and standard for testing retirement plans for employers of police and fire members that are exempt from PERS because the employer's plan has been determined to be equal to or better than (ETOB) the benefits provided under PERS. Rodeman said that staff is further developing and evaluating the ETOB rules in light of HB 2280's changes. Chair Pittman requested that the ETOB rules be re-opened for public comment given the potential draft revisions.

#### C.10. ADOPTION OF IAP ACCOUNT INSTALLMENTS RULES

Rodeman presented the proposed adoption of modified IAP Account Installments Rules, to include changes resulting from HB 2679 that provided a new distribution option for retirement benefits paid from the IAP account. This new option would pay installments based on the member's estimated life expectancy.

It was moved by Brenda Rocklin and seconded by Mike Pittman to adopt the rule modifications as presented to OAR 459-080-0250. The motion passed unanimously.

#### C.11. ADOPTION OF NOTICE OF CONTEST RULES

Rodeman presented the proposed adoption of modified Notice of Contest Rules, to comply with HB228 which changed the term "notice of contest" to "notice of dispute." Rodeman said there were minor changes in the grammar and terminology.

It was moved by Brenda Rocklin and seconded by Mike Pittman to adopt the permanent rule modifications as presented to OAR 459-045-0030. The motion passed unanimously.

#### C.12. ADOPTION OF REEMPLOYED RETIREES RULES

Rodeman presented the proposed adoption of modified Reemployment of Retirees Rules to accommodate 2007 legislative change to the categories of retired members who can return to work after retirement under the PERS Chapter 238 Program and exceed the 1039-hour limit and to reflect the most recent Social Security annual compensation limits.

It was moved by Tom Grimsley and seconded by Eva Kripalani to adopt the rule modifications as presented to OAR 459-017-0060. The motion passed unanimously.

#### C.13. UPDATE ON REVIEW OF EMPLOYER DISPUTES AND PRIOR PERIOD CONTRIBUTIONS

Rodeman reviewed the status of Review of Employer Disputes and Prior Period Contributions Rules. Rodeman said that the rule will be re-opened for public comment and that staff will re-draft proposed rule modifications for review by the LAC before returning to the Board for further consideration or adoption.

#### C.14. DELEGATION OF SUBPOENA AUTHORITY

Rodeman presented a review of challenges that staff encounters when trying to recover overpayments or erroneous payments that occur when PERS is not informed in a timely manner of a benefit recipients passing away or when benefit checks are fraudulently negotiated.

Rodeman recommended that the Board delegate the subpoena authority provided by ORS 238.655 to the Executive Director to be exercised in limited circumstances under qualified criteria. This would allow PERS staff to access account information and other financial institution records necessary to pursue payment recovery.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the staff recommendation as presented. The motion passed unanimously.

### **ACTION AND DISCUSSION ITEMS**

#### **D.1. 2006 ACTUARIAL VALUATION REPORT**

Mercer Actuaries Bill Hallmark and Matt Larrabee presented the results of the December 31, 2006 actuarial evaluation, and reviewed the risks and underlying dynamics of the future funding status and contribution rates. Key findings included average employer contribution rates are getting smaller; funded status continues to improve; break-in-service legislation has no net impact on rates; and approximately 5,000 members were added to Tier 2 who had not been previously included in a system-wide valuation.

#### **D.2. 2006 ACTUARIAL EQUIVALENCY FACTORS**

Hallmark and Larrabee presented their analysis and recommendation regarding the 2006 Actuarial Equivalency Factors (AEF) to be used for retirement benefits dated January 1, 2008 through December 31, 2009. It was recommended that the Board re-adopt the 2005 AEFs as the 2006 AEFs because mortality and earnings assumptions did not change enough between the 2005 and 2006 Experience Studies to warrant a change in the AEFs.

It was moved by James Dalton and seconded by Eva Kripalani to adopt the actuarial equivalency factor tables, effective January 1, 2008 as recommended. The motion passed unanimously.

### **EXECUTIVE SESSION**

Pursuant to ORS 192.660 (2) (f), (h), and ORS 40.255, the Board went into executive session at 2:25 P.M.

The Board reconvened to open session.

Chair Pittman adjourned the meeting at 2:40 P.M.

Respectfully submitted,



Paul R. Cleary  
Executive Director

# PERS Board Meeting Forward-Looking Calendar

MEETING	02-15-08
DATE	
AGENDA	A.2.a
ITEM	Calendar

## March 28, 2008

### **1:00 P.M., March 28, 2008**

Adoption of Staff Action & Determinations Rules

Adoption of Employer Contributions for Prior Periods Rule

First Reading & Adoption of Review of Staff Actions Regarding Employers Rule

Adoption of ETOB Rules

First Reading and Adoption of Definition of Salary Rules

First Reading of Selection of Benefit Option and Commencement of Allowance Rule (Disability)

First Reading of Unforeseeable Emergency Withdrawal Committee Rule

2007 Final Earnings Crediting

Preliminary 2009 Legislative Concepts – Approval to Submit to DAS

## April 2008

**No Meeting Scheduled**

## May 2008

### **May 16, 2008 (tentative)**

Adoption of Selection of Benefit Option and Commencement of Allowance Rule (Disability)

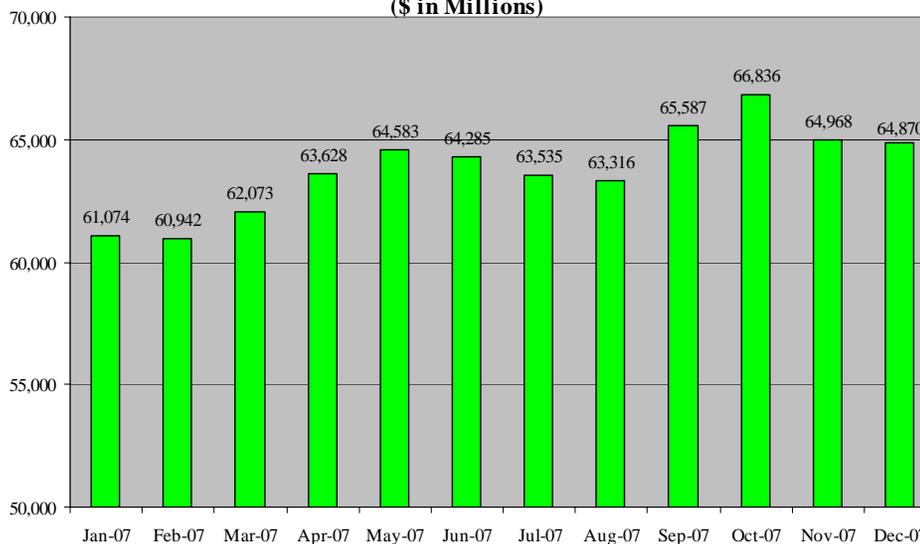
Adoption of Unforeseeable Emergency Withdrawal Committee Rule (OSGP)

OPERF	Regular Account				Historical Performance					
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands <sup>2</sup>	Actual	Year-To-Date <sup>3</sup>	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	14-24%	19%	\$ 14,737,494	23.3%	5.34	5.34	9.56	8.98	9.95	14.17
Non-US Equity	14-24%	19%	13,081,504	20.6%	16.03	16.03	21.34	20.47	20.71	24.58
Global Equity	5-11%	8%	4,838,529	7.6%	N/A					
Private Equity	12-20%	16%	8,770,408	13.8%	25.76	25.76	20.64	28.00	27.65	21.48
<b>Total Equity</b>	<b>60-70%</b>	<b>62%</b>	<b>41,427,935</b>	<b>65.4%</b>						
Opportunity Portfolio			443,107	0.7%	3.01	3.01				
<b>Total Fixed</b>	<b>22-32%</b>	<b>27%</b>	<b>16,790,351</b>	<b>26.5%</b>	<b>4.84</b>	<b>4.84</b>	<b>5.34</b>	<b>4.78</b>	<b>5.13</b>	<b>5.99</b>
<b>Real Estate</b>	<b>8-14%</b>	<b>11%</b>	<b>4,702,018</b>	<b>7.4%</b>	<b>10.20</b>	<b>10.20</b>	<b>18.44</b>	<b>23.00</b>	<b>22.52</b>	<b>21.39</b>
<b>Cash</b>	<b>0-3%</b>	<b>0%</b>	<b>-</b>	<b>0.0%</b>	<b>5.41</b>	<b>5.41</b>	<b>5.23</b>	<b>4.53</b>	<b>3.75</b>	<b>3.26</b>
<b>TOTAL OPERF Regular Account</b>	<b>100%</b>		<b>\$ 63,363,411</b>	<b>100.0%</b>	<b>9.66</b>	<b>9.66</b>	<b>12.44</b>	<b>12.69</b>	<b>13.13</b>	<b>14.98</b>
<b>OPERF Policy Benchmark</b>					<b>10.51</b>	<b>10.51</b>	<b>12.68</b>	<b>11.71</b>	<b>11.97</b>	<b>14.29</b>
<b>Value Added</b>					<b>(0.85)</b>	<b>(0.85)</b>	<b>(0.24)</b>	<b>0.98</b>	<b>1.16</b>	<b>0.69</b>

**Asset Class Benchmarks:**

Russell 3000 Index	5.14	5.14	10.30	8.89	9.65	13.63
MSCI ACWI Free Ex US	17.12	17.12	22.04	20.37	20.62	24.52
Russell 3000 Index + 300 bps--Quarter Lagged	19.64	19.64	16.43	17.07	17.67	20.32
LB Universal--Custom FI Benchmark	6.34	6.34	5.56	4.71	4.77	4.91
NCREIF Property Index--Quarter Lagged	17.30	17.30	17.46	18.03	16.60	14.79
91 Day T-Bill	5.00	5.00	4.93	4.30	3.55	3.07

**TOTAL OPERF NAV**  
(includes variable fund assets)  
One year ending December 2007  
(\$ in Millions)

<sup>1</sup>OIC Policy 4.01.18, as revised September 2007.<sup>2</sup>Includes impact of cash overlay management.<sup>3</sup>For mandates beginning after January 1, YTD numbers are "N/A". Performance is reflected in Total OPERF.

*Agenda item from January 30, 2008 OIC meeting.  
For PERS Board informational purposes only.*

## **Public Equities Variable Account Restructure**

### **Purpose**

Staff is recommending restructuring the OPERF Variable Account from a U.S. equity portfolio to a global equity portfolio.

### **Background**

The Variable Account was established in 1968 to allow PERS members, wishing to take additional risk, the potential to receive higher benefit payments in retirement. Members who chose to participate in the Variable Account have their retirement allowance adjusted based on whether the contributions invested in that account earned more or less than those contributions would have earned in the Regular Account. Oregon Law requires that moneys in the Variable Account shall be invested “primarily” in equities, including common stock, securities convertible into common stock, real property, and other recognized forms of equities.

OPERF was managed much differently when the Variable Account was first established, and was invested in fixed income and U.S. equities only. The expected return profile of OPERF has changed significantly over time with the addition of private equity, real estate, and non-U.S. equity.

Implementation of actions taken by the 2003 Oregon Legislature necessitated changes to be made in administrative and custodian procedures, at both the Office of the State Treasurer and PERS. OPERF was unitized in January 2004, and the Regular Account, the Individual Account Program (IAP), the Oregon Public Service Retirement Plan (OPSRP) Pension Program and two retirement health insurance accounts all own units of “OPERF.” Until OPERF was unitized, the Variable Account was embedded within the Domestic Equity Fund (DEF) of OPERF.

One change enacted by the 2003 legislation was to “freeze” the Variable Account by eliminating any new contributions (except for the small number of Judge members who can still contribute to the Variable Account). Also, members can make a one-time election to move their Variable Account balance to the Regular Account at or near retirement. The Variable Account is presently cash flow negative, and the outflows are steadily increasing. The Variable Account will diminish in size, until it goes away, which could be decades off. In 2004, the Variable Account assets were separated from the DEF as an alternative to unitizing the DEF. The current structure of using the three enhanced index managers (two with quantitative investment processes) was implemented, with the thought that low-risk managers should provide good risk-adjusted returns, and not under-perform by significant amounts over prolonged periods. The structure worked well initially, but the hedge fund de-levering last August has caused low risk quantitative managers to under-perform by levels far greater than anyone foresaw.

Staff and Strategic Investment Solution (SIS) recommend restructuring the Variable Account for the following reasons:

- The current Variable Account structure that employs two thirds of the assets managed by quantitative investment managers, could benefit from additional manager style diversification.
- In August 2007, the OIC adopted a new asset allocation policy for OPERF. Instead of separate allocations to domestic and international equities, there is now one allocation to public equities. The large home country bias of the domestic equity allocation was eliminated.
- SIS's long-term return forecast for global equities is higher than for domestic equities.
- The OIC's Investment Objectives and Policy Framework provide a long-term return forecast for Public Equity (global) and for OPERF at 9.0 percent and 8.9 percent, respectively. The SIS long-term return forecast for U.S. equities is actually below the 8.9 percent return forecast for OPERF.

Staff and SIS looked at the following options for restructuring the Variable Account:

- Keep all of the assets with DEF managers, reducing the amounts managed by the three existing managers and adding several other DEF managers that employ a fundamental investment process. This option does not solve the problem that over a long time horizon, the Variable Account expected return would be equal to or below the Regular Account expected return. The structure is complex for a fund that will continue to diminish in size, making this a poor long-term solution.
- Buy units in OPERF. Although this would be a simple solution, it is questionable whether it meets the legal requirement to invest "primarily" in equities. Also, members' expectation to be fully invested in equities has been set through nearly 40 years of history.
- Unitize the public equity component of OPERF and have the Variable Account own units. This provides a global equity asset allocation with an anticipated excess return. However, this creates a sub-unitization structure since OPERF is already unitized, making the structure complicated and more expensive, a cost that would have to be born by Variable Account holders.
- Use a MSCI ACWI index fund. This option is consistent with the OIC's asset allocation adopted for the Regular Account, provides an estimated long-term return above the Regular Account's long-term forecasted return, has very low fees, is very simple to manage for cash flows, and should be a long-term solution as the Variable Account diminishes in size.

### **Recommendation**

Staff recommends moving all monies in the Variable Account to BGI index funds that track the MSCI ACWI index. OIC Policy 4.05.11, 4.05.13, and the OIC's Statement of Investment Objectives and Policy Framework are amended to reflect this change.

*Note: OIC approved the Treasury staff recommendation on January 30, 2008.*



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Paul R. Cleary, Director  
SUBJECT: Employer Reporting and Outreach Program

MEETING	<b>2-15-08</b>
DATE	
AGENDA	
ITEM	<b>A.2.c.</b> ER Update

PERS is currently working with 878 employers to process outstanding 2006 and 2007 employer reports and member records. In addition, PERS continues to monitor all employer account receivables and conduct its Employer Outreach Program.

### EMPLOYER REPORTING

The table below shows the status as of January 25, 2008 of employer reports and member records for calendar years 2006 and 2007. We will include calendar year 2008 in the next Board report.

	Calendar Year 2006	Calendar Year 2007
Reports due:		
▪ Number expected	12,892	13,072
▪ Number received	12,834	12,863
▪ Percent received	99.6%	98.4%
▪ Key Performance Measure	99.0%	99.0%
Reports fully posted at 100%:		
▪ Number	12,548	11,628
▪ Percent fully posted at 100%	97.3%	89.0%
▪ Key Performance Measure	95.0%	95.0%
Records due (estimated)	3,146,658	3,387,932
Records not posted:		
▪ Number	1,330	39,249
▪ Percent not posted	≤ .1%	1.2%
▪ Key Performance Measure	≤ .2%	≤ .2%
Contributions posted	\$ 427,002,794	\$451,289,001
Contributions not posted	\$29,569	\$953,898

As of January 25, 2008, employers submitted 99.55 % of the reports due for 2006. Of the reports submitted, less than 0.1% of records remain suspended (representing less than 0.01% of total contributions anticipated for 2006). For 2007, employers have submitted approximately 98% of the reports due. Of those reports submitted, approximately 89% are 100% posted. Even though there is an increase in the number of reports and records expected for 2007, we are pleased to announce that the year-over-year performance is slightly better than last year's and that we are well on the way to meeting our 2007 targets.

## Employer Reporting Report

2/15/08

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At this time, the Employer Service Center is working with employers to ensure that all 2007 reports are submitted by the end of February so that the 2007 earnings can be credited to the member and employer accounts. The end of February represents the close of calendar year 2007 and all data received after that date is considered a prior year adjustment and employers will be responsible for the earnings after that date. Compared to this time last year, employers have improved in the timely submission of their reports with only 6% of employers having one or more missing reports, compared to 8.9% last year.

With some recent staff reallocations, we are also implementing a more comprehensive employer reporting approach, with staff focusing on improving employer reporting efficiency and compliance as well as data quality.

### EMPLOYER OUTREACH PROGRAM

Part of the improvement in employer reporting is due to our broad employer outreach and education program, which continues to expand. In addition to employer presentations being offered in the fall and spring of each year, we continue to educate new employees that are responsible for EDX reporting through our EDX training. For 2007, 123 employer representatives attended this training. In the past the EDX class has always been conducted in the PERS computer lab, but recently we were successful in bringing it to an outside computer lab and are planning on expanding this training to other locations throughout the state in 2008.

Our education team is also developing new educational tools, such as tutorials and help files, and making them available to employers via the Employer Website. We are currently conducting a survey to see how effective they are. In addition, staff utilizes the Employer Advisory Committee to review and improve employer communication and to assist in the testing and development of enhancing EDX functionality.

### ACCOUNTS RECEIVABLE PLAN

Besides assisting employers with overdue reports and electronic payments, PERS' accounts receivable department proactively collects receivable balances that are more than 30 days overdue. As of January 25, 2008 we had 321 outstanding invoices (224 employers) with an aggregate balance of less than \$312,634. Our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Kyle J. Knoll, Business Operations Manager  
SUBJECT: February 2008 Budget Report

MEETING DATE	<b>2/15/08</b>
AGENDA ITEM	<b>A.2.d. Budget</b>

### 2005-07 BUDGET UPDATE

The total expenditures for 2005-07 closed out at \$74,446,561, or 99.24% of the operating budget. Our positive budget variance for the biennium was \$568,867 (see attachment 1).

### 2007-09 BUDGET UPDATE

Operating expenditures for the months of November and December 2007 were \$2,959,179 and \$3,631,487 respectively. Through the first six months (25%) of the biennium, the Agency has expended a total of \$17,384,022, or 21.5% of our 2007-09 operating budget (see attachment 2).

The negative budget variance for the biennium is currently projected at \$867,035. This projection does not include the COLA adjustment for the 2007-09 Collective Bargaining Package. PERS anticipates receiving between \$2.8 and \$3.0 million in additional budget limitation from the Legislature during the February Supplemental Session for the COLA adjustment:

- \$2.8 million is the amount computed by DAS / Budget & Management (BAM) to cover the 3.0% and 3.2% COLAs for represented employees and management that will be implemented during the biennium.
- \$3.0 million includes PERS' request to BAM and LFO for an additional \$225,000 budget limitation to cover the shortfall for carrying *Strunk/Eugene* and RIMS Conversion Project Limited Duration positions from one biennium to the next at higher than the baseline second-step salaries funded in the biennial budget.

The budget variance presented in the March 2008 Budget Report will reflect both the COLA adjustment, and an adjustment to PERS' State Data Center (SDC) rates that will also be presented by DAS during the 2008 Legislative Session. The significant decrease in rates, retroactive to July 1, 2007, will drive a corresponding decrease in PERS' budget limitation for SDC charges.

### PERS PROGRESS REPORT - FEBRUARY 2008 SUPPLEMENTAL LEGISLATIVE SESSION

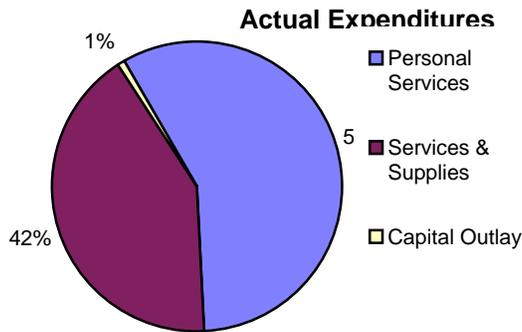
February 20, 2008, PERS Director Paul Cleary will be presenting a PERS Progress Report to the Full Ways & Means Committee. A copy of that Progress Report is attached (see attachment 3 and 4).

Attachment 1 – Chart 2005 – 07 Agency-wide Operations  
Attachment 2 – Chart 2007 – 09 Agency-wide Operations  
Attachment 3 – Joint Ways & Means Letter  
Attachment 4 – PERS Progress Report

**2005-07 Agency-wide Operations - Budget Execution**  
**Summary Budget Analysis**  
For the Month of: June 2007

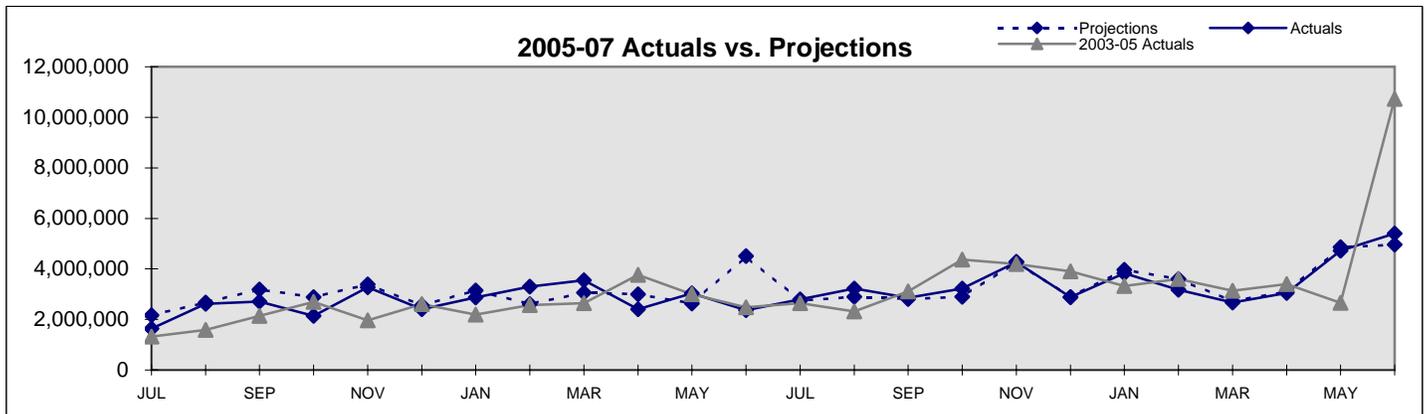
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	42,804,552		42,804,552	46,875,869	4,071,317
Services & Supplies	31,107,542		31,107,542	27,460,026	(3,647,516)
Capital Outlay	534,468		534,468	679,533	145,065
Special Payments					
<b>Total</b>	<b>74,446,561</b>		<b>74,446,561</b>	<b>75,015,428</b>	<b>568,867</b>



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,981,313	2,079,083	97,770	1,861,067	
Services & Supplies	3,215,015	2,671,802	(543,214)	1,352,502	
Capital Outlay	203,354	214,000	10,646	23,238	
Special Payments					
<b>Total</b>	<b>5,399,682</b>	<b>4,964,884</b>	<b>(434,797)</b>	<b>3,236,807</b>	



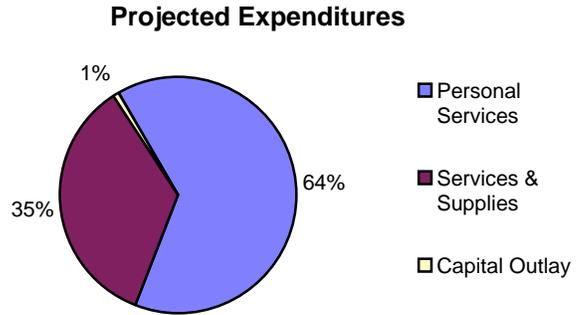
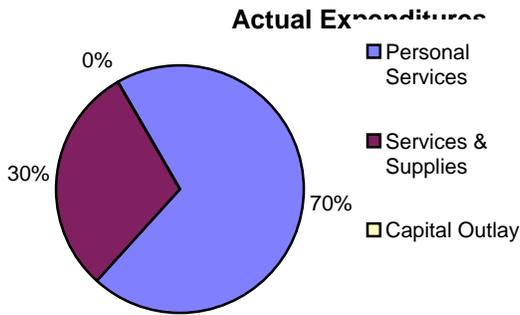
**2003-05 Biennium Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2003-05 LAB	Variance
Personal Services	34,589,563		34,589,563	39,082,078	4,492,515
Services & Supplies	39,850,036		39,850,036	34,853,263	(4,996,773)
Capital Outlay	1,932,276		1,932,276	9,436,739	7,504,463
Special Payments					
<b>Total</b>	<b>76,371,874</b>		<b>76,371,874</b>	<b>83,372,080</b>	<b>7,000,206</b>

**2007-09 Agency-wide Operations - Budget Execution**  
**Summary Budget Analysis**  
For the Month of: December 2007

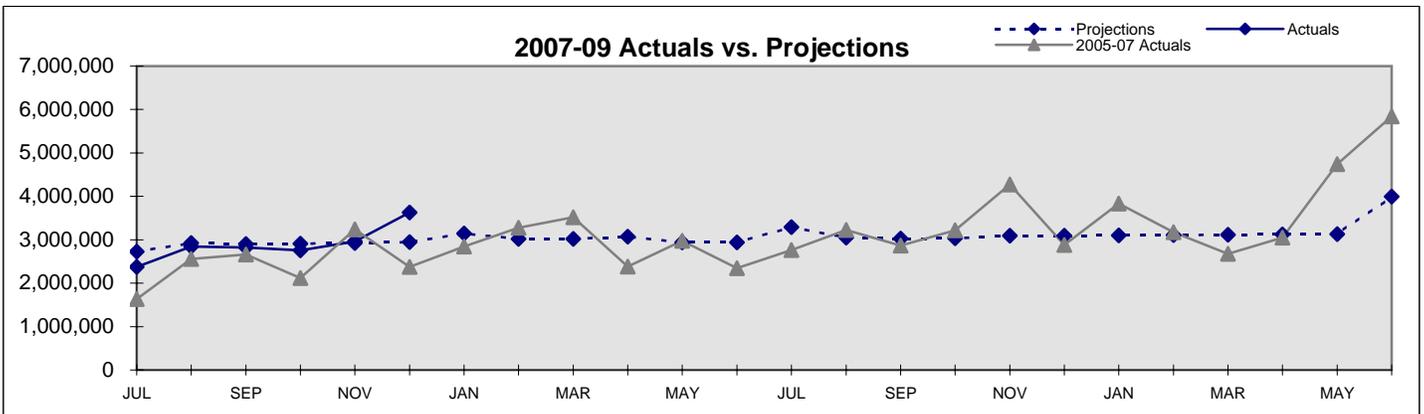
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2007-09 LAB	Variance
Personal Services	12,169,640	41,383,987	53,553,627	50,413,822	(3,139,805)
Services & Supplies	5,214,382	22,596,826	27,811,208	29,611,078	1,799,870
Capital Outlay		474,800	474,800	947,701	472,901
Special Payments					
<b>Total</b>	<b>17,384,022</b>	<b>64,455,613</b>	<b>81,839,635</b>	<b>80,972,601</b>	<b>(867,035)</b>



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	2,070,681	2,252,756	182,076	2,028,273	2,299,110
Services & Supplies	1,560,806	696,295	(864,511)	869,064	1,255,379
Capital Outlay					26,378
Special Payments					
<b>Total</b>	<b>3,631,487</b>	<b>2,949,051</b>	<b>(682,435)</b>	<b>2,897,337</b>	<b>3,580,867</b>



**2005-07 Biennium Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	42,804,552		42,804,552	46,875,869	4,071,317
Services & Supplies	31,107,541		31,107,541	27,460,026	(3,647,515)
Capital Outlay	534,468		534,468	679,533	145,065
Special Payments					
<b>Total</b>	<b>74,446,561</b>		<b>74,446,561</b>	<b>75,015,428</b>	<b>568,867</b>



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
Mailing Address:  
P.O. Box 23700  
Tigard, OR 97281-3700  
(503) 598-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

February 15, 2008

Senator Kurt Schrader, Co-Chair  
Representative Mary Nolan, Co-Chair  
Joint Ways and Means Committee  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301-4048

Dear Co-Chairs:

### **Nature of the Request:**

This report is provided to the Joint Ways and Means Committee as directed by the Budget Report and Measure Summary for PERS' 2007-09 budget (HB 5040 – A). The attached document describes PERS' progress in managing ongoing workload, implementing the *Strunk/Eugene* court decisions, and converting the agency IT system platform from the Retirement Information Management System (RIMS) to jClarety. Also described are various risk considerations and agency mitigation strategies associated with these activities. We will provide another update to the Committee in third quarter 2008.

### **Agency Action:**

As detailed in the attached report, PERS has made significant progress in each of the three areas:

1. Ongoing and changing workloads are being effectively prioritized and managed.
2. The *Strunk/Eugene* project is focused on completing monthly benefit adjustments, and
3. RIMS conversion is providing enhanced functionality and process improvements.

PERS staff will be available to discuss the report and answer questions February 20, 2008.

### **Action Requested:**

PERS is requesting that the Committee acknowledge receipt of the report.

### **Legislation Effected:**

No legislative revisions will be required.

Thank you for your interest and assistance.

Sincerely,

Paul R. Cleary  
Executive Director

# **Public Employees Retirement System (PERS) Progress: A Report to the Joint Committee on Ways and Means**

**February 15, 2008**

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## Overview

In its 2007-09 budget, PERS was directed to report in the first and third quarters of 2008 on its progress in managing ongoing workload, implementing the *Strunk/Eugene* court decisions, and converting the agency IT system platform from the Retirement Information Management System (RIMS) to jClarety.

PERS has made significant progress in each of the three areas:

1. Ongoing and changing workloads are being effectively prioritized and managed.
2. The *Strunk/Eugene* project is focused on completing monthly benefit adjustments, and
3. RIMS conversion is providing needed functionality and process improvements.

External influences and demographic trends are constant factors affecting PERS projects and workload. For example, Judge Kantor's ruling (June 2007) in the *Arken/Robinson* cases allowed monthly benefit adjustments under the *Strunk/Eugene* project to proceed, but put a hold on collection of overpayments from various classes of benefit recipients. Moreover, legislative changes in 2005 and 2007 require additional IT system programming under the RIMS Conversion Project (RCP), while new retirement programs and demographic trends are increasing workloads. Given this dynamic environment, the PERS Board and agency management continually monitor agency budgets, projects, and workloads for any necessary adjustments.

In January 2007, PERS was nationally recognized by *PlanSponsor* magazine as the 2007 Public Plan Sponsor of the Year, acknowledging the success of PERS reform, the timely issuance of pension obligation bonds, and the \$65 billion retirement fund's investment performance under the Office of the State Treasurer and the Oregon Investment Council. These factors combined to close a \$17 billion pension funding gap between 2003 and 2006.

In December 2007, a Pew Charitable Trust report declared that Oregon "has the best-funded pension system in the country." Oregon was further identified as one of only five states with its pension plan funded at 100 percent or greater (Florida, New York, North Carolina, Oregon, and Wisconsin) and one of only six states on track to fund retiree health care commitments (Arizona, North Dakota, Ohio, Oregon, Utah, and Wisconsin). The Oregon fact sheet from the state-by-state analysis is attached as the appendix.

## **I. Performance and Progress in Managing Ongoing Workload**

The General Government Subcommittee on Ways and Means discussed and supported various initiatives designed to improve agency performance and customer satisfaction. In particular, the Subcommittee focused on:

1. Transitioning data from the agency's legacy information system to the new jClarety platform,
2. Working more closely with employers to improve data reporting,
3. Providing greater assistance to retiring members to improve application processing, and
4. Improving overall customer service.

### **Data preparation/migration and information integrity**

In the last six months the Data Preparation Team has cleared 39,056 data migration exceptions, with an estimated 100,000 to clear before Stage II of the RIMS Conversion Project (RCP) is completed. The projected cost for this team from July 2007 through June 2008 is approximately \$600,000. Given the success of this approach and the critical nature of the task to RCP, we anticipate requesting additional budget limitation to continue this effort beyond June 2008. Data preparation is scheduled to be completed before jClarety is fully implemented in late 2009.

After data preparation/migration is complete, the focus will shift to information integrity to validate, correct, and complete contribution and service time data needed for accurate benefit calculations and payments. The Information Integrity project will use operational staff to analyze and correct the most difficult accounts. In addition, we will perform extensive analysis to identify account information that can be corrected by contractors currently assigned to Data Preparation. Staff hope to be able to initiate the Information Integrity project in fall 2008, with a major expansion in the 2009-11 biennium.

### **Employer outreach**

We are continuing our employer training and outreach sessions with presentations offered annually in the spring and fall. We conducted 35 sessions in 19 locations throughout the state during fall 2007. These sessions covered the effects of 2007 legislation on employers, Employer Data Exchange (EDX) reporting issues, and a review of new eligibility rules. In 2008, we will conduct EDX training at more locations throughout the state.

### **Retirement Application Assistance Sessions (RAAS)**

PERS now provides individual retirement application assistance sessions to our members. Activities include:

2007

- Created four Retirement Application Assistance positions
- Began offering one-hour individual RAAS in July in Tigard and Salem
- Began offering statewide sessions in September
- Conducted 750 sessions statewide.

2008

- 2,100 sessions scheduled in 24 different locations statewide
- Outreach via phones, website, and flyers that are included in every retirement estimate and handed out during One-Year Group presentations.

## Group Turn In Forms Sessions (TIFS)

In 2007, PERS reestablished group TIFS for members who are:

1. Retiring within three months
2. Prepared to submit their retirement application(s).

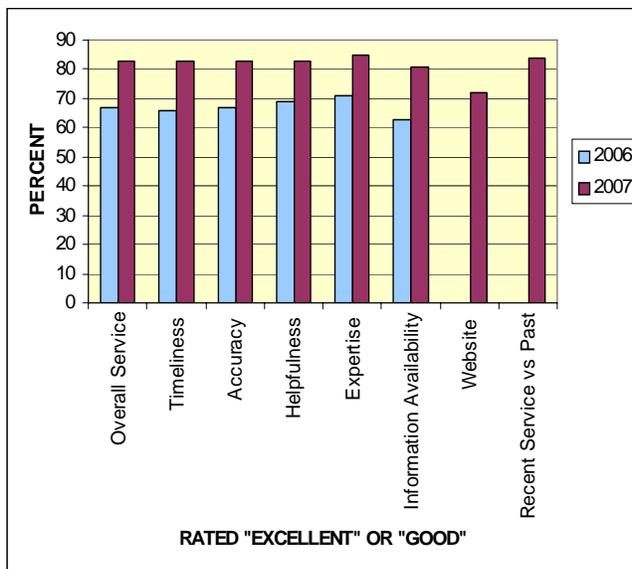
In 2007, PERS conducted nine TIFS in Tigard attended by 337 participants. The TIFS program is continuing in 2008 with 10 sessions anticipated.

RAAS and TIFS have dramatically reduced common errors and, subsequently, the number of retirement applications returned to applicants for corrections. In December 2007, 11 percent of all retirement applications received by PERS were returned to the retiring members because of errors or missing information. The return rate for applications received from retiring members who attended a RAAS or TIF in the same month was less than 1 percent.

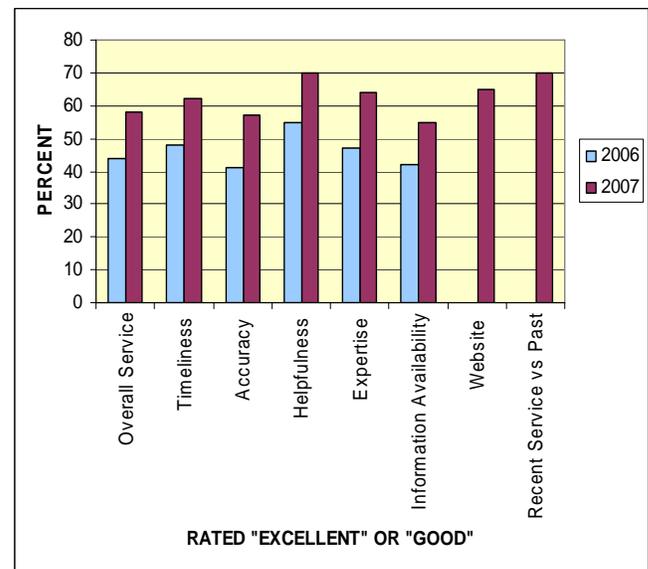
## Customer satisfaction surveys

PERS began an annual survey program in 2006 for members and employers to measure customer satisfaction. The 2007 survey results for members and employers show marked improvement in all service categories as shown on graphs below. The website and service trend questions were added in 2007, so data is shown for that year only.

### Member results



### Employer results



Our Customer Service Center eliminated the backlog of customer emails and now answers emails within three business days (unless extensive research is required). Previously, email responses took up to 30 days.

We now answer letters within 10 business days (unless extensive research is required). Previously, responses to letters took up to 45 days.

We now provide written benefit estimates to members within 30 days of the request. Members can request written estimates if they are within two years of retirement eligibility.

## Workload statistics

The table below compares program transaction work volume for 2006 and 2007.

### Quantity

<b>Employer Reporting</b>	<b>2006</b>	<b>2007</b>
Number of employers reporting	871	878
Number of reports received	11,882	12,773
Number of member records received	2,748,302	3,342,576

<b>Member Annual Statements</b>	<b>2006</b>	<b>2007</b>
Tier One/Tier Two	163,000	179,000
OPSRP Pension Program	28,700	45,300
Individual Account Program (IAP)	185,000	200,400

<b>Member Transactions</b>	<b>2006</b>	<b>2007</b>
Retirements – monthly benefit checks	134,587	128,019
Retirements – monthly benefit automatic deposits	1,135,487	1,166,711
Retirements – Tier One/Tier Two	5,050	5,883
Retirements – IAP	2,375	3,480
Retirements – OPSRP Pension Program	0	27
Retirements – contests/appeals (including <i>Strunk/Eugene</i> )	107	696
Membership Eligibility Reviews	1,968	2,286
Withdrawals – Tier One/Tier Two	2,766	4,871
Withdrawals – OPSRP Pension Program	0	0
Withdrawals – IAP	2,046	2,953
Loss of Membership accounts closed	360	1,287
Purchases – Tier One/Tier Two	3,091	2,507
Deaths – IAP beneficiary payment requests	414	289
Deaths (pre/post retirement death benefits processed)	3,235	4,252
Divorces		
Decrees received	1,058	1,118
Retirement calculations for members/alternate payees	657	778
Pre/post divorce retirement estimates	578	548
IAP account split requests	6	48
Disability		
Disability applications	359	357
Periodic reviews of existing cases	598	669
Retirement calculations	204	271
Death, Divorce, Disability – contests/appeals	53	35

<b>Member and Employer Customer Service</b>	<b>2006</b>	<b>2007</b>
Telephone calls (incoming/outgoing)	234,000	250,712
Faxes (incoming)	52,461	36,103
Group presentation attendance	17,532	12,941
Emails (incoming)	91,351	95,108
Letters (incoming/outgoing)	15,858	40,541
Website visits	900,000	825,500
Tier One/Tier Two written benefit estimates	10,250	12,469
OPSRP written benefit estimates	1	26
Website benefit estimate calculator page visits	119,148	98,328

## Risks and mitigation strategies in managing ongoing workload

<p><b>Risk #1</b></p>	<p>Statutory changes, court rulings and demographic trends have created additional workloads that are impacting agency priorities and requiring IT system reprogramming. This workload reprioritization may eventually impact other work areas, and the IT system changes are currently being evaluated for schedule and funding needs.</p>
<p><b>Mitigation</b></p>	<p>PERS management is continuing to monitor and adjust priorities accordingly and evaluate potential project schedule and budget limitation impacts.</p>
<p><b>Risk #2</b></p>	<p>Additional statutory changes could create additional workload and programming needs.</p>
<p><b>Mitigation</b></p>	<p>PERS has been holding meetings with our Legislative Advisory Committee to discuss potential statutory changes that could impact PERS and determine if any PERS employers or stakeholders are considering introducing such legislation in the 2008 and 2009 sessions.</p>
<p><b>Risk #3</b></p>	<p>Approximately 50,000 PERS Tier One and Tier Two members are eligible to retire. In 2007, we handled 1,950 more retirements (Tier One/Tier Two, OPSRP Pension Program, and Individual Account Program) than in 2006.</p>
<p><b>Mitigation</b></p>	<p>The individual Retirement Application Assistance Sessions (RAAS) and group Turn In Forms Sessions (TIFS), combined with improved member communication and employer outreach, have allowed us to process applications more efficiently.</p>

## II. Implementing *Strunk/Eugene*

### ***Strunk/Eugene* requirements and PERS actions**

The following table shows the requirements of the *Strunk/Eugene* court cases and Settlement Agreement, as well as the actions PERS has initiated.

<b>Requirement</b>	<b>Action</b>
Reallocate 1999 earnings crediting for Tier One member regular accounts at 11.33 percent instead of 20 percent (active and retired members).	PERS recalculated 1999 earnings crediting at 11.33 percent for some 103,000 active/inactive members in 2005 and reflected the change in 2004 Member Annual Statements (mailed in May 2005).  PERS is currently adjusting benefits (where allowable) for all benefit recipients whose payments included 1999 earnings crediting (see <i>Strunk/Eugene</i> project schedule and progress table below and related <i>Arken/Robinson</i> court cases discussion).
Credit 8 percent earnings to Tier One member regular accounts for 2003 and beyond.	This was accomplished as part of the 2004 Annual Statement project. The Board has also credited 8 percent to Tier One member regular accounts in subsequent years, and placed excess earnings in the Tier One Rate Guarantee Reserve (\$1.6 billion balance as of December 31, 2007).
Restore COLA increases to retirees that were frozen due to 2003 PERS reform Legislation.	For Tier One members who retired between April 1, 2000 and April 1, 2004, the COLAs are being restored as part of <i>Strunk/Eugene</i> implementation project and related benefit adjustment process (see <i>Strunk/Eugene</i> project schedule and progress table below).

### **Accounts affected by *Strunk/Eugene* and the Settlement Agreement**

<b>Category</b>	<b>Accounts</b>
Member and alternate payee retirements after March 1, 2000	34,000
Account withdrawals (member and alternate payee)	5,000
Final lump-sum installment for retirements before April 1, 2000	1,000
Pre-retirement death benefits	1,400
Non-retired alternate payee/member divisions	3,000
Reemployed retirees	140
<b>TOTAL ACCOUNTS</b>	<b>44,540</b>

### **Estimated financial impact of *Eugene* and the Settlement Agreement**

Active/inactive members		
Future distributions yet to be paid		\$800 million
Benefit recipients		
Future distributions yet to be paid		\$650 million
Prior distributions already paid		
Lump-sum payments	\$62.5 million	
Annuity payments	<u>\$87.5 million</u>	
		<u>\$150 million</u>
<b>TOTAL REDUCTION IN LIABILITIES:</b>		<b>\$1.6 billion</b>

***Strunk/Eugene* project schedule and progress**

<b>Benefit Type</b>	<b>Adjustment Timeline</b>	<b>Number of Accounts</b>	<b>Accounts Adjusted*</b>
<b>Estimated benefits</b> (convert to actual benefits)	Feb. 2006 – Sep. 2006	4,500	4,414
<b>Recipients with annuity payments</b>			
Divorce	Apr. 2006 – June 2009	1,500	85
Non-COLA freeze benefits (benefit recipients not affected by the COLA freeze effective July 1, 2003)	Sep. 2006 – Mar. 2007	5,200	4,051
COLA freeze benefits (benefit recipients affected by the COLA freeze effective July 1, 2003)	Apr. 2007 – June 2009	19,000	15,942
Death benefits	Jan. 2007 – June 2009	1,100	0
Police & Fire units	Apr. 2007 – June 2009	1,400	119
<b>Recipients who had a lump-sum payment(s)</b>			
Lump-sum benefits (pre-2000 retirements)	Apr. 2006 – Dec. 2007	900	333
Total lump-sum benefits	Sep. 2006 – Mar. 2007	3,240	2,008
Death benefits (post-retirement benefits; this applies to benefit recipients that passed away with a beneficiary)	Apr. 2007 – June 2009	900	238
Withdrawals (those who withdrew their PERS accounts)	Apr. 2007 – Dec. 2008	6,800	0
<b>TOTALS</b>		<b>44,540</b>	<b>27,190</b>

\* As of December 31, 2007.

***Arken/Robinson* cases**

Multnomah County Circuit Court Judge Kantor ruled on the *Arken/Robinson* cases June 20, 2007 and held a status conference for all parties in the *Arken/Robinson* cases August 16, 2007. At the status conference, Judge Kantor clarified the scope of his June 20, 2007 ruling on calculating benefits based on 11.33 percent versus 20 percent earnings for 1999. The judge recognized that correcting benefits to be based on 11.33 percent crediting was not covered by his June order.

Judge Kantor also indicated that he would further consider the issues and the scope of his ruling. Until the courts provide further direction, PERS is focusing on completing the monthly benefit adjustments, but holding off on further overpayment collections.

***Strunk/Eugene* project staffing phase-out plan**

Pursuant to the Subcommittee’s discussion on the *Strunk/Eugene* project’s 2007-09 budget, we have developed a staffing phase-out plan matching resources to anticipated workload as the project proceeds through the biennium. We have identified several strategies to make the project phase-out successful and positive for the agency. Management will determine the exact timing and execution of each strategy to provide the best possible outcome for each situation. These

strategies include restricting future agency recruitments to internal candidates, leaving positions open to coincide with layoffs and associated bumping rights, and using temporary staff to fill future project openings.

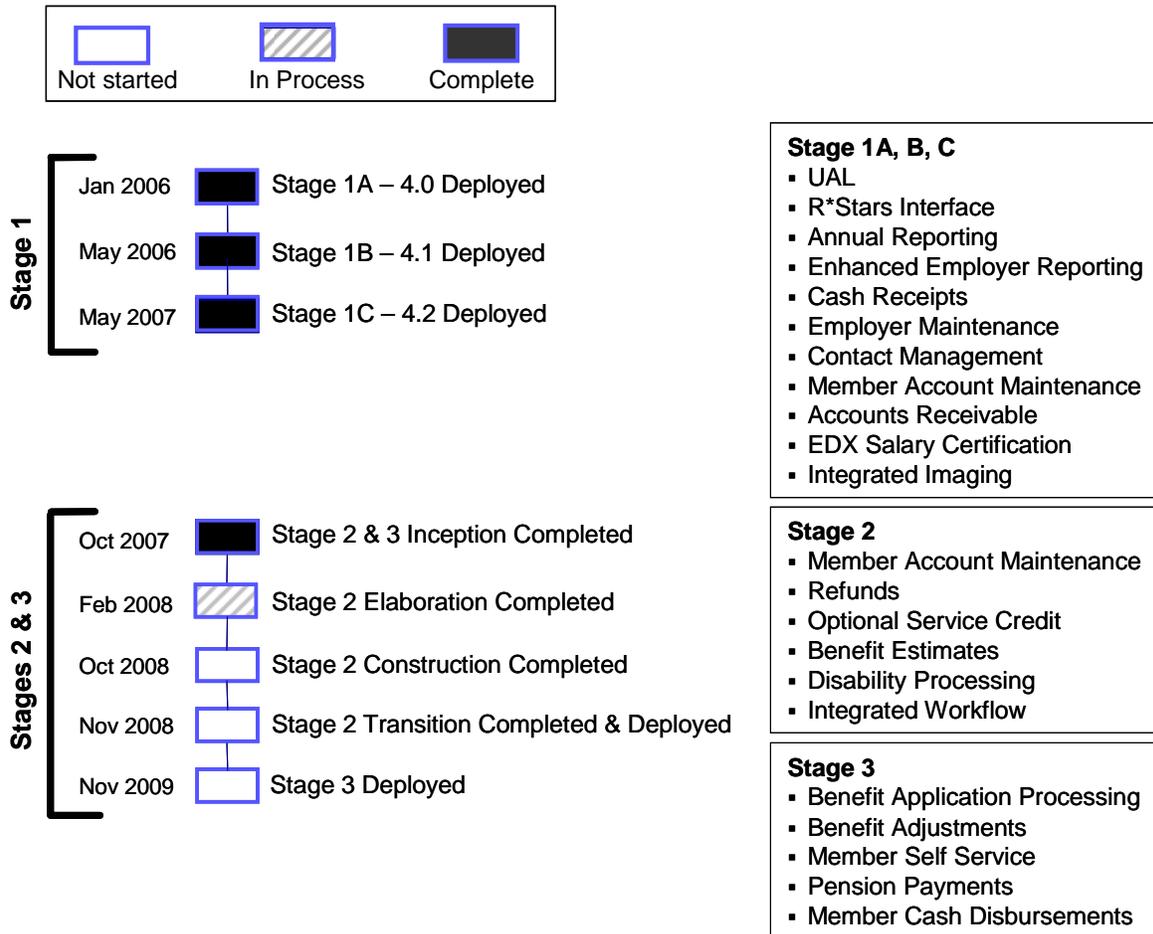
**Risks and mitigation strategies for the *Strunk/Eugene* project**

<b>Risk #1</b>	Further court direction in the <i>Arken/Robinson</i> cases may be delayed for an extended period.
<b>Mitigation</b>	Project staff will continue to calculate all benefit adjustments but additional overpayment invoicing and collection activities will remain on hold.  Contested case activities will also continue to be tolled until further court direction is provided. Schedule coordination between the <i>Strunk/Eugene</i> project and the RIMS Conversion Project will continue to be refined. Critical project staff may be temporarily reassigned to other projects to maintain staff expertise to complete the <i>Strunk/Eugene</i> project when further court direction is provided.

### III. Converting from RIMS to jClarety

The RIMS Conversion Project (RCP) will result in an enterprise-level retirement administration and information system that will support the agency's core retirement administration business functions.

#### **RCP status as of December 31, 2007**



#### **RCP benefits to date**

- Employers have a single, web-enabled entry point to report and correct demographic, wage, and contribution information for all PERS programs. Validation rules enhance the quality of incoming data. Employers can report more timely.
- New customer service capabilities, such as contact management, have enabled PERS' staff to respond to member inquires more efficiently and effectively.
- Electronic document imaging has greatly improved staff efficiency: provides secure access to documents; provides access to documents within minutes rather than hours/days; reduces paper consumption from more than 45,000 copies per month to 500; eliminates lost/misplaced documents; eliminated costs for filming (\$50K/biennium).
- Electronic workflows enable PERS staff and employers to receive, track, prioritize, and report status on significant business processes. Workflows already implemented include salary certification, retirement application intake, and withdrawal.

- Employer payments are received via electronic funds transfer (EFT). This has decreased employer workload and costs, and the time it takes for funds to be deposited and available for investment.
- Employers receive consolidated bi-monthly statements that provide a comprehensive view of their accounts and give PERS enhanced accounts receivable tracking and reporting capabilities.
- Full auditing capabilities for every update to data in the system.

**Anticipated additional benefits at RCP completion**

- Tier One, Tier Two, OPSRP Pension Program, and IAP administration will be conducted in a single system.
- More than 80 percent of retirement calculations will be automatically processed. Legacy system retirement calculations (about 6,000 a year) require frequent (more than 50 percent) manual intervention due to system limitations and poor data quality.
- Self-service will enable members to get plan materials, forms, and estimates as well as view and update information over the Internet.
- Integrated workflow will provide repeatable processes that will increase the efficiency, data availability, and accountability of PERS staff, allowing better management and allocation of staff workload.
- A single data source will allow staff to view and complete account reviews faster leading to more timely benefit processing.
- The ability to correct data systematically through designed user interfaces (currently most of the data correction is done manually and is extremely time consuming).

**RCP risks and mitigation strategies (as of December 2007)**

<b>Risk #1</b>	RCP is competing with other projects (e.g., the <i>Strunk/Eugene</i> project) and ongoing workloads for limited, skilled staff resources.
<b>Mitigation</b>	PERS management and staff have developed a prioritized, integrated approach that takes into account the interdependencies of not only the major projects noted above, but daily operations as well as smaller projects.
<b>Risk #2</b>	Data integrity is inconsistent in RIMS, which will be the source of the data needed for jClarety.
<b>Mitigation</b>	Business-led data preparation/migration and information integrity teams will be deployed to address data integrity issue using a series of initiatives to identify and correct missing and problem data under a data lifecycle approach. Some additional budget limitation may be requested to support this deployment.
<b>Risk #3</b>	New development methodologies, procedures, and software impose a formal set of processes and skill sets that need to be mastered through training and experience.
<b>Mitigation</b>	PERS is utilizing outside experts to provide training using these new tools and continued staff improvement and skill development is expected.
<b>Risk #4</b>	Statutory changes in 2005 and 2007 have altered the scope and functionality required to administer the retirement system. Similar statutory changes may occur before the end of this project (scheduled to complete at the end of 2009).
<b>Mitigation</b>	To the extent possible, manage functionality and project scope changes within the current budget and schedule by exchanging functionality no longer needed with the required additional functionality. Some additional budget authority and project schedule adjustments may be requested in the interim and in the 2009-11 budget.

# Appendix

The Oregon state fact sheet from the Pew Charitable Trust study of U.S. state pension systems (December 2007) is presented below.



**OREGON CURRENTLY HAS THE BEST-FUNDED** pension system in the country, and it is one of just six states on track to fund its modest retiree health benefits as well. On the pension side, Oregon's strong performance is partially due to the state's use of bonds to finance its liabilities following a significant drop in pension funding levels in 2002. The state also substantially reorganized its pension system in 2003, shifting to a hybrid plan that has both defined contribution and defined benefit elements. Oregon's non-pension, retiree health benefits are extremely modest, but the state was on track to fully fund those obligations at the end of fiscal year 2006. (In fact, it was one of only 13 states with any assets set aside for non-pension benefits as of 2006.) If Oregon continues on this path, its total non-pension liability will be reduced from \$832 million to \$238 million, based on the higher interest rate the state can assume if it consistently sets funding aside in an irrevocable qualified trust.

## PENSIONS

TOTAL BILL COMING DUE: **\$51.2 billion<sup>1</sup>**

FUNDS SET ASIDE: **\$56.6 billion**

PORTION UNFUNDED: **\$0**

PERCENT FUNDED: **110 as of 2006<sup>2</sup>**

TEN YEAR FUNDING HIGH: **110% in 2006**

TEN YEAR FUNDING LOW: **91% in 2002**

HOW IS THE STATE DOING IN PAYING ITS ANNUAL BILL?

**ASSUMPTIONS:** Oregon assumes 8% investment returns, which is the 50-state median. It's one of a handful of states that values its assets on a fair market basis rather than smoothing out gains and losses over time. This means that a downturn or upswing in the stock market will be reflected in its pension funding levels immediately (as occurred in 2002 when the pension funding level dropped to 91% from 106.7% the previous year).

<sup>1</sup> Consolidated public employees retirement fund.

<sup>2</sup> 50-state mean was 82%.

## OTHER BENEFITS

TOTAL BILL COMING DUE: **\$832 million<sup>1</sup>**

FUNDS SET ASIDE: **\$187 million**

PORTION UNFUNDED: **\$645 million<sup>2</sup>**

PERCENT FUNDED: **22 as of 2006**

HOW IS THE STATE DOING IN MANAGING THIS BILL?

<sup>1</sup> About \$415 million for state employees.

<sup>2</sup> 10% of covered payroll, compared to a national median of 135%.

**REFORMS:** Oregon significantly reorganized its pension systems in 2003, with a hybrid defined contribution/defined benefit plan put in place that the state believes has resulted in substantial savings. The state also restructured the retirement system board at the time and instituted a number of changes to its actuarial practices.

KEY: Top Performer

Needs Improvement

Below Par

Non-Pension Benefits are Minimal

This fact sheet stems from a 50-state analysis of states' retiree benefit obligations by Pew's Center on the States. The full report and 50 state fact sheets can be found at [www.pewcenteronthestates.org](http://www.pewcenteronthestates.org).



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# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Zue Matchett, Retiree Insurance Program Manager  
SUBJECT: PERS Retiree Insurance Program Update

MEETING DATE	2/15/08
AGENDA ITEM	A.2.e. Retiree Ins.

### EARLY RETIREE INFORMATION PRESENTATIONS

The PERS Health Insurance Program provided early retiree-specific information presentations for the second year in a row. These meetings were held during the spring and summer months for PERS retirees who are within 18 months of Medicare eligibility that want information regarding Medicare insurance plans available through PERS. The presentations provide an outline of Medicare benefits, time lines to consider and an overview of what to expect as one approaches Medicare eligibility. These meetings were held along the I-5 corridor, where the majority of PERS retirees reside.

Member feedback indicates that these meetings are well received, with the content easy to understand and very helpful in preparing for Medicare eligibility. Attendance in 2007 was 1,118, which reflects a 53% increase over the previous year's attendance. As a result of the increased interest, PERS Health Insurance Program staff, the Administrator's staff, consultants and carriers are currently reviewing the presentations for enhancements to both content and scheduling in preparation for the 2008 schedule.

While the early retiree meetings focus on retirees living along the I-5 corridor, both the early retiree group and current enrollees will also continue to receive program information via the annual fall plan change meetings scheduled throughout the state.

### ANNUAL PLAN CHANGE INFORMATION PRESENTATIONS

As PERS insurance carriers expand member's choices, there is more for retirees to consider when entering the PERS Health Insurance Program for the first time and each year during the annual plan change period. For example, in 2006 a statewide Medicare Advantage PPO plan, offered by ODS, was introduced at the same time as the Medicare Part D prescription drug program. For the 2008 plan year, Providence introduced a new Medicare Advantage POS plan option.

In the fall of 2007 the PERS Health Insurance Program conducted 41 meetings during its annual plan change period. Member comments show that these meetings are also well received. PERS retirees appreciate staff involvement at their local level and the opportunity to ask questions face to face. Preliminary tallies of the 1,999 attendees show that 98% of those responding to our survey are "satisfied to very satisfied" with the PERS Health

Insurance Program. In addition to learning about the additional plan choices, participants' questions and comments centered on the ever-challenging topic of premium increases. These meetings provide a valuable opportunity to educate retirees as to what factors drive premium cost and how the PERS insurance program offers value through a very stable and benefit-enhanced program.

PERS continues to contract with four health plans, offering a now expanded choice of options. For plan year 2008 the contracted carriers are offering the following options:

1) The ODS Companies

- a. Traditional Medicare Supplemental plan
- b. Medicare Advantage PPO (Preferred Provider Option) plan providing both in and out-of network service options
- c. Non-Medicare PPO plan
- d. Stand alone Prescription Drug Plan (PDP) that provides uniform prescription benefits for the following members:
  - ODS Medicare and Non-Medicare enrollees
  - Providence Medicare and Non-Medicare enrollees
  - Clear Choice Health Plan Medicare and Non-Medicare enrollees
- e. Dental plan

2) Providence Health Plans

- a. Medicare Advantage managed care plan
- b. Medicare Advantage POS (Point of Service) plan providing both in and out-of network service options (new for plan year 2008)
- c. Non-Medicare PPO plan

3) Clear Choice Health Plan

- a. Medicare Advantage managed care plan
- b. Non-Medicare PPO plan

4) Kaiser Permanente

- a. Medicare Advantage managed care plan with prescription drug coverage
- b. Non-Medicare managed care plan with prescription drug coverage
- c. Dental plan

PROGRAM ENROLLMENT

The PERS Health Insurance Program makes optional health, dental and long term care insurance plans available to eligible retirees, spouses, and dependents (Tier One and Tier Two members only). Actively employed members and their dependents are not eligible for the PERS insurance program, nor are OPSRP retirees.

The PERS Health Insurance Program serves primarily Medicare eligible public retirees and spouses. ORS 243.303 requires Oregon public employers to make their active employee group insurance programs available to their retirees and dependents that are not yet Medicare eligible at a tiered rate that is equivalent to what would be charged for an active employee. Public employers may charge retirees the entire monthly premium (as state government does) or may choose to subsidize the insurance premium for eligible retirees (as provided in varying degrees by individual school districts and local governments).

There are two statutory trust funds, administered by PERS as part of the Health Insurance Program, that provide premium subsidies for eligible retirees and surviving spouses. These trusts are known as the Retirement Health Insurance Account (RHIA), serving all qualifying PERS retirees, and the Retiree Health Insurance Premium Account (RHIPA), serving qualifying state government retirees. Both trusts are funded on an actuarial basis.

Totals as of January 1, 2008:

<u>Medical Plans (all plans)</u>	<u>Totals</u>	<u>Medicare</u>	<u>Non-Medicare</u>
Covered lives	50,374	48,489	1,885
Retirees (or surviving spouses)	40,586	39,469	1,117
Spouses/dependents	9,788	9,020	768
Average age of enrolled retirees	74	75	57
<u>Dental Plans total (ODS and Kaiser)</u>	25,207		
<u>Long Term Care Plan</u>	1,818		

Statutory Health Insurance Premium Subsidies

Retirees (or surviving spouses) receiving RHIA (trust fund held by PERS\*): 37,764

Employer rate: 0.37% of monthly payroll

Retirees (or surviving spouses) receiving RHIPA (trust fund held by PERS\*\*) 736

Employer rate: 0.10% of monthly payroll

RHIA monthly payment total \$ 2,265,840

RHIPA monthly payment total \$ 162,408

Unfunded actuarial liability is \$308 million (as of December 31, 2006)

- \* The RHIA subsidy is \$60 per month for Medicare-eligible retirees.
- \*\* The 2007 RHIPA subsidy is for State of Oregon pre-Medicare retirees only and varies from \$116.29 (8 years) to \$232.58 (30+ years) depending on the employee's years of service. The 2008 RHIPA subsidy varies from \$126.27 (8 years) to \$252.54 (30+ years).

### MARKETING FOR THE FUTURE

Although the PERS Health Insurance program has strong collaborative relationships between its carriers and a strong, stable program, it also has to regularly remind members about the value the program brings to the table. With the enactment of the federal Medicare Modernization Act of 2003, two significant changes to Medicare occurred: prescription plans became available and variations of Medicare Advantage programs, including PPO options were introduced. As a result, retirees, including PERS retirees, have more choices than ever before and greater premium and benefit comparisons to consider.

The PERS Health Insurance Program staff, the Administrator's staff, and consultant are collaborating with the PERS insurance carriers to establish an informational marketing plan designed to carry the program forward in this vastly changing market. This model will address the excellent quality and stability of the PERS insurance program; its value-added features and provide specific information and communication tools that will enable each retiree to make a fully informed comparison; helping them to look beyond simply premium comparisons and make an informed choice based on all aspects of the coverage.

### UPCOMING ACTIVITIES

The Retiree Health Insurance Advisory Committee met on February 1, 2008 to review program activities and prepare for the upcoming plan renewal season. The Committee will meet again in March to review year-end 2007 data and projections for the 2009 renewal, and discuss issues to include in the plan renewal letters. Renewal responses will be due from carriers in mid-April, and the Advisory Committee will meet again in May to review carrier renewal and rate proposals, which will then be finalized for presentation to the PERS Board at the June 20, 2008 Board meeting.



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February 15, 2008

TO: Members of the PERS Board  
FROM: Paul Cleary, Executive Director  
SUBJECT: HB 2423, Changes to the Administrative Procedures Act

MEETING DATE	<b>02/15/2008</b>
AGENDA ITEM	<b>A.2.f. APA Changes</b>

The 2007 Oregon Legislature adopted HB 2423, amending the Administrative Procedures Act, ORS Chapter 183. That Act governs the contested case process. As a result of these changes, PERS needs to amend the notice provided to parties of their right to request a contested case hearing and the “Rights of Parties at Hearings” statement we provide once a hearing is requested. The amendments also provide an opportunity to the Board to consider delegating final order authority in particular circumstances.

### NOTICE CHANGES

When PERS staff issues a determination to a member, the Administrative Procedures Act requires the determination include a notice of the member’s right to a contested case hearing. HB 2423 clarifies ORS 183.415, requiring that the notice include a statement of the member’s right to hearing with “A statement indicating whether and under what circumstances an order by default may be entered.” Because PERS by current practice does not enter orders of default, staff is instead adding language to the notice of what happens if the member does not request a hearing, e.g.: “If you do not request a contested case hearing as set forth below, your disability claim is closed. PERS will take no further action on your application for disability retirement.” The appropriate language will be added to all future determination letters.

Once a hearing is requested and the date, time and place are scheduled, PERS sends a Notice of Hearing and a standard statement of the “Rights of Parties at Hearings.” The amendments to ORS 183.413 now require that these documents include information about whether discovery is permitted and how to request it. PERS’ practice has been to provide parties with its exhibits automatically, so we’re working with legal counsel to craft the appropriate wording given this practice and will include new language as appropriate.

### DELEGATION OF FINAL ORDER AUTHORITY

HB 2423 created a new provision (ORS 183.411) that now allows the PERS Board to delegate the authority to enter a final order. This delegation can be made for a proceeding or class of proceedings and to an officer or employee, or class of officers or employees. With this new provision, the PERS Board could delegate the authority to enter a final order to one of its board members or to one or more PERS staff, such as the executive director. This delegation could cover a class of proceedings, such as all proposed orders issued on a motion for summary determination or all disability-related appeals. If the PERS Board would like to consider delegating this authority and the parameters of that delegation, staff can develop the necessary documentation to be considered at the March 28, 2008 meeting.



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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
SUBJECT: Third Reading 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	<b>2/15/08</b>
AGENDA ITEM	<b>B.1. Admin. Review/Appeal</b>

### OVERVIEW

- Action: None. This is the third reading of the Administrative Review and Appeal Processes Rules.
- Reason: Changes are necessary because employer grievance procedures are not spelled out in the rules.
- 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.2. and B.3. 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.

Consequently, PERS staff has kept these three rulemakings on parallel tracks so that public comment has been re-opened on these modifications and the package will be presented for adoption at the PERS Board's March 28, 2008 meeting.

### 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 from the last time they were presented to the PERS Board. 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 are in substance the originally proposed changes to conform to DOJ's model rules and other process improvements.

### LEGAL REVIEW

The draft rules have been submitted to the Department of Justice for legal review. Any comments or changes will be incorporated before the rules are presented for adoption.

### 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.2. and B.3.). A rulemaking hearing was held on January 22, 2008. No one attended. Public comment closes on February 22, 2008, at 5:00 p.m.

### 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 at 2:00 p.m. in Tigard.
February 15, 2008	Third Reading of the rule.
February 22, 2008	Public comment period ends at 5:00 p.m.

Third Reading – Review/Appeal Processes Rules

02/15/2008

Page 3 of 3

March 28, 2008          Staff proposes adopting the permanent rule, including any amendments warranted by public comment or further research.

NEXT STEPS

The rules are scheduled to be brought before the PERS Board for adoption at the March 28, 2008, meeting.

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

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 001 – PROCEDURAL RULES**

1 **459-001-0030**

2 **Review of Staff Actions and Determinations Regarding Persons**

3 **(1) For purposes of this rule, “Director” means the executive director of PERS,**  
4 **or an administrator appointed by the executive director.**

5 *[(1)](2) Request for review. Any person [or public employer] may file with the*  
6 *Director a request for review of a staff action or determination, **except** [ Except]as*  
7 *provided for in ORS 238.450 or in Board rules on disability retirement. [ , oral or written*  
8 *staff actions or determinations that are subject to review under this rule include but are*  
9 *not limited to:*

- 10 *(a) Establishing membership;*
- 11 *(b) Determining service credit and final average salary;*
- 12 *(c) Refund of contributions;*
- 13 *(d) Eligibility for benefits;*
- 14 *(e) Computation of benefits;*
- 15 *(f) Penalty for late reporting.]*

16 The request *[shall]***must** be filed within 60 days following the date *[of]* the staff action or  
17 determination **is sent to the person** *[or public employer]* **requesting review**. Late  
18 requests may be considered only if facts constituting good cause are alleged in the  
19 request.

20 *[(2)](3) Informal conferences. Informal conferences are available as an alternative*  
21 *means that may achieve resolution of any matter under review. A request for an informal*

1 conference does not **change the time limit to file a request for review.***[relieve a person*  
2 *of the requirements for timely filing of a review request.]*

3 *[(3)](4)* Criteria for request. A request for review of a staff action or determination  
4 *[shall]must* be in writing and set forth:

5 (a) A description of the staff action or determination for which review is requested;

6 (b) A short statement of the manner in which the action is alleged to be in error;

7 (c) A statement of facts that are **the** basis of the request;

8 (d) Reference to applicable statutes, rules or court decisions **relied upon** *[upon*  
9 *which the person relies];*

10 (e) A statement of the relief **requested** *[the request seeks];* and

11 (f) A request for review.

12 *[(4)](5)* Denial of request. The Director*[, or an administrator appointed by the*  
13 *Director,]* may deny any request **for review within 45 days of receipt of the request**  
14 *[made pursuant to this rule]:*

15 (a) *[Which]* **If the request** does not contain the information required under section  
16 *[(3)](4)* of this rule; or

17 (b) **When** *[Regarding which]*, in the Director's view, there is no bona fide dispute of  
18 material fact, the pertinent statutes and rules are clear in their application to the facts, and  
19 there *[was not a]* **is no** material administrative error.

20 *[(c) The denial of the request shall be made within 45 days of receipt of the*  
21 *member's request].*

22 *[(5)](6)* If a request is denied by the Director*[, or an administrator appointed by the*  
23 *Director,]* because it does not contain the information required under section *[(3)](4)* of

1 this rule, a *[person]***requester** shall have one opportunity to correct that deficiency and  
2 resubmit a request for review within 45 days of the date of denial.

3 *[(6)](7)* Approval of request. If the request for review is granted, the Director*[, or an*  
4 *administrator appointed by the Director, shall]* **must** issue a written determination within  
5 45 days of receipt of the *[member's]*request after:

- 6 (a) Considering the request;
- 7 (b) Directing staff to reconsider; or
- 8 (c) Directing staff to schedule an informal *[hearing]***conference**.

9 *[(7) Contested case hearing. In lieu of issuing a written determination, the Director*  
10 *may direct the staff to schedule a formal contested case hearing. Such hearing shall be*  
11 *conducted in accordance with OAR 459-001-0035.]*

12 *[(8) If a request is denied or the Director's determination is not the relief sought by*  
13 *the requester, and the Director did not cause a contested case hearing to be scheduled, a*  
14 *person may file with the Board a request for a contested case hearing pursuant to OAR*  
15 *459-001-0035.]*

16 *[(9)](8)* Extension of deadline. Any 45-day deadline within this rule may be  
17 extended upon request in writing for an additional 45 days. *[Additional time may be*  
18 *requested, but shall only be granted upon approval by both parties.]*

19 **(9) Resolution process.**

20 **(a) In lieu of issuing a written determination, the Director may direct staff to**  
21 **schedule a formal contested case hearing. The hearing must be conducted in**  
22 **accordance with the Attorney General's Model Rules of Procedure.**

1       **(b) If a request is denied or the Director's determination is not the relief sought**  
2       **by the person, and the Director did not cause a contested case hearing to be**  
3       **scheduled, a person may file with the Board a request for a contested case hearing**  
4       **pursuant to the Attorney General's Model Rules of Procedure.**

5       Stat. Auth.: ORS [237.263]**238.650**

6       Stats. Implemented: ORS 183.413 - 183.470

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 001 – PROCEDURAL RULES

1 **459-001-0035**

2 **Contested Case Hearing**

3 (1) Request for a contested case hearing. To obtain review of any determination *[by*  
4 *the Director,]***made under OAR 459-001-0030 or 459-001-0032** for which a contested  
5 case hearing has not been held, the party *[shall]***must** file with the Board a  
6 *[petition]***request** for a contested case hearing. The *[petition shall]* **request must** be filed  
7 within 45 days following the date of the Director's determination. *[Late petitions may be*  
8 *considered only if facts constituting a good cause are alleged in the petition.]*

9 (2) Informal conferences. Informal conferences are available as an alternative means  
10 that may achieve resolution of any matter under review. *[A request for an informal*  
11 *conference does not relieve a person of the requirements for timely filing of a request for*  
12 *a contested case hearing.]*

13 (3) Criteria for request. The *[petition]***request** for a contested case hearing *[shall]*  
14 **must** be in writing and set forth:

15 (a) A description of the determination for which review is requested;

16 (b) A short statement of the manner in which the determination is alleged to be in  
17 error;

18 (c) A statement of facts that are the basis of the *[petition]***request**;

19 (d) Reference to applicable statutes, rules or court decisions upon which the  
20 *[petitioner]***requester** relies;

21 (e) A statement of the action the *[petition]***request** seeks; and

22 (f) A request for a hearing.

1 *[(4) Contested case hearing. The Board shall acknowledge receipt of a petition for a*  
2 *contested case hearing within 15 days of filing.]*

3 *[(5)](4) The Director, or an administrator appointed by the Director, may direct the*  
4 *staff to schedule a formal contested case hearing or develop a recommendation to deny*  
5 *the member's request to be presented to the Board. The Board may then deny a request*  
6 *for a hearing when it has decided, in consultation with legal counsel, that the Board has*  
7 *no authority to grant the relief requested.*

8 *[(6)](5) The hearing [shall] **must** be conducted in accordance with the Attorney*  
9 *General's Model Rules of Procedure. **Parties to the hearing will include the requester,***  
10 ***any other person named as a party, and any other person who petitions to***  
11 ***participate and is determined to have an interest in the outcome of the proceeding.***

12 *[(7) Proposed order. The administrative law judge's proposed order becomes final*  
13 *90 days following service upon the petitioner, the Director and the Board through the*  
14 *Director. Exceptions to the proposed order by the Director or the petitioner must be filed*  
15 *with the Hearing Officer administrative law judge within 45 days of service. If the Board*  
16 *determines additional time is necessary to review a proposed order and issue an*  
17 *amended order, the Board may extend the time after which the proposed order will*  
18 *become final in accordance with ORS 183.464(3).]*

19 *[(8) In accordance with the Attorney General's Model Rules of Procedure, the Board*  
20 *may reject the order and direct the Hearings Officer to conduct further proceedings and*  
21 *prepare an amended order within the time specified by the Board.]*

1        *[(9) Extension of deadline. Any 45-day deadline within this rule may be extended*  
2 *upon request in writing for an additional 45 days. Additional time may be requested, but*  
3 *shall only be granted upon approval by both parties.]*

4        *[(10)](6) The Board [will] generally deliberatesu and decidess on final orders during*  
5 *regularly scheduled board meetings. The Board may instead deliberate and decide at any*  
6 *other time and place allowed by law, as determined on a case-by-case basis, such as*  
7 *electronically or via a telephone conference.*

8        Stat. Auth.: ORS 238.650, 183.464 & 183.600 - 183.690

9        Stats. Implemented: ORS 183.413 - 183.470

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 001 – PROCEDURAL RULES**

1 **459-001-0040**

2 **Petitions for Reconsideration**

3 (1) *[Request for a]* Petition for reconsideration. *[Prior to]* **Before** initiating any  
4 judicial review of a final order in a contested case, a party may file with the Board a  
5 petition for reconsideration. If the party chooses to file a petition, it *[shall]* **must** be filed  
6 within 60 days following the date the order becomes final. **Written argument from a**  
7 **petitioner must be submitted with the petition.** *[Late petitions may be considered only*  
8 *if facts constituting good cause are alleged in the petition.]*

9 *[(2) Criteria for request. The petition for reconsideration shall be in writing and set*  
10 *forth:]*

11 *[(a) A short statement of the manner in which the final order is alleged to be in*  
12 *error;]*

13 *[(b) Reference to applicable statutes, rules or court decisions on which the party*  
14 *relies;]*

15 *[(c) A suggested alternative form of order; and]*

16 *[(d) A request for reconsideration.]*

17 *[(3)]***(2)** Board action. The Board *[shall]* **may** either grant or deny a petition for  
18 reconsideration within 60 days of filing. **If the Board does not grant or deny the**  
19 **petition within 60 days of filing, the petition shall be deemed denied.***[A petition may*  
20 *be denied if it does not contain the information required under section (2) of this rule. If*  
21 *the petition for reconsideration is granted, the Board may:]*

22 *[(a) Affirm the original order; or]*

1        *[(b) Reconsider and issue an amended order.]*

2        *[(4)](3) Staff action. If the petition **for reconsideration** is granted [*and the Board**

3        *reconsiders*], the [*Director shall submit*] **Board must enter a new final order in**

4        **accordance with OAR 137-003-0675 and may consider** written argument **from the**

5        **Director** on the merits of the petition [*for Board consideration*]. **The Board may**

6        **schedule oral argument in its discretion.**

7        *[(5)Petitioner action. Written argument from a petitioner shall be submitted together*

8        *with the petition. The Board may schedule oral argument in its discretion.]*

9        *[(6) Extension of deadline. Any 60-day deadline within this rule may be extended*

10       *upon request in writing for an additional 45 days. Additional time may be requested, but*

11       *shall only be granted upon approval by both parties.]*

12       Stat. Auth.: ORS 238.650

13       Stats. Implemented: ORS 183.413 - 183.470, 183.482



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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
SUBJECT: First Reading of Employer Contributions for Prior Periods  
OAR 459-009-0130, *Employer Contributions for Prior Periods*

MEETING DATE	2/15/08
AGENDA ITEM	B.2. Employee Contributions

### OVERVIEW

- Action: None. This is first reading of the Employer Contributions for Prior Periods rule.
- Reason: To address employer concerns about invoicing for employee contributions.
- Subject: Employee Contributions for Prior Periods.
- Policy Issue: Whether PERS should accept responsibility to pay for earnings associated with a prior period contribution and, if so, under what circumstances?

### BACKGROUND

Employers raised several issues in the rulemaking on OAR 459-001-0030 to -0040 on reviews of appeals and contested cases. Some of those issues were particular to the process of invoicing employers for contributions in prior calendar years and for the earnings associated with those contributions. Staff indicated that those issues were better addressed in the rule related to the invoicing for those contributions, so we have begun this rulemaking accordingly.

Prior period contributions can be owed for a number of reasons, such as determining that employment was in a qualifying position or that the employer inadvertently failed to make contributions. These circumstances are most often discovered when an employee's records are audited at the time of a benefit payment (retirement allowance or withdrawal). Previous practice had been for PERS to invoice the employer for all contributions and the earnings those contributions would have accrued had they been received when originally due.

**POLICY ISSUE:** *Whether PERS should accept responsibility to pay for earnings associated with a prior period contribution and, if so, under what circumstances?*

As described above, the current practice is to invoice the employer for all the earnings that a prior period contribution would have earned had it been paid in the prior period. Employers have identified several instances where PERS knew or should have known that the contributions were owed long before the time the employer is issued an invoice. This delay increases the amount of earnings owed. Employers contend that PERS should be responsible for those earnings caused by its delay. The proposed rule modifications impose an obligation on PERS to pay for earnings associated with any periods which occur after PERS has returned or failed to accept the contributions in question from the employer.

The proposed rule modifications also designate that any earnings PERS pays would be charged against the earnings available for distribution in the year PERS finally posts those earnings to the member's account. In other words, if PERS credits a member's account in 2008 for earnings related to a prior period contribution, PERS will charge those earnings against the earnings otherwise available to distribute on 2008. Employers originally discussed whether the Contingency Reserve could be a source of funds to pay these earnings. However, ORS 238.670(1)(b) prohibits use of that reserve's funds for expenses related to adjudicating an individual member's benefits or employer's liabilities. Instead, if PERS accepted responsibility for these earnings, we propose that they be charged to that year's available earnings.

#### SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

When these rule modifications were originally noticed, several issues requested by the Employers PERS Alliance were included, such as whether the member should receive benefits until they re-pay the contributions owed (if the contributions were originally member-paid as opposed to employer-paid). Stakeholders reviewed and discussed those proposals, particularly in light of a September 18, 2007 letter Greg Hartman submitted on behalf of the PERS Coalition (a copy of which is attached to this memo). As Mr. Hartman points out, the issue of withholding benefits has been litigated and stakeholders concurred that the issue would not be addressed here. Mr. Hartman also raised some concerns about the assumption by PERS of some responsibility for earnings associated with these contributions. Staff still recommends that PERS pay the earnings on contributions as described in these rule modifications as the determination seems clear enough on the basis set forth. The source of those earnings is also more clearly stated in this version.

#### LEGAL REVIEW

The attached draft rule has been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rule is presented for adoption.

#### PUBLIC COMMENT AND HEARING TESTIMONY

This rule originally had a hearing on October 23, 2007, at 2:00 p.m. at PERS headquarters in Tigard. Based on feedback from stakeholders, PERS reopened the public comment period and held a second rulemaking hearing on January 22, 2008, at 2:00 p.m. at PERS headquarters in Tigard. No one attended. The second public comment period ends on February 22, 2008, at 5:00 p.m.

#### IMPACT

**Mandatory:** No, the Board need not adopt the rule. The modifications were originally proposed at the request of the Employers PERS Alliance.

**Impact:** These modifications would have a minimal impact on processing these determinations and on the associated notifications that result from that review.

**Cost:** PERS would incur additional costs if it accepted responsibility for some of the associated earnings. These costs would reduce the earnings available for distribution, predominantly

impacting employers, members, and the BIF. Over all, however, the amount of earnings PERS pays would not significantly reduce the earnings otherwise available for crediting.

#### RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 19, 2007	Staff postponed First Reading of the rule to November 16, 2007, meeting.
October 23, 2007	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
October 26, 2007	Public comment period ended at 5:00 p.m.
November 16, 2007	Staff postponed First Reading of the rule to February 15, 2008, meeting.
December 15, 2007	Rule Re-noticed to Secretary of State.
January 22, 2008	Second rulemaking hearing held at 2:00 p.m. in Tigard.
February 15, 2008	First Reading of the rule.
February 22, 2008	Second public comment period ends at 5:00 p.m.
March 28, 2008	Rule modifications to be proposed for adoption, including any amendments warranted by public comment or further research.

#### **NEXT STEPS**

Public comment ends on February 22, 2008 at 5:00 p.m. The rule is scheduled to be brought before the PERS Board for adoption at the March 28, 2008, meeting.

B.2. Attachment 1 OAR 459-009-0130, Employer Contributions for Prior Periods

B.2. Attachment 2 Hartman letter of September 18, 2007

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 009 – PUBLIC EMPLOYER

1 **459-009-0130**

2 **[Invoicing for Delinquent] Employee Contributions for Prior Periods**

3 (1) When *[required to invoice for]* employee contributions~~], or employer "pick-up"~~  
4 *of employee contributions,*] (ORS 238.205)[,] **are determined by PERS to be required**  
5 **for [on wages] salary** paid in previous calendar years, or allocated to such years pursuant  
6 to ORS 238.005[(11)]**(21)(b)(C) or ORS 238A.005(16)(b)(E),[:]** **PERS must notify**  
7 **both the employee and the employer of the amount of contributions required, the**  
8 **pay period and salary for which the contributions are to be paid, and the**  
9 **information relied upon by PERS in determining that the contributions are due.**  
10 **The employer must forward the required contributions to PERS.**

11 *[For Tier One members, an amount equal to the earnings actually distributed for*  
12 *Tier One members for those years shall be added to the Tier One member's individual*  
13 *account and the amount charged to the employer.]*

14 *[(2) For Tier Two members, an amount equal to the amount actually distributed for*  
15 *Tier Two members for those years shall be added to the Tier Two member's individual*  
16 *account and charged to the employer.]*

17 *[(3) For both Tier One and Tier Two members participating in the Variable Annuity,*  
18 *an amount equal to the amount actually distributed to members participating in the*  
19 *Variable Annuity for those years shall be added to the member's account in the Variable*  
20 *Annuity account in the Fund and charged to the employer.]*

1 (2) The notice provided under section (1) will also include a determination of  
2 the amount of earnings owed on the contributions, the amount of earnings the  
3 employer must pay, and the amount of earnings PERS will pay.

4 (a) In determining the amount of earnings the employer must pay, PERS will  
5 not include earnings attributable to periods after the date the employer submitted  
6 the contributions if:

7 (A) The employer submitted the contributions before PERS sent the notice that  
8 they were owed, and

9 (B) PERS returned or failed to accept the contributions.

10 (b) Any earnings paid by PERS will be charged to current year earnings in the  
11 year that the earnings are actually credited to the employee's account.

12 Stat. Auth: ORS 238.650

13 Stats. Implemented: ORS 238.200 and 238.705

**BENNETT, HARTMAN, MORRIS & KAPLAN, LLP**

B.2. Attachment 2

ATTORNEYS AT LAW

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**GREGORY A. HARTMAN**

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September 18, 2007

*BY EMAIL AND MAIL*

Steve Delaney  
Deputy Director  
Public Employees Retirement System  
PO Box 23700  
Tigard, OR 97281-3700

Re: OAR 459-009-0130  
Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to make comments on behalf of the PERS Coalition on the proposed modifications to OAR 459-009-0130. The proposed rule change has two major components which I will address separately.

1. The proposed rule provides that when PERS determines that retroactive billings to an employer are required that employees will be solely responsible to pay employee contributions and further that no benefits will be paid for periods of time when the employee has the obligation to make a payment to PERS unless and until that payment is made. This proposed rule is clearly inconsistent with the statute. ORS 238.200, which provides for the employee contribution, establishes quite clearly in Section 2 that the burden falls upon the employer to deduct employee contributions and transmit those amounts to PERS. In a circumstance where the board has determined that a retroactive payment must be made, it is the employer's responsibility to forward both employer and employee contributions to the board. The employer may well have a legal right to recover from employees any amounts which were not properly deducted from their payroll, but they do not have the option of avoiding their obligations under the PERS statute. There is no basis in the statute for PERS to withhold benefits for any period when employee contributions have not been made.

As we discussed, this precise issue was litigated in a case entitled *Tri-Met v. Jones*, Multnomah County Circuit Court No. 9501-00343. My recollection is that initially PERS

Steve Delaney  
September 18, 2007  
Page 2

sued Tri-Met taking the position that a number of Tri-Met employees were police officers and entitled to equal-to-or-better-than benefits under ORS 237.620. That case was resolved by an agreement by which Tri-Met retroactively placed those employees in PERS. Unfortunately that settlement agreement did not clearly provide for the mechanism for funding the benefits under PERS. Subsequently Tri-Met took the position that because these employees were required to make a contribution to PERS, that Tri-Met had no obligation to make any payment to the system until the employees had forwarded the employee contributions. A second lawsuit was filed (as referenced above) and the court specifically rejected Tri-Met's position and held that the employer had the obligation to forward both employee and employer contributions. The failure of the employer to withhold those contributions initially did not relieve them of the responsibility to pay those amounts to PERS.

The proposed PERS rule as drafted is not only inconsistent with the statute but also inconsistent with the precedent established by the Multnomah County Circuit Court in the Tri-Met litigation and the proposed rule should be rejected.

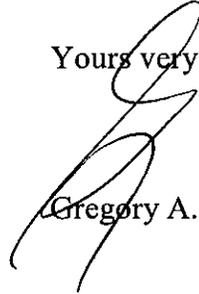
2. The rule provides in essence that in certain circumstances where it has been determined that PERS has been mistaken in its invoicing to employers that PERS will absorb some portion of the earnings on those billings for prior service which will be funded as an administrative expense. It appears that there are several problems with the rule as drafted. First the rule requires in every instance where there are retroactive billings some analysis, agreement, or adjudication about the relative fault of PERS and the employer on why the mistake occurred. This is not likely to decrease the administrative burden on PERS. If the mistake involves a single employee the requirement payment is not likely to be a substantial hardship to an employer and it is hard to understand why a relative fault assessment makes much sense. On the other hand if the problem involves a large number of employees then they are presumably employed by a large number of employers and charging some portion of the earnings on these payments to administrative expenses would not appear to be a very effective remedy. Utilizing administrative expenses as a source of payment also opens up arguments about whether earnings on employee accounts are suitably used for remedying errors created by PERS and employers which require retroactive payments. Absent some showing that the current system is causing substantial hardship on employers, it is not clear why that system needs to be changed.

The rulemaking memo also notes, under Policy Issues, some additional issues raised by the employers which are not being addressed in the proposed rules for the reasons stated.

Steve Delaney  
September 18, 2007  
Page 3

On behalf of the PERS Coalition we generally agree that those are not topics which need to be addressed in rulemaking.

Yours very truly,

A handwritten signature in black ink, appearing to read 'G. Hartman', written over the typed name.

Gregory A. Hartman

GAH:kaj

G:\Hartman\AFSCME 5415\237 PERS 2\Delaney 07-09-19.wpd

cc: Clients



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
SUBJECT: Notice of Rulemaking for Review of Staff Actions and  
Determination for Employers  
OAR 459-001-0032, *Review of Staff Actions and Determination for Employers*

MEETING DATE	<b>02/15/2008</b>
AGENDA ITEM	<b>B.3. Review/Appeal Processes</b>

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The Employers PERS Alliance submitted a request for separate employer and employee procedures to review staff actions and determinations.
- Subject: PERS administrative review and appeal processes.
- Policy Issue: Should employers have a separate process to follow to seek review or appeal of staff actions and determinations?

### BACKGROUND

After staff began rulemaking on the staff determination, contested case, and appeal rules (see Agenda Item B.1.), the Employers PERS Alliance requested that PERS staff consider a different dispute review and resolution process from that used for member disputes for those challenges made by employers. Originally, PERS staff proposed to incorporate those provisions into the rules then open for rulemaking (OARs 459-001-0030, 459-001-0035, and 459-001-0040). Upon further review and consideration, staff is now proposing that the separate employer review process be contained in a new rule, OAR 459-001-0032.

### POLICY ISSUE

*Should employers have a separate process to follow to seek review or appeal of staff actions and determinations?*

A separate rule for employer disputes does make sense given that the nature of the disputes with employers and non-employers are different. Also, the State of Oregon has a dispute resolution procedure that state agencies are required to follow, so those disputes already have to follow a particular path different from non-employer disputes. Staff consequently developed this new rule that incorporates those provisions originally embedded in OAR 459-001-0030 to address employer disputes. These separate provisions would provide employers the option they requested to have their dispute resolved through arbitration, mediation, or contested case, at their election.

### LEGAL REVIEW

The draft rule has been submitted to the Department of Justice for legal review. Any comments or changes will be incorporated before the rule is presented for adoption.

### PUBLIC COMMENT AND HEARING TESTIMONY

A public rulemaking hearing was scheduled on January 22, 2008, at PERS headquarters in Tigard. No one attended. The public comment period ends on February 22, 2008 at 5:00 p.m.

### IMPACT

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

Impact: Establishes a separate process for employers to seek review of a staff action or determination, ensuring that the review occurs in the proper forum and in a manner better suited to employer concerns.

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

### RULEMAKING TIMELINE

November 11, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
December 1, 2007	<i>Oregon Bulletin</i> published the Notice.
January 22, 2008	Rulemaking hearing held at 2:00 p.m. in Tigard.
February 15, 2008	PERS Board notified that staff began the rulemaking process.
February 22, 2008	Initial public comment period ends at 5:00 p.m.
March 28, 2008	Staff proposes adopting the permanent rule, including any amendments warranted by public comment or further research.

### NEXT STEPS

Public comment ends at 5:00 p.m. on February 22, 2008. The rule is scheduled to be brought before the PERS Board for adoption at the March 28, 2008 meeting.

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 001 – PROCEDURAL RULES**

1 **459-001-0032**

2 **Review of Staff Actions and Determinations Regarding Public Employers**

3 **(1) For purposes of this rule, “Director” means the executive director of PERS,**  
4 **or an administrator appointed by the executive director.**

5 **(2) Request for review. Any public employer may file with the Director a**  
6 **request for review of a staff action or determination, except as provided for in ORS**  
7 **238.450 or in Board rules on disability retirement. The request must be filed within**  
8 **60 days following the date the staff action or determination is sent to the public**  
9 **employer requesting review. Late requests may be considered only if facts**  
10 **constituting good cause are alleged in the request.**

11 **(3) Informal conferences. Informal conferences are available as an alternative**  
12 **means that may achieve resolution of any matter under review. A request for an**  
13 **informal conference does not change the time limit to file a request for review.**

14 **(4) Criteria for request. A request for review of a staff action or determination**  
15 **must be in writing and set forth:**

16 **(a) A description of the staff action or determination for which review is**  
17 **requested;**

18 **(b) A short statement of the manner in which the action is alleged to be in error;**

19 **(c) A statement of facts that are the basis of the request;**

20 **(d) Reference to applicable statutes, rules or court decisions relied upon;**

21 **(e) A statement of the relief requested; and**

22 **(f) A request for review.**

1 **(5) Denial of request. The Director may deny any request for review within 45**  
2 **days of receipt of the request:**

3 **(a) If the request does not contain the information required under section (4) of**  
4 **this rule; or**

5 **(b) When, in the Director's view, there is no bona fide dispute of material fact,**  
6 **the pertinent statutes and rules are clear in their application to the facts, and there**  
7 **is no material administrative error.**

8 **(6) If a request is denied by the Director because it does not contain the**  
9 **information required under section (4) of this rule, a requester shall have one**  
10 **opportunity to correct that deficiency and resubmit a request for review within 45**  
11 **days of the date of denial.**

12 **(7) Approval of request. If the request for review is granted, the Director must**  
13 **issue a written determination within 45 days of receipt of the request after:**

14 **(a) Considering the request;**

15 **(b) Directing staff to reconsider; or**

16 **(c) Directing staff to schedule an informal conference.**

17 **(8) Extension of deadline. Any 45-day deadline within this rule may be extended**  
18 **upon request in writing for an additional 45 days.**

19 **(9) Resolution process for state agency employers. If a request is denied or the**  
20 **Director's determination is not the relief sought by the employer, and the employer**  
21 **is a state agency subject to the dispute resolution provisions of OAM policy**  
22 **35.70.30.PO, the Interagency Dispute Resolution Process, then the dispute must be**  
23 **resolved in accordance with that policy.**

1 **(10) Resolution process for non-state agency employers. If a request is denied or**  
2 **the Director's determination is not the relief sought by the employer, and the**  
3 **employer is not a state agency subject to the dispute resolution provisions of OAM**  
4 **policy 35.70.30.PO, then the employer can request the issue to be addressed by**  
5 **arbitration, mediation, or a contested case.**

6 **(a) If the employer requests arbitration, PERS and the employer will as closely**  
7 **as possible parallel the process outlined in OAM policy 35.70.30.PO for state agency**  
8 **employers.**

9 **(b) If the employer requests a contested case, the process will be conducted**  
10 **pursuant the Attorney General's Model Rules of Procedure.**

11 **Stat. Auth.: ORS 238.650**

12 **Stats. Implemented: ORS 183.413 - 183.470**



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
SUBJECT: Second Reading of "Equal To or Better Than" Rules  
OAR 459-030-0011, *Equal To or Better Than Exemption*  
OAR 459-030-0025, *Standards for Review of Police Officers and Firefighters Retirement Plans*  
OAR 459-030-0030, *Board Action on Petition and Review of Order*

MEETING DATE	02/15/2008
AGENDA ITEM	B.4. ETOB

### OVERVIEW

- Action: None. This is the second reading of the "Equal To or Better Than" Rules.
- Reason: Update rules to reflect legislative changes.
- Subject: Board assessment of non-PERS employer retirement benefits for police officers and firefighters.
- Policy Issue: What circumstances should trigger a review of a previously granted exemption from PERS participation for an employer's police and fire members?

### BACKGROUND

ORS 237.620 requires all public employers to provide PERS retirement benefits to their police officer or firefighter employees unless the PERS Board determines that another plan provides benefits that are equal to or better than (ETOB) the PERS benefits. The Board has developed a set of rules that outlines the application process and provides the guidelines for establishing the methodology for an actuarial review of the employer's retirement benefits to determine if the benefits meet the ETOB standard.

HB 2280 (2007 Session) eliminated the requirement that the PERS Board conduct an ETOB study every two years. This bill also sets the comparative benchmark for the ETOB study to the PERS benefits that were in effect at the time the police officer or firefighter was hired. Lastly, the bill eliminates the requirement that those employers failing to meet the ETOB standard must join PERS but, rather, requires the employer to provide comparable benefits to police officers and firefighters. Three sets of rule modifications are necessary to reflect these legislative changes.

### POLICY ISSUE

*What circumstances should trigger a review of a previously granted exemption from PERS participation for an employer's police and fire members?*

One of the primary purposes of HB 2280 was to eliminate the two-year ETOB testing requirement as the consensus of PERS stakeholders was that requirement was costly and administratively burdensome while providing little extra protection to those non-PERS employees. HB 2280 changes the statute to leave the trigger for an ETOB review to be determined by the PERS Board.

Staff Recommendation: Based on stakeholder testimony during consideration of HB 2280, staff recommends that the ETOB review be triggered only when the employer reduces benefits by amending the retirement plan after the previous exemption was granted.

#### SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST READING

OAR 459-030-0011 and -0030 have not been modified since those rules were last presented.

OAR 459-030-0025 has been modified with input from Bill Hallmark at Mercer. One of the reasons we postponed adoption of these rules from the November 2007 meeting was to allow Mercer the opportunity to provide feedback on how to structure the comparison between the employer's plan and the comparable classes of members in PERS and the factors that should be used in that comparison.

Section (2) has consequently been modified to better express how the plans will be compared with what is intended to be clearer language about the comparison to the classes of PERS members required by HB 2280. Section (4) explains that the PERS Board will adopt specific methods and assumptions for the comparison, and expresses the principles staff recommends to be considered when developing those methods and assumptions. The comment period on all these rules was re-opened and extends to March 7, 2008 to allow stakeholders the opportunity to review these modifications and provide further feedback.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 18, 2007 at 10 a.m. at the State Archives in Salem, and a second hearing was held on October 23, 2007 at 2 p.m. at PERS headquarters in Tigard. The first public comment period ended October 26, 2007 at 5 p.m. Due to revisions in OAR 459-030-0025 resulting from this public comment and input from PERS' actuary, another public hearing is scheduled for February 26, 2008 at 2:00 p.m. at PERS headquarters in Tigard. This public comment period ends March 7, 2008.

#### LEGAL REVIEW

The attached draft rules have been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are presented for adoption.

#### IMPACT

Mandatory:

OAR 459-030-0011: Yes, as the PERS Board must establish a standard for reviewing the ETOB exemption by rule.

OAR 459-030-0025: Yes, this rule conflicts with the requirements of HB 2280. Specific comparative measures for the ETOB study based on the equivalent retirement benefits offered by PERS at the time the non-PERS police officers or firefighters were hired need to be added to the rule.

OAR 459-030-0030: Yes, this rule conflicts with the requirements of HB 2280. This legislation eliminated the requirement that all non-employers failing the ETOB study provide PERS retirement benefits to its police officers and firefighters.

Impact: These changes will result in lower costs and a reduced administrative burden for both PERS and ETOB employers.

Cost: The revised rules will result in cost savings for non-PERS employers by eliminating the frequent ETOB exemption review. Changing the comparison standard may limit potential costs savings for employers, but that effect is not discrete to this rule.

### RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 18, 2007	Rulemaking hearing held at 10 a.m. at the State Archives in Salem.
October 19, 2007	First reading of the rules.
October 23, 2007	Rulemaking hearing held at 2 p.m. in Tigard.
October 26, 2007	Public comment period ends at 5 p.m.
November 16, 2007	Postponed adopting the rule.
December 15, 2007	Rules re-noticed to the Secretary of State
January 1, 2008	<i>Oregon Bulletin</i> published the Notice.
February 15, 2008	Second reading of the ETOB rules.
February 26, 2008	Rulemaking hearing scheduled for 2 p.m. in Tigard.
March 7, 2008	Public comment ends at 5 p.m.
March 28, 2008	Staff proposes adopting the permanent rule, including any amendments warranted by public comment or further research.

### NEXT STEPS

Public comment ends on March 7, 2008, at 5 p.m.

B.4. Attachment 1 – OAR 459-030-0011, Equal To or Better Than Exemption

B.4. Attachment 2 – OAR 459-030-0025, Standards for Review of P & F Retirement Plans

B.4. Attachment 3 – OAR 459-030-0030, Board Action on Petition & review of Order

B.4. Attachment 4 – Greg Hartman Letter dated September 17, 2007

*DRAFT*      *DRAFT*      *DRAFT*      B.4. Attachment 1  
**OREGON ADMINISTRATIVE RULE**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**  
**CHAPTER 459**  
**DIVISION 030 – LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR**  
**POLICE OFFICERS AND FIRE FIGHTERS**

1    **459-030-0011**

2    **“Equal To or Better Than” Exemption**

3        (1) *[If a]* **A** public employer **that** provides retirement benefits to its police officers  
4 and firefighters that are equal to or better than the benefits that would be provided to  
5 them under *[the Oregon Public Service Retirement Plan]* **PERS** *[, the public employer]*  
6 may petition the Board for **an** exemption from participation of such employees. Such  
7 petition will be reviewed under the requirements and timelines of this division.

8        **(2) Any exemption granted under this division will continue until the PERS**  
9 **Board determines that the public employer’s plan no longer provides equal to or**  
10 **better than benefits at the time of the valuation date.**

11        **(3) Whenever a change decreasing the public employer’s retirement benefits is**  
12 **adopted, the public employer must file with the Board a new petition for exemption**  
13 **within 60 days of adopting such a change.**

14        *[(2) The Board will review any exemption granted under this division every two*  
15 *years to determine whether the exempt public employer is complying with the*  
16 *requirements of this division.]*

17    Stat. Auth.: ORS 238.650

18    Stats. Implemented: ORS 237.620 **& OL 2007 Ch. 622**

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459

DIVISION 30 – Local Public Employer Retirement Plans For Police Officers And Fire  
Fighters

1 459-030-0025

2 Standards for Review of Police Officers and Firefighters Retirement Plans

3 (1) A determination whether a public employer provides retirement benefits to its  
4 police officers and firefighters that are equal to or better than the benefits that would be  
5 provided to them *[under]***by** *[the Oregon Public Service Retirement Plan*  
6 *(OPSRP)]***PERS** will be made as of the valuation date. The "valuation date" is the date  
7 set by the Board as of which the retirement benefits under the public employer's  
8 retirement plan and *[under the OPSRP]***the PERS** retirement plan shall be compared.

9 (2) The Board will *[consider the aggregate total actuarial present value of all*  
10 *retirement benefits accrued since July 1, 1973 and projected to be accrued after the*  
11 *valuation date by the group of police officers and firefighters employed on the valuation*  
12 *date by the public employer. The projected benefits will ]*compare the *[total value*  
13 *of]***retirement** benefits *[that would be accrued if the police officers and firefighters*  
14 *became members of OPSRP or remained in the plan being evaluated.]***provided under**  
15 **the public employer’s retirement benefit plan to the following classes of employees**  
16 **to the retirement benefits provided to the equivalent class of employees**  
17 **participating in the PERS retirement benefit plan:**

18 (a) **Police officers or firefighters who would have been entitled to receive**  
19 **benefits only under ORS Chapter 238 and who would have established membership**  
20 **in the system before January 1, 1996, as described in ORS 238.430(2);**

21 (b) **Police officers or firefighters who would have been entitled to receive**  
22 **benefits only under ORS Chapter 238 and who would have established membership**

1 **in the system on or after January 1, 1996, and before August 29, 2003, as described**  
2 **in ORS 238.430;**

3 (c) **Police officers or firefighters who would have established membership in**  
4 **the system on or after August 29, 2003, and would have been entitled to benefits**  
5 **only under the Oregon Public Service Retirement Plan as described in ORS**  
6 **238A.025.**

7 ([a]d) The Board [will] **may** not require that every retirement benefit for each  
8 individual employee be equal to or better than the particular benefit [he or she] **that**  
9 **employee** would **have** received **d** [under OPSRP] **as a member of that employee's class**  
10 **as defined under subsections (a) to (c) of this section.**

11 ([b]e) [The Board will require that] **While the aggregate total of retirement**  
12 **benefits under** the public employer's retirement plan(s) [ or plans provide at least] **must**  
13 **be equal to or better than the equivalent PERS plan, the Board will also require that**  
14 **the public employer's retirement plan(s) provide service retirement, disability**  
15 **retirement, death, and vesting benefits for each employee class that are equal to or**  
16 **better than** eighty percent (80%) of the [actuarial present value of projected retirement  
17 benefits in each of the major categories of benefits available under OPSRP, namely: A  
18 service retirement; a disability retirement; a death benefit; and vesting] **benefit available**  
19 **to the equivalent class under the PERS plan.**

20 (3) In conducting an actuarial review of a public employer's retirement plan for its  
21 police officers and firefighters, the actuary retained by the Board will use  
22 [demographic] **census** data supplied by the employer to determine whether the retirement  
23 benefits provided under the plan are equal to or better than the benefits which would be

1 provided under *[OPSRP]***PERS**. If the employer does not provide sufficient data in a  
2 timely manner, the actuary will use a hypothetical data set representing a demographic  
3 cross-section of police officers and firefighters who are subject to this division.

4 (4) *[The Board will conduct its review based on its current actuarial assumptions*  
5 *for police officers and firefighters of public employers in OPSRP.] **Before conducting***  
6 **an actuarial review of a public employer’s retirement plan for its police officers and**  
7 **firefighters, the Board shall adopt the specific methods and assumptions to be used**  
8 **in the determination of whether or not the benefits meet the equal to or better than**  
9 **standard of ORS 237.620(2). In adopting these methods and assumptions, the**  
10 **Board shall maintain the following principles:**

11 (a) **Preference will be given to the simplest, least expensive methodology for**  
12 **comparing a specific retirement plan to the PERS plan provided the methodology is**  
13 **consistent with ORS 237.610 – 237.637 and any applicable actuarial standards.**

14 (b) **Preference will be given to actuarial assumptions used in the latest PERS**  
15 **valuation to the extent they are applicable.**

16 (c) **The ultimate cost or benefit of risk taken prior to the valuation date shall not**  
17 **be considered in the comparison.**

18 *([5]d) [The Board will consider the cost of the benefits to be provided and the*  
19 *proportion of the cost being paid by the public employer and the participating police*  
20 *officers and firefighters. The Board will consider whether the benefits to be provided by*  
21 *the employer are funded, and the adequacy of funding.] Whether the benefits are*  
22 *provided by contract, trust or insurance, or a combination thereof shall have no effect on*  
23 *the decision to grant or deny the petition.*

1            ~~[(6)]~~ In considering a public employer's retirement plan provisions, the Board  
2 will not value portability of pension credits, tax advantages, Social Security benefits or  
3 participation, and any worker's compensation component of a public employer's plan as  
4 determined by the employer.

5            *[(7) Additional actuarial assumptions as shall be needed to evaluate public*  
6 *employer plan provisions shall be considered by the Board's actuary to be consistent with*  
7 *assumptions specified in these rules. Any disputes as to the appropriateness of additional*  
8 *actuarial assumptions shall be resolved by the Board in its sole discretion.]*

9 Stat. Auth: ORS 238.650

10 Stats. Implemented: ORS 237.620

*DRAFT*      *DRAFT*      *DRAFT*      *DRAFT*      **B.4. Attachment 3**  
**OREGON ADMINISTRATIVE RULE**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**  
**CHAPTER 459**  
**DIVISION 030 – LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR**  
**POLICE OFFICERS AND FIRE FIGHTERS**

1    **459-030-0030**

2    **Board Action on Petition and Review of Order**

3        (1) The actuary will issue a written report that concludes whether a public  
4    employer's plan meets the standards for receiving an exemption under OAR 459-030-  
5    0025. After receipt of the written actuarial review report and recommendations of staff,  
6    the Board will issue an order granting or denying the petition for exemption. No order  
7    denying a petition for exemption will be issued until at least 90 days after the actuary had  
8    delivered its report to the Board. During that period, the public employer may amend its  
9    plan to comply retroactive to the valuation date or file a written request for an extension.  
10    Upon filing of that request, the Board will not enter an order denying a petition for  
11    exemption for an additional 60 days after receiving the request. If a public employer  
12    submits an amended plan before the Board adopts an order denying the exemption, the  
13    actuary will submit a supplemental report on whether the amended plan meets the  
14    required standards under OAR 459-030-0025. The Board may adopt an order at any time  
15    after receiving the supplemental report.

16        (2) Within 60 days of the effective date of any order issued under this rule, the  
17    public employer, the affected public employees, or their labor representative may file a  
18    petition for rehearing or reconsideration pursuant to OAR 459-001-0010 and 459-001-  
19    0040.

20        *[(3) A public employer who has received an order denying its petition for exemption*  
21    *and who has exhausted its remedies under this division will join the Oregon Public*

- 1 *Service Retirement Plan as of the following January 1, or such other date as the Board*
- 2 *directs in its order.]*
- 3 Stat. Auth: ORS 238.650
- 4 Stats. Implemented: ORS 237.620 **& OL 2007 Ch. 622**

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September 17, 2007

*BY EMAIL AND FIRST CLASS MAIL*

Paul Cleary  
Executive Director  
Public Employee Retirement System  
PO Box 23700  
Tigard, OR 97281-3700

Re: ORS 237.620 (Equal-to-or-Better-Than)  
Our File No.: 5415-237

Dear Paul:

The 1973 legislature provided that police officers and fire fighters in the state of Oregon were entitled either to participation in PERS or alternatively to a pension plan which was equal to or better than PERS. This requirement has been a source of controversy virtually since its inception. The 2007 legislature made two significant changes to the equal-to-or-better-than statute. The first and most fundamental is that the default position for employers who do not provide an equal-to-or-better-than plan is no longer mandatory participation in PERS. At the inception of the equal-to-or-better-than requirement, requiring an employer who did not meet the test to integrate into PERS made good sense. However with the development of multiple PERS tiers, integration into PERS, which can only be done on a prospective basis, no longer provided an adequate remedy to those police or fire fighters whose plans were not deemed sufficient. In fact when we last reviewed the rules on equal-to-or-better-than it became clear that forcing participation in PERS could actually be harmful to police officers and fire fighters whose plans were no longer sufficient to meet the test.

The new statute avoids this problem by eliminating integration into PERS as the default and now requiring that an employer whose plan is not deemed sufficient is required to make amendments to bring the plan up to sufficiency under the equal-to-or-better-than standard. Interestingly an employer who failed the equal-to-or-better-than test is not only no longer required to join PERS, but joining PERS would be extremely unlikely to satisfy the test under the new statute.

The second significant change in the new statute is the more specific direction given by the legislature that testing must be done by classes based on the tier that the participant would have been in, had they been a member of PERS. This will require a fundamental restructuring of the test as the most recent test would clearly not be adequate under this more-specific approach.

Paul Cleary  
September 17, 2007  
Page 2

I believe that the new statute raises some fundamental issues which need to be addressed during the rulemaking process.

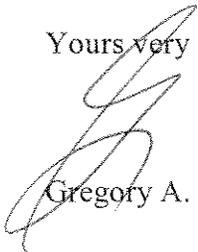
1. Because integration into PERS is no longer the default, this is no longer a request for an exemption from PERS but is more properly thought of as a request for certification. This change will have the greatest impact in determining what the appropriate role for PERS is in circumstances where an employer does not pass the equal-to-or-better-than test. Does PERS's responsibility end once it has determined that the employer is not in compliance with the statute, or does PERS have a greater responsibility to assure compliance?

2. Clearly the test which will be administered pursuant to the legislature's more specific direction is going to be substantially different from the most recent test. Certainly the rules to implement the new statute should not be finalized until the actuary has had an opportunity for full input on the type of analysis which will be required. Any rules should be written so that they are consistent with that required test.

3. The adoption of the more-specific standards for comparison will require a new test for exempt employers once the rulemaking process has been completed. The next question which should be addressed is what would be an appropriate trigger for additional testing in the future. Should it focus solely on potential changes in either PERS or the employer's plan, or will the passage of time, which may change the demographics of an employer, also be sufficient to trigger a new test?

The last time the PERS board did rulemaking in this area, it did so only after stakeholders had a full opportunity to meet with PERS staff as well as the PERS actuary to explore all of the issues which arose under the prior testing process. Given the substantial change mandated by the statute, it would be entirely appropriate for the PERS board to create an opportunity for stakeholders to meet with PERS staff as well as the PERS actuary to explore some of the issues identified above and other issues which may arise during the rulemaking process. I would appreciate your including this letter in the board's meeting packet for the upcoming meeting, and I will, of course, be ready to address any issues at the upcoming meeting on this equal-to-or-better-than process.

Yours very truly,



Gregory A. Hartman

GAH:kaj

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# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
SUBJECT: Notice of Rulemaking to Amend Definition of Salary  
OAR 459-005-0001, *Definitions, Generally*  
OAR 459-070-0001, *Definitions*

MEETING DATE	<b>02/15/2008</b>
AGENDA ITEM	<b>B.5. Amend Definition of Salary</b>

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: HB 3138 (2007) added an option for employers to make non-elective contributions to 403(b) plans pursuant to ORS 243.820(3). This rule modification would clarify that these types of contributions will not be considered “salary” for PERS purposes.
- Subject: PERS definition of “salary.”
- Policy Issue: Should PERS change the definition of “salary” to exclude non-elective employer contributions to 403(b) plans?

### BACKGROUND AND POLICY ISSUE

*Should PERS change the definition of “salary” to exclude non-elective employer contributions to 403(b) plans?*

HB 3138, as adopted by the 2007 Oregon legislature, added another type of contribution for employers to make to 403(b) plans pursuant to ORS 243.820(3). These optional contributions are described as non-elective employer contributions for educational institution employees.

This new type of contribution begs the question of whether such payments should be considered “salary” for PERS purposes. If it was, then PERS employer and employee contributions would be owed on that payment; if not, no PERS contributions would be triggered.

As the term “salary” is defined in statute (ORS 238.005(21) and 238A.005(16)), these non-elective employer contributions appear to be most closely analogous to payments that are excluded from the current definition of “salary.” These rule modifications clarify the treatment of the non-elective employer contributions for PERS purposes.

### LEGAL REVIEW

The draft rules have been submitted to the Department of Justice for legal review. Any comments or changes will be incorporated before the rules are presented for adoption.

### PUBLIC COMMENT AND HEARING TESTIMONY

The public comment period ends on March 7, 2008 at 5:00 p.m.

### IMPACT

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

Impact: Clarifies the PERS-related costs of additional 403(b) contributions allowed by HB 3183 for employers considering those contributions.

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

### RULEMAKING TIMELINE

January 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
February 1, 2008	<i>Oregon Bulletin</i> published the Notice.
February 15, 2008	PERS Board notified that staff began the rulemaking process.
February 26, 2008	Public hearing scheduled for 2:00 p.m. in Tigard
March 7, 2008	Initial public comment period ends at 5:00 p.m.
March 28, 2008	First reading of the rule and staff proposes adopting the permanent rule, including any amendments warranted by public comment or further research.

### NEXT STEPS

Public hearing is scheduled on February 26, 2008. Public comment ends at 5:00 p.m. on March 7, 2008. The rule is scheduled to be brought before the PERS Board for adoption at the March 28, 2008 meeting.

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 5 – Administration**

1 **459-005-0001**

2 **Definitions, Generally**

3 The words and phrases used in chapter 459, Oregon Administrative Rules, have the  
4 same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used  
5 in Chapter 459 generally are defined as follows unless context of a particular division or  
6 rule within this chapter requires otherwise:

7 (1) "Ad hoc" means one-time for a specific purpose, case, or situation without  
8 consideration of a broader application.

9 (2) "After-tax" contributions means:

10 (a) Member contributions required or permitted by ORS 238.200 or 238.515 which a  
11 participating employer has not elected to "pick up," assume or pay in accordance with  
12 ORS 238.205 and 238.515(b). "After-tax" contributions are included in the member's  
13 taxable income for purposes of state or federal income taxation at the time paid to PERS.  
14 "After-tax" contributions are included in computing FAS and in computing the  
15 employer's contributions paid to PERS.

16 (b) Payments made by a member to PERS for the purchase of additional benefits.

17 (3) "Before-tax" contributions means member contributions required or permitted by  
18 ORS 238.200 or 238.515 which a participating employer has elected to "pick up," assume  
19 or pay in accordance with ORS 238.205 and 238.515(b). "Before-tax" contributions are  
20 not included in the member's taxable income for purposes of state or federal income  
21 taxation at the time paid to PERS. "Before-tax" contributions are included in:

22 (a) Computing final average salary; and

1 (b) Computing the employer's contributions paid to PERS if the employer has  
2 elected to "pick up" the member contributions.

3 (4) "Calendar month" means the Julian Calendar beginning with the first calendar  
4 day of a month through the last calendar day of that month.

5 (5) "Casual worker" means an individual engaged for incidental, occasional,  
6 irregular, or unscheduled intervals or for a period of less than six consecutive calendar  
7 months.

8 (6) "Contributions" means any contributions required or permitted pursuant to ORS  
9 238.200 or 238.515.

10 (7) "Effective date of withdrawal" is the later of:

11 (a) The first day of the calendar month in which PERS receives the completed  
12 documents required of the member who is requesting a withdrawal of the member's  
13 regular account and variable account, if any; or

14 (b) The first day of the calendar month in which PERS receives the required notice  
15 of separation from the member's former employer(s).

16 (8) "Effective retirement date" means:

17 (a) For service retirements, the date described in OAR 459-013-0260; or

18 (b) For disability retirements, the date described in OAR 459-015-0015.

19 (9) "Elected official" means an individual who is a public official holding an elective  
20 office or an appointive office with a fixed term for the state or for a political subdivision  
21 of the state who has elected to participate in PERS pursuant to ORS 238.015(5).

22 (10) "Emergency worker" means an individual engaged in case of emergency,  
23 including fire, storm, earthquake, or flood.

1 (11) "Employee" has the same meaning as provided in ORS 238.005(7) and shall be  
2 determined in accordance with OAR 459-010-0030.

3 (a) For the purposes of ORS 238.005 to 238.750 the term "employee" includes  
4 public officers whether elected or appointed for a fixed term.

5 (b) The term "employee" does not include:

6 (A) A member of the governing board of a political subdivision unless the individual  
7 qualifies for membership under ORS 238.015.

8 (B) An individual who performs services for a public employer as a contractor in an  
9 independently established business or as an employee of that contractor in accordance  
10 with OAR 459-010-0030.

11 (C) An individual providing volunteer service to a public employer without  
12 compensation for hours of service as a volunteer, except for volunteer firefighters who  
13 establish membership in accordance with ORS 238.015(6).

14 (12) "Employer contribution account" means a record of employer contributions to  
15 the Fund, as required by ORS 238.225(1), and investment earnings attributable to those  
16 contributions, that the Board has credited to the account after deducting amounts required  
17 or permitted by ORS Chapter 238.

18 (13) "Employment" is compensated service to a participating employer as an  
19 employee whose:

20 (a) Period or periods of employment includes only the actual hours of compensated  
21 service with a participating employer as an employee; and

22 (b) Compensated service includes, but is not limited to, paid vacation, paid sick  
23 leave, or other paid leave.

1 (14) "Estimate" means a projection of benefits prepared by staff of a service or  
2 disability retirement allowance, a death or a refund payment. An estimate is not a  
3 guarantee or promise of actual benefits that eventually may become due and payable, and  
4 PERS is not bound by any estimates it provides. (ORS 238.455(6))

5 (15) "FAS" and "final average salary" have the same meaning as provided in:

6 (a) ORS 238.005(8) for all PERS Tier One members;

7 (b) ORS 238.435(2) for all PERS Tier Two members who are not employed by a  
8 local government as defined in ORS 174.116;

9 (c) ORS 238.435(4) for all PERS Tier Two members who are employed by a local  
10 government as defined in ORS 174.116; or

11 (d) ORS 238.535(2) for judge members of PERS for service as a judge.

12 (16) "General service member" means membership in PERS as other than a judge  
13 member, a police officer, a firefighter, or a legislator.

14 (17) "Good cause" means a cause beyond the reasonable control of an individual.  
15 "Good cause" exists when it is established by satisfactory evidence that factors or  
16 circumstances are beyond the reasonable control of a rational and prudent individual of  
17 normal sensitivity, exercising ordinary common sense.

18 (18) "Independent contractor" means an individual or business entity that is not  
19 subject to the direction and control of the employing entity as determined in accordance  
20 with OAR 459-010-0032.

21 (19) "Judge member" has the same meaning as provided in 238.500(3). For purposes  
22 of this chapter, active, inactive, and retired membership of a judge member shall have the  
23 same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

1 (20) "Legislator" means an individual elected or appointed to the Oregon Legislative  
2 Assembly who has elected to participate in PERS pursuant to ORS 238.015(5) as a  
3 member of the Oregon Legislative Assembly as provided in ORS 238.068.

4 (21) "Member cost" means after-tax member contributions and payments made by  
5 or on behalf of a member to purchase additional benefits.

6 (22) "Participating employer" means a public employer who has one or more  
7 employees who are active members of PERS.

8 (23) "PERS" and "system" have the same meaning as the Public Employees  
9 Retirement System in ORS 238.600.

10 (24) "Qualifying position" has the same meaning as provided in ORS 238.005(19).

11 (25) "Regular account" means the account established under ORS 238.250 for each  
12 active and inactive member who has made contributions to the Fund or the account of an  
13 alternate payee of such a member.

14 (26) "Salary" has the same meaning as provided in ORS 238.005(21).

15 **(a) For Tier One and Tier Two members, contributions made pursuant to ORS**  
16 **243.820(3) are not considered salary.**

17 ([a]/b) For a Tier One member, a lump sum payment for accrued vacation pay is  
18 considered salary:

19 (A) In determining employee and employer contributions.

20 (B) In determining final average salary for the purpose of calculating PERS benefits.

21 ([b]/c) For a Tier Two member, a lump sum payment for accrued vacation pay:

22 (A) Is considered salary in determining employee and employer contributions.

1 (B) Is not considered salary in determining final average salary for the purpose of  
2 calculating PERS benefits.

3 (27) "Seasonal worker" means an individual whose engagement is characterized as  
4 recurring for defined periods that are natural divisions of the employer's business cycle or  
5 services.

6 (28) "Staff" means the employees of the Public Employees Retirement System as  
7 provided for in ORS 238.645.

8 (29) "Tier One member" means a member who established membership in the  
9 system before January 1, 1996, as defined in ORS 238.430(2).

10 (30) "Tier Two member" means a member who established membership in the  
11 system on or after January 1, 1996, in accordance with ORS 238.430.

12 (31) "Vacation pay" means a lump sum payment for accrued leave in a Vacation  
13 Leave Program provided by a public employer which grants a period of exemption from  
14 work for rest and relaxation with pay, and does not include:

15 (a) Sick leave programs;

16 (b) Programs allowing the accumulation of compensatory time, holiday pay or other  
17 special leaves unless the public employer's governing body indicates by resolution,  
18 ordinance, or other legislative process, that such leave is intended to serve as additional  
19 vacation leave; and

20 (c) Other programs, such as a Personal Time Off (PTO) plan, which are a  
21 combination of vacation, sick, bereavement, personal and other leaves of pay as defined  
22 and described by a public employer unless the employer has a written policy that clearly  
23 indicates the percentage of the plan that represents vacation leave. If the employer's PTO

1 has a cash option, the employer shall report to PERS the amount of any lump sum pay-off  
2 for the percentage that represents vacation leave.

3 (32) "Variable account" and "member variable account" mean the account in the  
4 Variable Annuity Account established under ORS 238.260(2) for each active and inactive  
5 member who has elected to have amounts paid or transferred into the Variable Annuity  
6 Account.

7 (33) "Variable Annuity Account" means the account established in ORS 238.260(2).

8 (34)(a) "Volunteer" means an individual who performs a service for a public  
9 employer, and who receives no compensation for the service performed.

10 (b) The term "volunteer" does not include an individual whose compensation  
11 received from the same public employer for similar service within the same calendar year  
12 exceeds the reasonable market value for such service.

13 (35) "Year" means any period of 12 consecutive calendar months.

14 (36) The provisions of this rule are effective January 1, 2003.

15 Stat. Auth.: ORS 238.650

16 Stats. Implemented: ORS Chapters 238 and 238A

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459**

**DIVISION 70 – Oregon Public Service Retirement Plan, Generally**

1    **459-070-0001**

2    **Definitions**

3    The words and phrases used in this Division have the same meaning given them in ORS  
4    238A.005 unless otherwise indicated. Specific and additional terms for purposes of  
5    Divisions 70, 75 and 80 are defined as follows unless context requires otherwise:

6        (1) "Academic employee of a community college" means an instructor who teaches  
7    classes offered for college-approved credit or on a non-credit basis.

8        (a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-  
9    teaching faculty, and classified, professional or nonprofessional support staff are not  
10   academic employees for the purposes of section 20 of OL 2005 Ch. 332, but are subject  
11   to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

12        (b) The governing body of a community college shall determine who is an academic  
13   employee in its employ under this rule. In making that determination, a community  
14   college shall consider all disciplines (academic activity) collectively when an employee's  
15   assignment includes multiple disciplines.

16        (2) "Calendar month" means a full month beginning on the first calendar day of a  
17   month and ending on the last calendar day of the same month.

18        (3) "Calendar year" means 12 calendar months beginning on January 1 and ending  
19   on December 31 following.

20        (4) "Employee" has the same meaning as "eligible employee" in ORS 238A.005(4).

1 (5) "Employee class" means a group of similarly situated employees whose  
2 positions have been designated by their employer in a policy or collective bargaining  
3 agreement as having common characteristics.

4 (6) "Employee contributions" means contributions made to the individual account  
5 program by an eligible employee under ORS 238A.330, or on behalf of the employee  
6 under ORS 238A.335.

7 (7) "Final Average Salary" (FAS) has the same meaning given the term in:

8 (a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed  
9 by a local government as defined in ORS 174.116; or

10 (b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by  
11 a local government as defined in ORS 174.116.

12 (8) "Member" has the same meaning given the term in ORS 238A.005(10).

13 (9) "Member account" means the account of a member of the individual account  
14 program.

15 (10) "Member of PERS" has the same meaning as "member" in ORS  
16 238.005(12)(a), but does not include retired members.

17 (11) "OPSRP" means the Oregon Public Service Retirement Plan.

18 (12) "Overtime" means the salary or hours, as applicable, that an employer has  
19 designated as overtime.

20 (13) "Partial year of separation" means a period in the calendar year the employee  
21 separates from employment that begins on January 1 of the year and ends before the last  
22 working day of the year.

1 (14) "Qualifying position" means a position designated by the employer as  
2 qualifying, except:

3 (a) A position or concurrent positions in which an employee performs at least 600  
4 hours of service in a calendar year is qualifying regardless of employer designation.

5 (b) A position in a partial year of separation is qualifying regardless of employer  
6 designation if the position is continued from an immediately preceding calendar year in  
7 which the employee performed at least 600 hours of service in the position or concurrent  
8 positions.

9 (c) A position with one employer in which the employee is employed for the entire  
10 calendar year and fails perform at least 600 hours of service in that position or concurrent  
11 positions in the calendar year is non-qualifying regardless of employer designation.

12 (15) "Salary" has the same meaning given the term in ORS 238A.005(16)[.], **except**  
13 **“salary” does not include contributions made pursuant to ORS 243.820(3).**

14 (16) "School employee" has the meaning given the term in ORS 238A.140(7).

15 (17) "Service" means a period in which an employee:

16 (a) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

17 (b) Receives a payment of "salary," as defined in ORS 238.005A(16) or similar  
18 payment from workers' compensation or disability.

19 (18) The provisions of this rule are effective on January 1, 2004.

20 Stat. Auth.: ORS 238A.450

21 Stats. Implemented: ORS 238A.005, 238A.025, 238A.140, 238A.330 & 238A.335, OL

22 2007 Ch. 769



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Notice of Rulemaking for OAR 459-015-0055, *Selection of Benefit Option and Commencement of Allowance*

MEETING DATE	<b>02/15/2008</b>
AGENDA ITEM	<b>B.6. Disability Benefit Option</b>

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The current rule needs to be amended to clarify the administration of purchases of additional creditable service and retirement credit by members approved for disability retirement, and their beneficiaries.
- Subject: Purchase of creditable service or retirement credit incident to disability retirement under the PERS Chapter 238 Program.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

PERS Chapter 238 Program members who have been approved for disability retirement are allowed to make purchases of additional creditable service or retirement credit. The modifications to OAR 459-015-0055 clarify when that purchase must be made. The rule modifications also provide direction about the conditions under which the beneficiary of a deceased member may make the purchase when the member dies prior to PERS approving the disability retirement application.

When a member applies for a disability retirement benefit, they are asked to complete a preliminary benefit option selection form. This form documents the member's benefit option selection in case the member dies before PERS approves the disability retirement application.

In that case, the preliminary benefit option selection becomes effective when PERS approves the disability retirement application. The beneficiary, if any, named in the preliminary election may make purchases of additional creditable service and retirement credit to which the member was entitled within 90 days from the date the disability retirement application is approved.

If the deceased member did not complete a preliminary option selection form and the beneficiary designated to receive pre-retirement death benefits under ORS 238.390(1) is the member's surviving spouse, the rule provides for the surviving spouse to choose Option 2 or 3 and to purchase creditable service or retirement credit on behalf of the member, or to receive pre-retirement death benefits.

The proposed modifications more clearly describe current practice.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was scheduled on January 22, 2008, at 2:00 p.m. at PERS Headquarters in Tigard. No one attended. The public comment period ends on February 22, 2008, at 5:00 p.m.

### LEGAL REVIEW

The attached draft rule has been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rule is presented for adoption.

### IMPACT

Mandatory: No, the Board could retain the existing rule language, but the current rule is unclear.

Impact: Members, beneficiaries, and staff will benefit from the rule's clarification.

Cost: There are no discrete costs attributable to this rule.

### RULEMAKING TIMELINE

December 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2008	<i>Oregon Bulletin</i> published the Notice.
January 22, 2008	Rulemaking hearing held at 2:00 p.m. in Tigard.
February 15, 2008	PERS Board notified that staff began the rulemaking process.
February 22, 2008	Public comment period ends at 5:00 p.m.
March 28, 2008	First Reading of the rule.
May 16, 2008	Staff proposes adopting modifications to the permanent rule, including any amendments warranted by public comment or further research.

### NEXT STEPS

Public comment ends at 5:00 p.m. on February 22, 2008. The rule is scheduled to be brought before the PERS Board for first reading on March 28, 2008, and for adoption at the May 16, 2008, meeting.

*DRAFT*      *DRAFT*      *DRAFT*      *DRAFT*      **B.6. Attachment 1**  
**OREGON ADMINISTRATIVE RULE**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**  
**CHAPTER 459**  
**DIVISION 015 – DISABILITY RETIREMENT ALLOWANCES**

1    **459-015-0055**

2    **Selection of Benefit Option and Commencement of Allowance**

3        (1) Upon filing an application for a disability retirement allowance, the member may  
4    make a preliminary designation of beneficiary and a preliminary selection of benefit option.

5        (a) A member may choose from retirement Options 1, 2, 2A, 3, 3A, 15 year certain or  
6    refund annuity as set forth in ORS 238.300 and 238.305, or an optional disability retirement  
7    allowance under ORS 238.325.

8        (b) A member may not choose a lump-sum option.

9        (2) Within 90 days following the Director's, or the Director's designee's, approval of the  
10   application for disability retirement allowance, the member must complete a final designation  
11   of beneficiary and selection of benefit option on forms provided by PERS. Receipt of the final  
12   forms will supercede any preliminary beneficiary designation or benefit option.

13        (a) The final option selected applies only to the corresponding time period the member is  
14   receiving a disability retirement allowance.

15        (b) The beneficiary designation or benefit option may be changed up to 60 days after the  
16   date of the first benefit payment as provided in ORS 238.325(2).

17        (c) If a member's disability retirement allowance is canceled, the option selected for the  
18   purposes of that disability retirement allowance is canceled and a new option may be selected  
19   upon a subsequent disability or a service retirement.

20        (3) If the member does not complete a final selection of benefit option within 90 days  
21   following the Director's, or the Director's designee's, approval of the application for disability  
22   retirement allowance:

1            (a) The benefit will be the benefit as set forth under ORS 238.320(1); and

2            (b) The latest beneficiary designation on file for the PERS Chapter 238 Program will be  
3 used to determine the default beneficiary. If no designation exists, the beneficiary will be as  
4 provided for under ORS 238.390(2).

5            (4) Purchases. If a member is eligible to purchase additional creditable service or  
6 retirement credit under ORS [c]Chapter 238, **the member must submit [the]** payment for the  
7 purchase(s) [shall accompany] **at the time the member submits** the final selection of benefit  
8 option form **required under Section (2) of this rule.**

9            (5) The payment of a disability retirement allowance shall commence within ten days  
10 following receipt by PERS of all of the following items, or the date the first payment is due, as  
11 set forth in Section (6) of this rule, whichever is later:

12            (a) From the member:

13            (A) Final designation of beneficiary and selection of benefit option form;

14            (B) Proof of member's age;

15            (C) Proof of age for the designated beneficiary if a joint survivor option is elected; and

16            (D) Spousal consent form.

17            (b) From the employer:

18            (A) Financial; and

19            (B) Demographic information indicating the member has separated from PERS-covered  
20 employment.

21            (6) A disability payment is first due on the later of:

22            (a) The first of the calendar month in which the member files a complete application for  
23 disability benefits with PERS; or



1 (9) Minimum disability benefit. A disability benefit will not be less than \$100 per month  
2 under the non-refund Option 1 benefit or the amount the member would have received for  
3 service retirement, if eligible, whichever is higher.

4 (10) In the event a member applying for a disability retirement allowance dies prior to the  
5 Director's approval of the application[, and]:

6 (a) **If** the member has made a preliminary [*designation of beneficiary or selected a*]  
7 benefit option **election**, the preliminary election[(s)] shall be effective upon the Director's  
8 approval of [*that*] **the** application **for disability retirement**.

9 **(A) If the deceased member was eligible to purchase additional creditable service or**  
10 **retirement credit under ORS Chapter 238, the beneficiary, if any, designated in the**  
11 **preliminary election may make the purchase(s) by submitting the required forms and**  
12 **payment within 90 days from the date the disability application is approved.**

13 [*(A) If the beneficiary is the surviving spouse, the surviving spouse may, within 90 days*  
14 *from the date the disability application is approved, elect to have either Option 2 or 3*  
15 *disability benefits or pre-retirement death benefits, as provided in ORS 238.390 or 238.395, if*  
16 *eligible.*

17 (B) *If the surviving spouse elects either Option 2 or 3, the surviving spouse cannot name*  
18 *a beneficiary and all benefits will cease upon the spouse's death.]*

19 (b) **If** the member has not made a preliminary [*designation of beneficiary or selected a*]  
20 benefit option **election**, the member will be considered as having died before retirement.

21 **(A) If the beneficiary designated under ORS 238.390(1) is the surviving spouse, the**  
22 **surviving spouse may, within 90 days from the date the disability application is**

1 approved, elect to have either Option 2 or 3 disability benefits or pre-retirement death  
2 benefits, as provided in ORS 238.390 or 238.395, if eligible.

3 (i) Regardless of the election made by the surviving spouse under paragraph (b)(A)  
4 of this Section, all benefits will cease upon the surviving spouse's death.

5 (ii) If the deceased member was eligible to purchase additional creditable service or  
6 retirement credit under ORS Chapter 238, a surviving spouse who elects disability  
7 benefits under paragraph (b)(A) of this section, may make the purchase(s) by submitting  
8 the required forms and payment at the time of the election.

9 (B) If the beneficiary designated under ORS 238.390(1) is not the surviving spouse,  
10 the beneficiary will receive pre-retirement death benefits as provided in ORS 238.390 or  
11 238.395, if eligible.

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.320, 238.325 & 238.330<sup>[5]</sup>



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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
SUBJECT: Notice of Rulemaking for OSGP Unforeseeable  
Emergency Withdrawal Appeals Committee  
OAR 459-050-0040, *Unforeseeable Emergency Withdrawal Appeals Committee*

MEETING DATE	<b>02/15/2008</b>
AGENDA ITEM	<b>B.7. Appeals Committee</b>

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Minor modification to allow the Oregon Savings Growth Plan (OSGP) Emergency Withdrawal Appeals Committee to meet sooner than currently allowed and to meet by phone or in person.
- Subject: OSGP Emergency Withdrawal Appeals Committee timeline and procedures.
- Policy Issues:
  1. How soon should the Emergency Withdrawal Appeals Committee meet upon receipt by manager of an appeal?
  2. In what manner should the Appeals Committee meet?

### BACKGROUND

Participants in OSGP may receive an emergency withdrawal from their OSGP account without separating from the sponsoring employer if they meet certain criteria. If the participant's request for an emergency withdrawal is denied, they may appeal the denial to the Emergency Withdrawal Appeals Committee. Currently, the rule requires the committee to wait until 14 days after the manager receives the appeal to meet and is silent on the manner of how the committee may meet.

### POLICY ISSUES

#### *1. How soon should the Appeals Committee meet upon receipt by the Manager of an appeal?*

One of the criteria that a participant must meet to obtain an emergency withdrawal is that there is an "immediate need" that the participant cannot satisfy through other means. The participant is now also required to apply for a plan loan, if eligible, prior to requesting an emergency withdrawal. By the time the participant appeals the denial of an emergency withdrawal request, they may be weeks into the process. Currently, the rule does not allow the Appeals Committee to meet until 14 days after the appeal is received. It would seem illogical in an "immediate need" situation to make the participant wait another two weeks for the Appeals Committee to meet when they are already weeks into the process. Making the committee (and the participant) wait

two weeks could perpetuate the hardship for the participant. OSGP Staff are requesting the rule modification to remove the mandate for a 14 day delay.

2. *In what manner should the Appeals Committee meet?*

Currently the rule is silent on how the committee should meet. To facilitate a prompt meeting and decision, the OSGP staff recommend modifying the rule to allow the committee to meet via phone or in person.

LEGAL REVIEW

The draft rules have been submitted to the Department of Justice for legal review. Any comments or changes will be incorporated before the rules are presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on January 22, 2008. No one attended. The public comment period ends on March 21, 2008 at 5:00 p.m.

IMPACT

Mandatory: No.

Impact: Appeals will be processed in a timely manner and the committee will meet in person or by phone.

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

RULEMAKING TIMELINE

December 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2008	<i>Oregon Bulletin</i> published the Notice.
January 22, 2008	Rulemaking hearing held at 2:00 p.m. in Tigard.
February 15, 2008	PERS Board notified that staff began the rulemaking process.
March 21, 2008	Public comment ends at 5:00 p.m.
March 28, 2008	First Reading of the rule.
May 16, 2008	Staff proposes adopting the permanent rule, including any amendments warranted by public comment or further research.

NEXT STEPS

The public comment period end at 5:00 p.m., on March 21, 2008. The rule is scheduled to be brought before the PERS Board for adoption at the May 16, 2008 meeting.

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 050 – DEFERRED COMPENSATION**

1 **459-050-0040**

2 **Unforeseeable Emergency Withdrawal Appeals Committee**

3 (1) Purpose. The Unforeseeable Emergency Withdrawal Appeals Committee (the  
4 Committee) shall evaluate appeals denied by the Deferred Compensation Manager or  
5 designee authorized to take action on the Manager's behalf for the distribution of deferred  
6 compensation on the basis of claims of unforeseeable emergency in compliance with the  
7 Internal Revenue Code, Section 457, 26 U.S.C. 457, and the provisions of OAR 459-050-  
8 0150. The Committee shall formally approve or deny each appeal based on the merits of  
9 the appeal. *[and the standards set forth in applicable U.S. Treasury Regulations.]*

10 (2) Committee composition. The Committee shall consist of not fewer than three  
11 persons.

12 (a) One person shall be a PERS staff member from the Deferred Compensation  
13 Program.

14 (b) Two persons shall be PERS staff members from other than the Deferred  
15 Compensation Program.

16 (3) Committee meetings. The Committee shall meet upon the call of the Manager of  
17 the Deferred Compensation Program **no later than** *[no sooner than]* 14 calendar days  
18 following receipt of an appeal. **The Committee may meet by phone or in person.** The  
19 Committee shall evaluate the participant's written request, emergency withdrawal  
20 application, financial information, and all related documentation submitted for  
21 compliance with 26 U.S.C. 457 and the provisions of OAR 459-050-0150. *[The*  
22 *Committee may address appeals by phone, email, or in person.]*

1 (4) Appeal approval. If an appeal is approved, the Committee authorizes the  
2 Manager to release the funds within 30 calendar days of approval.

3 (5) Appeal denial. Within seven calendar days of the Committee's denial, the  
4 requestor may request an informal conference with the Deferred Compensation Manager  
5 or designee authorized to take action on the Manager's behalf.

6 (6) Request for review. The requester may submit a request for review of the  
7 Committee's determination to the Director of PERS and shall do so within 30 calendar  
8 days of the Committee's denial. The request shall be in writing and include:

9 (a) A description of the staff action or determination for which review is requested;

10 (b) A short statement of the manner in which the action is alleged to be in error;

11 (c) A statement of facts that are basis of the request;

12 (d) Reference to applicable statutes, rules or court decisions upon which the person  
13 relies;

14 (e) A statement of the relief the request seeks; and

15 (f) A request for review.

16 (7) Director's determination. Within 30 calendar days of receiving a request for  
17 review, the Director shall issue a written determination either approving or denying the  
18 unforeseeable emergency withdrawal.

19 Stat. Auth: ORS 243.470

20 Stats. Implemented: ORS 243.401 – 243.507



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February 15, 2008

TO: Members of the PERS Board

FROM: Dale S. Orr, Coordinator, Actuarial Analysis Section

SUBJECT: 2007 Preliminary Earnings Crediting and Reserving

MEETING DATE	<b>2/15/07</b>
AGENDA ITEM	<b>C.1. Preliminary 2007 Earnings Crediting</b>

Staff recommends that the Board, at its February 15, 2008 meeting, make its preliminary earnings crediting and reserving decisions for 2007 to comply with the reporting requirements in ORS 238.670(5). This statute requires PERS to submit a preliminary proposal to the appropriate legislative committee 30 days prior to making a final decision on the crediting of any interest or other income.

Once the Board makes its preliminary decisions, staff will prepare and present the required report to the Oregon Legislature's Ways and Means Committee (Committee). Any comments received from the Committee will be presented to the Board prior to its final earnings crediting decision on March 28, 2008. A Committee hearing is currently scheduled for February 20, 2008, to receive the Board's preliminary decisions.

This preliminary action and the resulting report to the Legislature do not prohibit the PERS Board from changing its final crediting and reserving decisions, such as if new information becomes available. If the Board makes a significant change from its preliminary decisions, staff will promptly report the Board's actions to the Legislature.

### BACKGROUND

There are several components to the Board's preliminary earnings crediting and reserving decisions. Many of these components are articulated in statute or rule. Some components have down-stream effects, such as crediting decisions regarding the Contingency Reserve which determine the amount of earnings remaining to credit to other reserves and accounts. The statutes and rules governing the decisions are briefly summarized below:

- a. Contingency Reserve (Current Balance: \$295.3 million). In each year that available earnings exceed the assumed rate, ORS 238.670(1) (copy attached) requires the Board to consider funding the Contingency Reserve until the Board determines that the reserve is adequately funded. The Board cannot credit more than 7.5% of that year's earnings to the Contingency Reserve. Moreover, the Contingency Reserve is not credited with its own earnings but, instead, funds are added to the reserve only when the Board directs.
- b. Tier One Rate Guarantee Reserve (Current Balance: \$1,635.4 million). This reserve, established under ORS 238.255(1) (copy attached), is to be used to fund crediting of the

assumed rate to Tier One member regular accounts. Those accounts may be credited with more than the assumed rate only when this reserve is fully funded with amounts determined by the Board, after consultation with the actuary, to be necessary to ensure a zero balance in the reserve when all Tier One members have retired, and funded to that limit for three consecutive years.

- c. OAR 459-007-0005. This rule (copy attached) sets forth the sequence and summarizes the statutory limitations that form the basis for annual earnings crediting.

## POLICY DISCUSSIONS

### Contingency Reserve:

In 2007, the Board assessed the funding levels and various uses for the Contingency and Capital Preservation Reserves. As a result, the Board allocated an additional \$50 million into the Contingency Reserve to keep that reserve at approximately 50 basis points of the total PERS Fund. The Board subsequently authorized using \$4.7 million from the Contingency Reserve to fund IAP contributions for members affected by retroactive legislation on lump sum vacation payouts.

The Board also chose not to fund the Capital Preservation Reserve. After consultation with its actuary, the Board decided that using either the Contingency or Capital Preservation Reserves to offset investment losses or stabilize employer rates was not efficient given the structural changes resulting from PERS reform and other available tools and options (e.g. rate collaring). In addition, due to restrictions on the Capital Preservation Reserve, the Board determined that the Contingency Reserve could serve the same purpose as the Capital Preservation Reserve while simultaneously allowing more flexibility in the use of reserved funds.

Because preliminary 2007 earnings exceeded the assumed earnings rate, the Board must again consider whether the Contingency Reserve is adequately funded. Staff developed three options, two of which will increase the Contingency Reserve from its current level. Charts showing the full impact of each option are attached.

Option 1: No increase. The Contingency Reserve would remain at \$295.3 million.

Option 2: \$50 million increase. This would increase the size of the Contingency Reserve to \$345.3 million so that it stays at the same proportional level to the entire PERS Fund established by the Board at the end of 2006 (approximately 50 basis points).

Option 3: \$357.4 million increase. This represents crediting the full 7.5% of earnings, the maximum amount allowed by statute that can be placed in the Contingency Reserve from 2007 earnings. This would bring the reserve balance to \$652.7 million.

Staff recommends Option 3 due to uncertainty from ongoing litigation and the unknown impact from unsettled financial markets. This option affords the PERS Board the most flexibility at this time, since Contingency Reserve creditings can only occur in years that earnings exceed the assumed rate. The PERS Board can redeploy this reserve allocation in later years, as it has

previously, when some of these exigent contingencies are more clearly defined. The following is a summary of these reserving options:

<b>Reserve Additions</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3*</b>
<b>Earnings to Contingency Reserve</b>	\$0	\$50 million	\$357.4 million
<b>Earnings to Tier One Rate Guarantee Reserve</b>	\$317.6 million	\$308.7 million	\$253.9 million
<b>Total Reserve Additions</b>	\$317.6 million	\$358.7 million	\$611.3 million
<b>Effect by Reserve:</b>			
<b>Contingency Reserve Ending Balance</b>	\$295.3 million	\$345.3 million	\$652.7 million
<b>Rate Guarantee Res. Ending Balance</b>	\$1,953.0 million	\$1,944.1 million	\$1,889.3 million
<b>Reserve Totals</b>	\$2,248.3 million	\$2,289.4 million	\$2,542.0 million

\*Staff recommendation

Tier One Rate Guarantee Reserve:

Earnings above the assumed rate from Tier One member Regular Accounts have been credited to this reserve since it was established in the 2003 PERS Reform legislation. Tier One member Regular Accounts cannot be credited from this reserve unless earnings fall below the assumed rate or the reserve's statutorily mandated funding level is met and held for three consecutive years (as explained previously). In 2007, the PERS actuary conducted a financial modeling study to assist the Board in determining the appropriate reserve funding level. The actuary reported its analysis to the Board in March 2007 by concluding that the Tier One Rate Guarantee Reserve had not reached the statutorily mandated funding level. Based on that analysis, the highest possible balance in the Tier One Rate Guarantee Reserve after 2007 earnings have been credited, under any option, will still have not reached that statutory funding level threshold. No further Board action is required at this time.

Strunk Attorney Fees:

The Oregon Supreme Court in the *Strunk* case awarded attorney fees to the plaintiff's attorneys based on a common fund theory of recovery. Under that theory, the attorney fees are to be awarded from the fund created by their success on the issues where they prevailed in that case. One of those issues was the restoration of annually crediting at least the assumed rate (currently 8%) to Tier One member Regular Accounts. The court directed PERS to take the specified plaintiff's attorney fees from the 8 % earnings that would otherwise be credited to Tier One member Regular Accounts for 2007. As a result, fees in the amount of \$1,394,566 were deducted from these earnings, causing the preliminary 2007 crediting rate for Tier One member Regular Accounts to be reduced from 8.00% to a preliminary earnings crediting rate of 7.97%. The balance of the attorney fees owed, \$763,367, were directed by the court to be recovered from the other common fund, those retired members who were subject to the COLA freeze.

These fees will be charged proportionately to those retired members as a one-time deduction from a future benefit payment.

#### PRELIMINARY EARNINGS CREDITING DECISION

To aid the Board in making its preliminary earnings crediting decision for 2007, staff has prepared a set of recommended actions. These actions are based on the following assumptions and preliminary steps, as outlined in OAR 459-007-0005:

1. The health insurance accounts in the PERS Fund are credited with their actual earnings, less administrative expenses incurred.
2. Employer lump sum payment accounts are credited with their actual earnings based on time on deposit, less administrative expenses as authorized by ORS 238.225(10).
3. Variable Annuity Accounts are credited with their actual earnings, less a proportional charge for administrative expenses. The variable earnings crediting rate for 2007 is currently estimated to be 1.75%.
4. Available earnings are net of the agency's administrative expenses, which are to be recovered first from available earnings according to ORS 238.610.

#### RECOMMENDED 2007 PRELIMINARY EARNINGS CREDITING ACTIONS

Staff recommends the following earnings allocations be adopted preliminarily by the PERS Board:

*1. Funding of Contingency Reserve*

Credit 7.5% of available preliminary 2007 earnings to the Contingency Reserve. (Option 3).

*2. Judge Member Accounts*

Credit Judge Member accounts with the assumed earnings rate (8%).

*3. Tier One Member Regular Accounts*

Credit Tier One member Regular Accounts with 7.97% following deduction and transfer of the required amount to pay specified *Strunk* attorney fees as described above, and credit the remainder of Tier One member Regular Account earnings to the Tier One Rate Guarantee Reserve.

*4. Tier Two Member Regular Accounts, Benefits-In-Force and Employer Reserves*

Credit Tier Two member Regular Accounts, Benefits-In-Force Reserve, and Employer Reserves evenly with the remaining available earnings.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the staff’s recommended preliminary earnings crediting and reserving allocations for calendar year 2007, subject to final adoption at the March 28, 2008 PERS Board meeting.” (Option 3 of crediting \$357.4 million to the Contingency Reserve)
2. Pass a motion to adopt the staff’s recommended preliminary earnings crediting and reserving allocations for calendar year 2007, subject to final adoption at the March 28, 2008 PERS Board meeting, but amending that recommendation as follows:
  - By crediting no dollars to the Contingency Reserve. (Option 1), or
  - By crediting \$50 million dollars to the Contingency Reserve. (Option 2)

Attachment 1 - Option 1: \$0.0 Increase in the Contingency Reserve

Attachment 2 - Option 2: \$50.0 million Increase in the Contingency Reserve

Attachment 3 - Option 3: \$357.4 million Increase in the Contingency Reserve

Attachment 4 - ORS 238.670 – Reserve Accounts

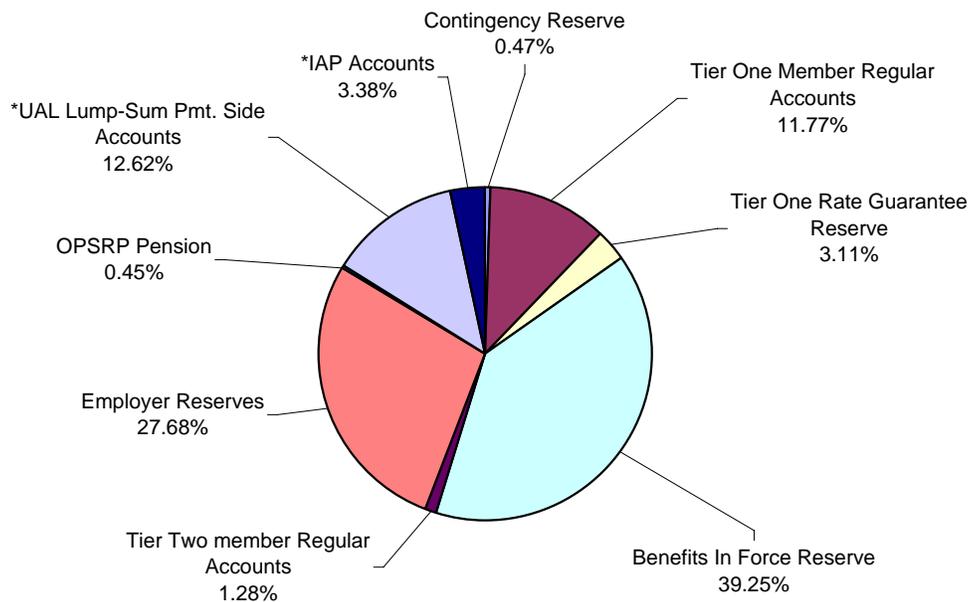
Attachment 5 - ORS 238.255 – Credits to Regular Accounts

Attachment 6 - OAR 459-007-0005 “Annual Earnings Crediting”

**Option 1**  
**2007 Preliminary Earnings Crediting**  
**No Additional to Contingency Reserve**  
**(All dollar amounts in millions)**

Regular Account Reserve	Reserves Before Crediting	2007 Preliminary Crediting	Reserves After Crediting	2007 Preliminary Rates
Contingency Reserve	\$295.3	\$0.0	\$295.3	N/A
Tier One Member Regular Accounts	6,845.0	546.2	7,391.2	7.97%
Tier One Rate Guarantee Reserve	1,635.4	317.6	1,953.0	N/A
Benefits In Force Reserve	22,375.1	2,283.5	24,658.6	10.20%
Tier Two member Regular Accounts	728.7	74.4	803.1	10.20%
Employer Reserves	15,777.3	1,610.2	17,387.4	10.20%
OPSRP Pension	257.8	23.4	281.2	9.07%
*UAL Lump-Sum Pmt. Side Accounts	7,195.0	731.1	7,926.1	Various
*IAP Accounts	1,939.1	184.1	2,123.2	9.49%
<b>Total</b>	<b>\$57,048.8</b>	<b>\$5,770.5</b>	<b>\$62,819.2</b>	

**2007 Regular Account Reserve Balances**  
**After 2007 Preliminary Crediting**

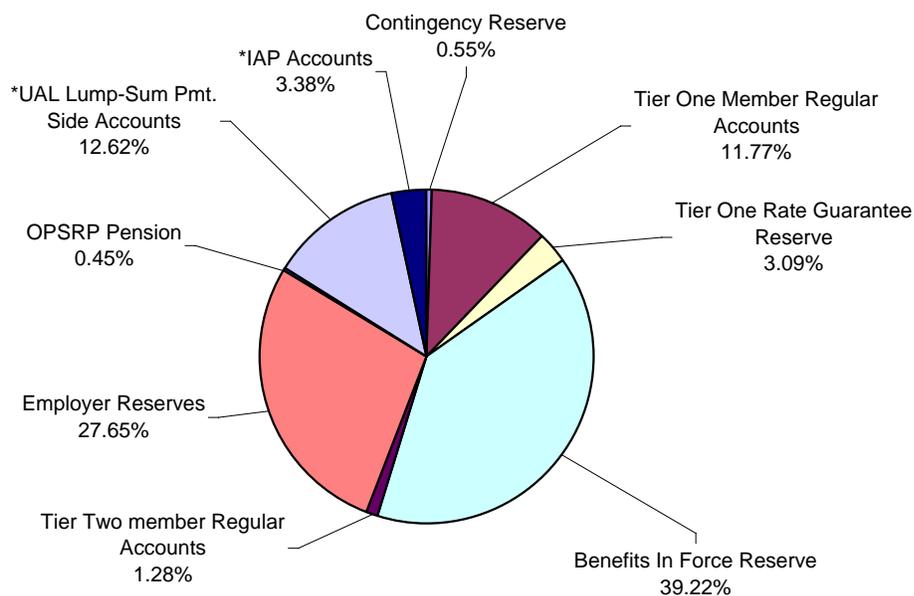


\*Informational only. Not affected by Board reserving or crediting decisions.

**Option 2**  
**2007 Preliminary Earnings Crediting**  
**\$50 Million Additional to Contingency Reserve**  
**(All dollar amounts in millions)**

Regular Account Reserve	Reserves Before Crediting	2007 Preliminary Crediting	Reserves After Crediting	2007 Preliminary Rates
Contingency Reserve	\$295.3	\$50.0	\$345.3	N/A
Tier One Member Regular Accounts	6,845.0	546.2	7,391.2	7.97%
Tier One Rate Guarantee Reserve	1,635.4	308.7	1,944.1	N/A
Benefits In Force Reserve	22,375.1	2,260.0	24,635.1	10.10%
Tier Two member Regular Accounts	728.7	73.6	802.4	10.10%
Employer Reserves	15,777.3	1,593.6	17,370.9	10.10%
OPSRP Pension	257.8	23.1	280.9	8.97%
*UAL Lump-Sum Pmt. Side Accounts	7,195.0	731.1	7,926.1	Various
*IAP Accounts	1,939.1	184.1	2,123.2	9.49%
<b>Total</b>	<b>\$57,048.8</b>	<b>\$5,770.5</b>	<b>\$62,819.2</b>	

**2007 Regular Account Reserve Balances**  
**After 2007 Preliminary Crediting**

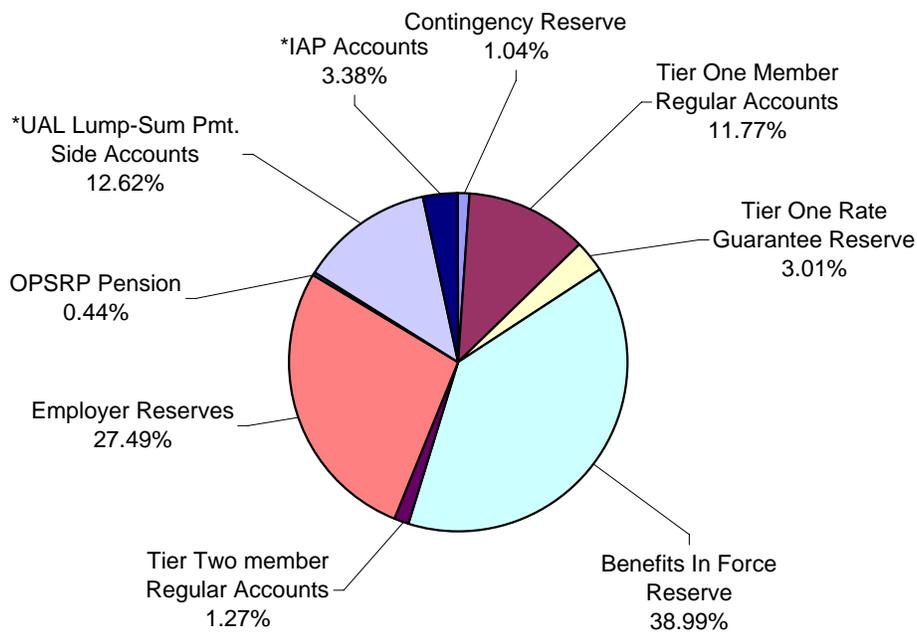


\*Informational only. Not affected by Board reserving or crediting decisions.

**Option 3**  
**2007 Preliminary Earnings Crediting**  
**\$357.4 Million (Maximum) Additional to Contingency Reserve**  
**(All dollar amounts in millions)**

Regular Account Reserve	Reserves Before Crediting	2007 Preliminary Crediting	Reserves After Crediting	2007 Preliminary Rates
Contingency Reserve	\$295.3	\$357.4	\$652.7	N/A
Tier One Member Regular Accounts	6,845.0	546.2	7,391.2	7.97%
Tier One Rate Guarantee Reserve	1,635.4	253.9	1,889.4	N/A
Benefits In Force Reserve	22,375.1	2,115.6	24,490.7	9.45%
Tier Two member Regular Accounts	728.7	68.9	797.6	9.45%
Employer Reserves	15,777.3	1,491.8	17,269.0	9.45%
OPSRP Pension	257.8	21.5	279.3	8.32%
*UAL Lump-Sum Pmt. Side Accounts	7,195.0	731.1	7,926.1	Various
*IAP Accounts	1,939.1	184.1	2,123.2	9.49%
<b>Total</b>	<b>57,048.8</b>	<b>\$5,770.5</b>	<b>\$62,819.3</b>	

**2007 Regular Account Reserve Balances**  
**After 2007 Preliminary Crediting**



\*Informational only. Not affected by Board reserving or crediting decisions.

**ORS 238.670**  
**Reserve accounts in fund**

(1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(c) To provide for any other contingency that the board may determine to be appropriate.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371 (1), for its review and comment. [Formerly 237.281; 2001 c.945 §5]

### **ORS 238.255**

#### **Credits to regular accounts when earnings less than assumed interest rate.**

(1) The regular account for members who established membership in the system before January 1, 1996, as described in ORS 238.430, and for alternate payees of those members, shall be examined each year. If the regular account is credited with earnings for the previous year in an amount less than the earnings that would have been credited pursuant to the assumed interest rate for that year determined by the Public Employees Retirement Board, the amount of the difference shall be credited to the regular account and charged to a reserve account in the fund established for the purpose. In years following the year for which a charge is made to the reserve account, all earnings on the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, and of alternate payees of those members, shall first be applied to reduce or eliminate the amount of a deficit. Only earnings on the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, and of alternate payees of those members, may be used to reduce or eliminate the amount of a deficit.

(2) Notwithstanding subsection (1) of this section and except as provided in subsection (5) of this section, the board may not credit any earnings to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, or of alternate payees of those members, in any year in which there is a deficit in the reserve account established under subsection (1) of this section, or credit any earnings to the regular accounts of those members, or alternate payees, that would result in a deficit in that reserve account. In any year in which the fund experiences a loss, the board shall charge the amount of the loss attributable to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, against the reserve account.

(3) The regular account for members who established membership in the system before January 1, 1996, as described in ORS 238.430, and for alternate payees of those members, may not be credited with earnings in excess of the assumed interest rate until:

(a) The reserve account established under subsection (1) of this section is fully funded with amounts determined by the board, after consultation with the actuary employed by the board, to be necessary to ensure a zero balance in the account when all members who established membership in the system before January 1, 1996, as described in ORS 238.430, have retired; and

(b) The reserve account established under subsection (1) of this section has been fully funded as described in paragraph (a) of this subsection in each of the three immediately preceding calendar years.

(4) The board may divide the reserve account established under subsection (1) of this section into one or more subaccounts for the purpose of implementing the provisions of this section.

(5) Subsection (2) of this section does not apply to a person who is a judge member of the system on June 30, 2003. [Formerly 237.277; 2001 c.945 §4; 2003 c.3 §1; 2003 c.67 §5; 2003 c.625 §10]

**459-007-0005**

**Annual Earnings Crediting**

(1) For purposes of this rule, "remaining earnings" means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.

(2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.

(3) **Health insurance accounts.** All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.

(4) **Employer lump sum payments.** All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.225(9) shall be credited to the accounts from which they were derived.

(5) **Administrative expenses.**

(a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the Variable Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses.

(b) Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system's remaining administrative expenses under ORS 238.610.

(6) **Member variable accounts.** All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under ORS 238.260(6) and (7)(b).

(7) **Contingency Reserve.**

(a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One member regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the level at which the Board determines it is adequately funded for the purposes specified in ORS 238.670(1).

(b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for use in preventing a deficit in the fund due to employer insolvency may only be credited using earnings attributable to employer contribution accounts.

(8) **Tier One Member Deficit Reserve.** All remaining earnings attributable to Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve established in ORS 238.255(1) until the deficit is eliminated.

(9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two member regular accounts, employer contribution accounts, the Benefits-in-Force

Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

(10) **Tier One member regular accounts.** All remaining earnings attributable to Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier One member regular accounts at the assumed rate in any year in which the conditions set out in ORS 238.255 have not been met. Crediting under this subsection shall be funded first by all remaining earnings attributable to Tier One member regular accounts and the Tier One Member Rate Guarantee Reserve, then moneys in the Tier One Member Rate Guarantee Reserve.

(11) **Tier One Member Rate Guarantee Reserve.** In any year in which the Tier One Member Deficit Reserve has a zero balance, remaining earnings attributable to Tier One member regular accounts, the Tier One Member Rate Guarantee Reserve, the Benefits-in-Force Reserve, and the Contingency Reserve may be credited to the Tier One Member Rate Guarantee Reserve established under ORS 238.255(1).

(12) **Tier Two member regular accounts.** All remaining earnings or losses attributable to Tier Two member regular accounts shall be credited to all active and inactive Tier Two member regular accounts under ORS 238.250.

(13) **Benefits-in-Force Reserve.** Remaining earnings attributable to the Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer contribution accounts, in that order, shall be used, to the extent available, to credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that calendar year in accordance with ORS 238.670(2).

(14) **Employer contribution accounts.** All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(15) **Remaining earnings.** Any remaining earnings shall be credited to accounts and reserves in the Fund at the Board's discretion.

(16) The provisions of this rule shall be applied retroactively to April 15, 2004.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 8-2004, f. & cert. ef. 4-15-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06

**ORS 238.670**  
**Reserve accounts in fund**

(1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(c) To provide for any other contingency that the board may determine to be appropriate.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371 (1), for its review and comment. [Formerly 237.281; 2001 c.945 §5]

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(2) Notwithstanding subsection (1) of this section and except as provided in subsection (5) of this section, the board may not credit any earnings to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, or of alternate payees of those members, in any year in which there is a deficit in the reserve account established under subsection (1) of this section, or credit any earnings to the regular accounts of those members, or alternate payees, that would result in a deficit in that reserve account. In any year in which the fund experiences a loss, the board shall charge the amount of the loss attributable to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, against the reserve account.

(3) The regular account for members who established membership in the system before January 1, 1996, as described in ORS 238.430, and for alternate payees of those members, may not be credited with earnings in excess of the assumed interest rate until:

(a) The reserve account established under subsection (1) of this section is fully funded with amounts determined by the board, after consultation with the actuary employed by the board, to be necessary to ensure a zero balance in the account when all members who established membership in the system before January 1, 1996, as described in ORS 238.430, have retired; and

(b) The reserve account established under subsection (1) of this section has been fully funded as described in paragraph (a) of this subsection in each of the three immediately preceding calendar years.

(4) The board may divide the reserve account established under subsection (1) of this section into one or more subaccounts for the purpose of implementing the provisions of this section.

(5) Subsection (2) of this section does not apply to a person who is a judge member of the system on June 30, 2003. [Formerly 237.277; 2001 c.945 §4; 2003 c.3 §1; 2003 c.67 §5; 2003 c.625 §10]

**459-007-0005**

**Annual Earnings Crediting**

(1) For purposes of this rule, "remaining earnings" means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.

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(3) **Health insurance accounts.** All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.

(4) **Employer lump sum payments.** All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.225(9) shall be credited to the accounts from which they were derived.

(5) **Administrative expenses.**

(a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the Variable Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses.

(b) Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system's remaining administrative expenses under ORS 238.610.

(6) **Member variable accounts.** All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under ORS 238.260(6) and (7)(b).

(7) **Contingency Reserve.**

(a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One member regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the level at which the Board determines it is adequately funded for the purposes specified in ORS 238.670(1).

(b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for use in preventing a deficit in the fund due to employer insolvency may only be credited using earnings attributable to employer contribution accounts.

(8) **Tier One Member Deficit Reserve.** All remaining earnings attributable to Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve established in ORS 238.255(1) until the deficit is eliminated.

(9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two member regular accounts, employer contribution accounts, the Benefits-in-Force

Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

(10) **Tier One member regular accounts.** All remaining earnings attributable to Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier One member regular accounts at the assumed rate in any year in which the conditions set out in ORS 238.255 have not been met. Crediting under this subsection shall be funded first by all remaining earnings attributable to Tier One member regular accounts and the Tier One Member Rate Guarantee Reserve, then moneys in the Tier One Member Rate Guarantee Reserve.

(11) **Tier One Member Rate Guarantee Reserve.** In any year in which the Tier One Member Deficit Reserve has a zero balance, remaining earnings attributable to Tier One member regular accounts, the Tier One Member Rate Guarantee Reserve, the Benefits-in-Force Reserve, and the Contingency Reserve may be credited to the Tier One Member Rate Guarantee Reserve established under ORS 238.255(1).

(12) **Tier Two member regular accounts.** All remaining earnings or losses attributable to Tier Two member regular accounts shall be credited to all active and inactive Tier Two member regular accounts under ORS 238.250.

(13) **Benefits-in-Force Reserve.** Remaining earnings attributable to the Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer contribution accounts, in that order, shall be used, to the extent available, to credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that calendar year in accordance with ORS 238.670(2).

(14) **Employer contribution accounts.** All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(15) **Remaining earnings.** Any remaining earnings shall be credited to accounts and reserves in the Fund at the Board's discretion.

(16) The provisions of this rule shall be applied retroactively to April 15, 2004.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 8-2004, f. & cert. ef. 4-15-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Legislative Concepts for 2009

MEETING DATE	<b>2/15/08</b>
AGENDA ITEM	<b>C.2. Preliminary Legislative Concepts</b>

In preparation for the 2009 Oregon Legislature's regular session, PERS staff have engaged in the process of developing potential legislative concepts. These concepts would be forwarded to DAS and the Governor's Office for possible introduction as agency-sponsored bills. The process has involved soliciting ideas from PERS management and stakeholders, working predominantly through the PERS Board's Legislative Advisory Committee.

As a result, PERS staff recommends that the PERS Board consider five potential legislative concepts for further development. These five concepts are explained more fully in five individual memos enclosed. Briefly, they are:

1. Re-Employed Retired Members: The PERS Board specifically asked staff to develop a concept that would provide an analytical framework to consider the circumstances under which a retired member can return to employment with a PERS participating employer.
2. Eliminate "Pick-a-Plan": This concept was suggested by PERS management to clarify that a new employer joining the PERS Plan must offer all the plan's programs (Tier One/Two, OPSRP Pension, IAP). An individual's participation would be governed by that member's eligibility when he or she became employed by the new employer.
3. Creditable Service for Retro Pay: Stakeholders have asked that a legislative concept be introduced that restores creditable service for members who are reinstated to PERS-covered employment by resolution of an employment dispute.
4. Tier Two & Disability Benefits: Stakeholders also requested that a legislative concept be developed to address an anomaly in the calculation of disability benefits for a Tier Two member because the operative statutes were never amended when Tier Two was created. At staff's request, the concept also extends the time to begin disability payments to a more reasonable deadline.
5. Tax Qualification Requirements: The Oregon PERS Plan needs to be submitted to the IRS for a determination letter no later than in early 2009. This concept would be a placeholder in case our tax counsel's analysis results in any necessary changes to the governing statutes.

If the PERS Board so directs, staff will further develop each of these concepts for the March 28, 2008 meeting. Then, at that meeting, those concepts that the PERS Board approves for submission to DAS and the Governor's Office will be forwarded accordingly.

There were also four potential concepts that PERS staff is not recommending to move forward with at this time. Those concepts, and the reasons for the recommendation, are briefly summarized below:

1. *De Minimus* Payments and Adjustments: PERS management had requested consideration of adopting statutory authority for PERS to not process a payment or benefit adjustment if the result would have only been for a *de minimus* amount. The Legislative Advisory Committee was not able to come to consensus on what should be considered a *de minimus* amount nor that the same standard could be applied regardless of whether the adjustment worked for or against the recipient's interests. PERS management will instead triage such adjustments, making those that have a higher dollar impact first and postponing those of less consequence until resources can be applied to make those adjustments.
2. Health Insurance Premium Payments: Stakeholders raised a question about PERS' intention to allow P&F members to pay their health insurance premiums on a pre-tax basis from their retirement allowance. This option was added by the Pension Protection Act of 2006. Our administrative system won't support this function but the new jClarety system, currently due to be deployed in November 2009, will include this processing capability. At the suggestion of Board Member Grimsley, an interim work group will be convened to explore how this option could be provided to a broader range of members under alternative approaches.
3. Member Information: Stakeholders inquired whether a legislative concept could be introduced in the general area of making PERS, members, and employers more accountable for data adjustments and corrections before members have to make the decision to retire. A mix of options was discussed with the Legislative Advisory Committee and the suggestion of a working group to address this issue was floated at their last meeting. PERS staff will work with such a group to see how best to address these concerns and whether a future legislative concept can address some or all of the issues.
4. Rollover for Purchases: Currently, members are required to make purchases with after-tax dollars. Frequently, the concept of making those purchases with pre-tax dollars as a rollover from another qualified plan or the member's IAP has been discussed. Principally since PERS administrative system cannot support accepting purchases on a pre-tax basis, staff suggested postponing this concept until the 2011 session. For the PERS Board's consideration, attached is a letter from Thomas Perry, an individual who's been advocating for this concept.

Unless the PERS Board directs otherwise, these suggestions will be addressed as explained above and not further developed for introduction as an agency bill for the 2009 regular session.

- C.2. Attachment 1 – December 20, 2007 Letter from Thomas Perry
- C.2. Enclosure 1 – Memo on Re-Employed Retirees LC
- C.2. Enclosure 2 – Memo on "Pick-a-Plan" LC
- C.2. Enclosure 3 – Memo on Creditable Service LC
- C.2. Enclosure 4 – Memo on Tier Two Disability Benefit LC
- C.2. Enclosure 5 – Memo on Tax Qualification LC

December 20, 2007

Steve J. Delaney, Deputy Director  
Public Employees Retirement System  
P.O. Box 23700  
Tigard, Oregon 97223

**Re: Rollover for purchases, PERS Preliminary Legislative Concepts for 2009**

Dear Steve:

I am pleased that PERS continues to consider the concept of Deferred Compensation and IAP rollovers for service credit purchases. If implemented, this concept would remove severe income tax penalties for certain PERS members, as authorized, and indeed encouraged by the US Tax Code and Oregon Revised Statutes.

When this concept was discussed at the December 4, 2007 meeting of the PERS Board Legislative Advisory Committee meeting, there were a number of points made, both in support and in opposition. The points in support included:

1. The concept would not grant new or additional benefits to any PERS member or group of PERS members. The benefits are currently provided for in PERS statutes.
2. The concept would remove severe income tax penalties for those who must withdraw Deferred Comp funds to purchase service credits.
  - a. For those in the 25% federal income tax bracket, a \$50,000 purchase of service credits would require a withdrawal of \$75,758 to realize the \$50,000 net of tax. The \$25,758 income tax expense (25% federal, 9% state) creates a 51.5% income tax penalty to purchase \$50,000 in service credits.
  - b. For those in the 33% federal income tax bracket, a \$50,000 purchase would require a withdrawal of \$86,207 to realize the \$50,000 net of tax. The \$36,207 income tax expense (33% federal, 9% state) creates a 72.4% income tax penalty to purchase \$50,000 in service credits.

The points in opposition included:

1. One employer representative alleged that rollovers would add more complexity to PERS. I believe this is a misplaced argument, because:
  - a. PERS manages the administration of benefits to PERS members; employers' staff have very little responsibility for PERS administration.
  - b. Adding the rollover feature would not increase the workload for employers' staff because rollovers would be handled by PERS staff.

2. A second employer representative alleged that adding the rollover feature would encourage employees to purchase refunded time and retire early. This is a puzzling allegation, because rollovers do not change the benefits available to members, or the eligibility requirements to access them. This allegation may be based on invalid assumptions. Until it is supported with sound logic or established facts, it is speculative, at best.
3. A third employer representative expressed concern that the rollover concept would increase employer costs. I do not believe this would materialize, for several reasons.
  - a. There are presently several non-tax barriers to members making purchases of credits, and none of these would be changed. Specifically, these are:
    - i. A 10-year waiting period to establish purchase eligibility
    - ii. The three-for-one requirement; to work three months to earn eligibility to purchase one refunded month's credit.
    - iii. The financial requirement to repay refunded contributions and all accrued interest thereon.
  - b. The trend of employer costs is on a down-slope because of the stability of the stock market, the effects of the pension obligation bonds, and the prudent management of the PERS Board.
  - c. When an eligible member meets the conditions is a. above, the member would then need sufficient funds in Deferred Comp to make a rollover purchase. The proportion of PERS members who participate in Deferred Comp is less than 40%, and of those who do participate, fewer still would have sufficient funds to make a rollover purchase.
  - d. House Bill 2397 is expected to affect approximately 140 members. The proportion of eligible members who actually take advantage of this should provide PERS with an indication of future participation in rollover activity, and this information should be available by April 1, 2008.
4. The employer representative who raised the complexity issue also argued that employees with refunded credits available for purchase could simply take a second mortgage on their house to purchase those credits. This option may be available to some members, but it is presumptive to assume that all PERS members own their house, and further, that all have sufficient equity to finance purchase of refunded credits.

Many of those who left PERS employment and withdrew their funds did so because of circumstances beyond their control. Some were laid off during the deep recession of the 1980's. Some were women who left the work force to have families. Some had exigent family issues such as failing businesses or family farms. Still others had medical issues.

Regardless of the reasons, these members have returned to public service and contributed their many years of service for the public good. They earned the refunded credits for their prior service, and now ask for access to those benefits without burdensome tax penalties.

The benefits are neither greater nor lesser than the benefits earned by those who have no break in service. The legislative concept simply removes existing income tax penalties for those earned benefits. I encourage PERS to facilitate member access to their earned benefits.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Thomas Perry".

Thomas Perry  
304 N. Atwater  
Monmouth, Oregon 97361

Cc: Board Members ✓



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Legislative Concept: Re-employed Retired Members

MEETING DATE	2/15/08
AGENDA ITEM	C.2. Enc. 1: Re-employed Retirees LC

### OVERVIEW

- Concept: Provide clearer guidelines for retired members from the PERS Chapter 238 Program on the parameters and consequences for returning to work for a PERS-covered employer.
- Reason: The statutes that currently outline those parameters and consequences are incomplete, inconsistent, and indefinite.
- Policy Issues:
  1. Should the PERS Plan impose restrictions or consequences beyond those necessary for tax qualification purposes on a retired member's opportunity for employment with a PERS-covered employer?
  2. If additional restrictions or consequences are to be imposed, on what basis should those restrictions be considered by the PERS Board in deciding whether to support their imposition?

### BACKGROUND

The PERS Chapter 238 Program currently contains varying restrictions and consequences for a retired member who returns to work with a PERS-covered employer. Historically, this landscape has been changed in every regular legislative session for the last 20 years.

Currently, ORS 238.078 explains the consequences to a retired member if they return to PERS-covered employment. Those consequences depend on whether the member was retired for more or less than six months and on what optional form of benefit payment the member chose at retirement. ORS 238.082 contains exceptions that, generally, allow a retired member to work less than 1040 hours in a calendar year without their retirement benefit payment being subject to any of the consequences under ORS 238.078. Additionally, ORS 238.082 contains categories of employment wherein a member can work more than 1040 hours in a calendar year and still avoid the consequences of ORS 238.078. Separately, other statutes proscribe the effect on a retired member's retirement benefit of returning to certain types of employment, such as ORS 238.088 regarding public office or ORS 238.092 for legislators, legislative employees, and certain members of the Oregon State Police.

The federal Internal Revenue Code does impose a tax qualification restriction on retired members returning to employment. Tax-qualified plans can only provide benefits upon a plan

member's separation from employment, which can be either terminating that employment or a bona-fide retirement. A bona-fide retirement is considered to be one where the retired member receives an unreduced benefit (no actuarial reduction for early retirement). Oregon's PERS Chapter 238 Program establishes when a member is eligible for unreduced retirement benefits (ORS 238.280). From a tax qualification perspective, the PERS Plan does not need to impose a limitation or consequence for retired members that return to work beyond that point.

### SUMMARY OF CONCEPT AND POLICY ISSUES

*Policy Issue 1: Should the PERS Plan impose restrictions or consequences beyond those necessary for tax qualification purposes on a retired member's opportunity for employment with a PERS-covered employer?*

At the first level, whether an employer and employee should enter into an employment relationship involves careful consideration by both parties of the consequences of that decision. As explained above, the PERS Plan has a limitation that it must impose on that decision to maintain the plan's tax qualified status. Generally, a plan should not commence retirement benefit payments unless there is a bona fide retirement, as the IRS defines that concept.

The question then becomes whether, as a policy matter, the retirement plan should place additional restrictions and consequences on the employer/employee decision. At most, recognize that PERS could only impose those restrictions and consequences on the decision as it relates to a PERS-covered employer. There is no limitation or restriction on employment for a retired member with an employer that's not covered by PERS.

Thus, the policy question further narrows down to whether the retirement plan should impose additional restrictions and limitations on its retired members only as it relates to employment with employers within the retirement system. To date, the Oregon legislature has not adopted a comprehensive answer to that question, but rather has relaxed restrictions and consequences for retired members in the PERS Chapter 238 Program depending on the type of employment, employee, or employer. Note, in contrast, that all members retired under the OPSRP Pension Program stop receiving retirement benefits if they return to work in a qualifying position.

*Policy Issue 2: If additional restrictions or consequences are to be imposed, on what basis should those restrictions be considered by the PERS Board in deciding whether to support their imposition?*

The current restrictions and limitations have not proceeded from an underlying, consistently applied policy. Rather, they have been adopted as advocates sought solutions in isolated contexts. Absent a common understanding of a broader policy, the PERS Board can not evaluate these proposed solutions on a systematic basis. Moreover, relaxing restrictions or limitations in isolation results in stakeholders not having a consistent understanding of how, when, or where the exception can or should be applied. Members have decided to retire based on a set of expectations that has had to radically change because the consequence was misunderstood. Given the ever-changing state of the plan in this area, development of those misunderstandings, while regrettable, is probable if not a certainty.

Should the PERS Board resolve that a legislative concept on this subject is advisable, there are potential approaches that would start from a principled base:

1. Remove all restrictions and consequences for retired members returning to PERS-covered employment. Benefit payments would continue so long as the member met the minimum requirement for a bona-fide retirement under tax qualification standards.
2. Impose broad-based limitations that apply to all retired members (e.g., must work less than 1040 hours in a calendar year) based on a policy decision as to the amount of employment a retired member should be allowed to engage in with a PERS-covered employer.
3. Stop benefit payments for any retired member returning to PERS-covered employment. A sunset date would be imposed on current exceptions.

#### LAC AND OTHER STAKEHOLDER COMMENTS

The PERS Board's Legislative Advisory Committee discussed this topic at its meeting on December 4, 2007. The Committee did not develop a consensus position on this question. Greg Hartman, on behalf of the PERS Coalition, did express broad support for a legislative concept that would "close the loopholes" in the current structure of exceptions so that the consequences for retired members would be more predictable and consistent.

The LAC discussed a draft of this memo at its January 23, 2008 meeting. Still, the LAC did not provide a consensus position on the policy issues presented. Members of the LAC did have several suggested ideas to consider related to this concept:

- Fixing the "loopholes" that cause confusion
- Adjusting population levels in the current exceptions after the 2010 U.S. Census
- Imposing "sideboards" on further exceptions (e.g., emergency declaration, sunset provisions)
- Aligning restrictions more closely with Social Security eligibility and benefits
- Imposing a three or five year cap on retired members returning under the 1039 exception
- Requiring the employer to pay the UAL rate on retired members' salary

#### STAFF RECOMMENDATION

Staff's principal position is that any restrictions or limitations should be static over time and consistent as applied to all retired members. Aside from the administrative difficulties presented by the ever-changing categories and limitations, this piece-meal approach has led to inconsistencies and misunderstandings that compromise and disrupt members' expectations.

Given that the legislature's momentum has generally been to create exceptions that expand opportunities to return to work, staff recommends that the PERS Board's concept impose only those restrictions and limitations necessary for tax qualification purposes.

#### BOARD OPTIONS

1. Direct staff to develop a legislative concept that establishes an underlying principle or policy that can be consistently applied to determine the consequences for a PERS Chapter 238 Program retired member to return to PERS-covered employment.

2. Direct staff to develop a legislative concept that more comprehensively and clearly restates the current exceptions to the restrictions and limitations on retired members returning to PERS-covered employment.
3. Direct staff not to develop any legislative concept on this topic.

LEGISLATIVE CONCEPT DEVELOPMENT TIMELINE

February 15, 2008	Legislative Concepts are first presented to the PERS Board. Further research, analysis, or other development proceeds as directed.
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Oct/Nov 2008	PERS Board reviews draft concepts returned from Legislative Counsel and decides whether to submit the concept to the Governor's office for introduction.
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January 12, 2009	Session begins.



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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Legislative Concept: Employer "Pick-a-Plan"

MEETING DATE	2/15/08
AGENDA ITEM	C.2. Enc. 2: "Pick-a-Plan" LC

### OVERVIEW

- Concept: Clarify that employers must participate in all programs in the PERS Plan and provide benefits to employees based upon the employee program eligibility.
- Reason: Current statutory provisions do not clearly address participation in the PERS Chapter 238 Program by newly participating employers for employees who are members of that program at the time of hire.
- Policy Issue: Should participating employers be required to participate in all programs in the PERS Plan?

### BACKGROUND

When the 2003 PERS Reform legislation created the OPSRP Pension Program and the Individual Account Program, the interplay of those programs with the PERS Chapter 238 retirement program was complicated. Concepts such as "Break in Service" and shifting contributions to the IAP made discerning membership eligibility for existing, returning, and retiring members difficult. The term "Public Employees Retirement System" was defined to represent one plan with multiple programs. When the "PERS Plan" was submitted to the IRS to determine tax qualification status, it was combined into a single defined benefit plan for tax purposes.

Still, the programs each have independent eligibility and benefit structures. As adopted in 2003, an employer who chooses to offer PERS benefits could, theoretically, chose to offer only one or any combination of these programs. Conversely, ORS 238A.070 required all employers that were participating in the PERS Chapter 238 Program on August 29, 2003 to also participate in the OPSRP Pension Program and the IAP.

The 2007 Oregon Legislature adopted HB 2281, which required a member who withdraws from one program to withdraw from all. This bill was an outgrowth of our realizations in administering these programs' independent eligibility and benefit structures. No single system can reasonably accommodate various programs when a single individual can work for multiple employers if each employer is allowed to pick and chose the plan programs in which their employees will participate. PERS members also have expected to be able to move from one PERS-covered employer to another and continue to participate based on their established eligibility: a Tier One member who goes to another PERS covered employer is still a Tier One member and does not need to re-establish membership.

## SUMMARY OF CONCEPT AND POLICY ISSUES

*Policy Issue: Should participating employers be required to participate in all programs in the PERS Plan?*

The tension among these provisions substantially clouds the factors in a new employer's decision on whether to join the Public Employees Retirement System. If the new employer tried to only offer some of the programs within the PERS Plan, members would be at best confused if not contentious when their work for a PERS-covered employer does not yield the benefits they expect. Membership and contribution start dates would fluctuate among employers and members could conceivably start and stop several times. Employer rates would be similarly tangled in sorting out which category a particular member's salary should fall. Finally, there's no practical way that a benefit administration system can be designed to track the permutations of a member who could potentially fall into an unpredictable combination of circumstances simultaneously for several employers concurrently.

All PERS employers in the system as of August 29, 2003 were required to continue participating in all the plan's programs. Any new employer should know the consequences of their decision to start offering PERS benefits. Those consequences should not be clouded by confused employees' expectations, administrative frustrations, and counter-intuitive cost structures. An employer that chooses to join the PERS Plan, as a single plan, should join all the programs and members should participate based on their established eligibility. If the PERS Plan as a whole does not meet the employer's needs for whatever reason, there are other benefit plans that they should consider.

## LAC AND OTHER STAKEHOLDER COMMENTS

The Legislative Advisory Committee discussed this topic at its meeting on December 4, 2007 and January 23, 2008. The topic drew little comment and found general support.

## STAFF RECOMMENDATION

Staff supports development of a concept requiring a new participating employer to participate in all programs in the PERS Plan. An employer will provide benefits to an employee based upon the programs in which the employee has established or establishes membership. The concept would match member expectations, provide operational efficiencies, diminish the probability of administrative and legal actions, and present negligible costs.

## BOARD OPTIONS

1. Accept the staff recommendation.
2. Direct staff to develop the concept with modifications.
3. Direct staff not to develop any legislative concept on this topic.

LEGISLATIVE CONCEPT DEVELOPMENT TIMELINE

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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Legislative Concept: Creditable Service for Retroactive Payments

MEETING DATE	2/15/08
AGENDA ITEM	C.2. Enc. 3: Creditable Service

### OVERVIEW

- Concept: Provide that recipients of retroactive payments made incident to a resolution of an employee/employer dispute receive creditable service for the period of reinstatement covered by the retroactive payment.
- Reason: Current statutes do not permit an employee who successfully disputes an employer discharge or suspension, is reinstated, and receives a retroactive payment of wages for the period of absence to receive creditable service for the period of reinstatement.
- Policy Issues:
  1. Should an employee who receives a retroactive payment of wages receive creditable service for the time associated with that retroactive payment award?
  2. If creditable service should be awarded in such circumstance, what mechanism should be used to provide the creditable service?

### BACKGROUND

PERS regularly receives court orders, administrative orders, settlement agreements, and other documents representing the resolution of a dispute between an employer and employee. Often, the resolution results in payment of back wages for a period the employee was absent from employment because of the employer's disciplinary or administrative action that gave rise to the dispute. Generally, the order or agreement directs that the employee be "made whole," including in regards to the PERS benefits the employee would have accrued during the period of absence.

ORS 238.005(21)(b)(C) defines the back wages as "salary" and provides specific authority for PERS to attribute them to the period they would have been earned. The statute does not contain a similar parallel for creditable service during that same period. Before 2003, "creditable service" was awarded for periods members made contributions. Retroactive salary triggered contributions which resulted in creditable service. When the PERS Reform legislation re-routed contributions from the member's Regular Account to the IAP, the "creditable service" standard changed from contributions to present employment. If the employee is absent from employment, even for a reason later found to have been wrongful, the current statutory structure does not allow PERS to grant creditable service for that period of absence.

## SUMMARY OF CONCEPT AND POLICY ISSUES

*Policy Issue 1: Should an employee who receives a retroactive payment of wages receive creditable service for the time associated with that retroactive payment award?*

The payment of retroactive wages in resolving an employer/employee dispute acknowledges at some level that the employer's action that created the absence was not permissible. Similarly, the resolution that the employee be "made whole" indicates intent to restore the employee to the status they would be in if the absence had not occurred, including PERS contributions and creditable service. Without statutory authority to award creditable service for the period, PERS cannot completely resolve that situation, leaving the parties to craft another solution outside of the retirement system that compensates the employee for their lost creditable service. That could mean a reduced retirement benefit or a delay in the employee's eligibility to retire.

Last session, the PERS Board put forward a legislative concept that eventually became HB 2284. This bill created an exception to "Break in Service" for absences such as these. The rationale for that bill was that a dispute resolution that reinstates an employee to a prior period should restore the employee's rights to that time. Although that bill became moot when "Break in Service" was eliminated by HB 2285, it did represent a consensus of the Legislative Advisory Committee around the idea that restoration to a prior period should restore the employee's rights.

In summary, the concept would be to provide creditable service to an employee for the period associated with a retroactive payment of wages if the employee was absent from employment due to a disciplinary or administrative action. The employee must challenge the employer action, and the resolution to the challenge must include reinstating the employee to employment for the period covered by the payment, or otherwise directing that the employee be "made whole" in regards to their PERS benefits.

*Policy Issue 2: If creditable service should be awarded in such circumstance, what mechanism should be used to provide the creditable service?*

"Creditable service" is the period an active member works in a qualifying position. PERS does allow periods outside of this construct to be applied to the member's benefit, such as purchasing time spent in the armed services or teaching out of state. In these purchases, the member is buying "retirement credit," which is treated as creditable service for PERS purposes.

A parallel authority that allows retirement credit to be awarded in the same situations that retroactive payment of back wages occurs would provide the mechanism to make the employee "whole" by also giving them an equivalent of creditable service. Similarly, the types of situations in which retroactive payments and retirement credit can be awarded should be expanded as described in HB 2284 so to allow this authority no matter how these disputes are resolved.

## LAC AND OTHER STAKEHOLDER COMMENTS

The Legislative Advisory Committee discussed this topic briefly at its meeting on December 4, 2007. This concept was brought before the Committee again at the January 23, 2008 meeting and, after further consideration, was generally supported.

### STAFF RECOMMENDATION

Staff recommends developing a concept that allows retirement credit to be awarded to a member who receives a retroactive payment of wages incident to the resolution of an employer/employee dispute. The concept should also include amending the situations in which such retroactive awards can be affected to include all dispute resolution processes, as in 2007's HB 2284.

### BOARD OPTIONS

1. Accept the staff recommendation.
2. Direct staff to develop the concept with modifications.
3. Direct staff not to develop any legislative concept on this topic.

### LEGISLATIVE CONCEPT DEVELOPMENT TIMELINE

February 15, 2008	Legislative Concepts are first presented to the PERS Board. Further research, analysis, or other development proceeds as directed.
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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Legislative Concept: Tier Two & Disability Benefits

MEETING DATE	2/15/08
AGENDA ITEM	C.2. Enc. 4: Tier Two & Disability Benefits LC

### OVERVIEW

- Concept: Conform disability retirement benefit calculations to normal retirement age for Tier Two members on full formula calculation. Establish more reasonable guideline for initial disability benefit payment.
- Reason: Correct statutes and set realistic administrative expectations.
- Policy Issues: Should PERS put forth a legislative concept that corrects an apparent oversight in statutory structure related to Tier Two disability benefit calculations and to establish a more realistic guideline for initial disability benefit payments?

### BACKGROUND

Disability retirement benefit calculations are defined at ORS 238.320(1). The method involves calculating a pension as if the disabled member had worked continuously until reaching age 58 (for members who are not P&F), and then retired for service. That is the normal retirement age for Tier One. Non-P&F Tier Two members have a different normal retirement age of 60 years (ORS 238.435(5)). So, when a Tier Two member qualifies for a disability retirement benefit, this calculation method imputes their employment to age 58, not 60. When Tier Two was created for members joining the system after January 1, 1996, this provision in the disability statutes was not amended to reflect the different normal retirement age.

The interplay of this calculation with early retirement eligibility was also not addressed. ORS 238.280 directs that anyone who retires early (age 55) will receive a reduced retirement benefit that is actuarially equivalent to the allowance provided at the normal retirement age. Reading the requirement in ORS 238.320 to calculate the disability retirement as if the member worked to age 58 and then retired for service, together with the actuarial reduction for early retirement in ORS 238.280, Tier Two members who receive a disability retirement benefit have that benefit actuarially reduced, but Tier One members do not.

As a separate issue, ORS 238.455(1)(b) provides that disability retirement benefit payments must start within 10 days after the member's application is approved. That narrow window presents some logistical challenges given that the member's application contains information (like beneficiary data and option selections) that are necessary to calculate the benefit but, once that application is received, that calculation must be finalized and payment out the door within 10 days. Further complicating the situation is that benefit payments are only processed once a week,

so if an application comes in too late to make one check run, seven days are added to an already compressed time frame.

### SUMMARY OF CONCEPT AND POLICY ISSUES

*Policy Issue 1: Should PERS put forth a legislative concept that corrects an apparent oversight in statutory structure related to Tier Two disability benefit calculations and to establish a more realistic guideline for initial disability benefit payments?*

Staff can find no justification for actuarially reducing a Tier Two member's disability benefit simply because of the normal retirement age difference. Our review leads us to conclude that this was an oversight when the new normal retirement age was set for Tier Two, which is understandable given the path through at least three statutes to discover the inter-play.

As to the deadline for commencing payments, staff recognizes that members starting their disability retirement benefits have waited through an extended eligibility determination period and those payments should start as soon as practicable. Extending the time frame to 15 business days would remove a substantial burden that forces the calculation to be compressed into a narrow window while still providing the benefit in a reasonable period of time.

### LAC AND OTHER STAKEHOLDER COMMENTS

This concept was suggested by the PERS Coalition after a particular member questioned the method used to calculate their disability benefit and why the actuarial reduction was applied. The LAC briefly discussed this concept when it was first raised at its December 4, 2007 meeting and again at the January 23, 2008 meeting. Comments were supportive of the concept; some members cautioned that the deadline extension should be measured but realistic.

### STAFF RECOMMENDATION

Staff supports development of a concept that would remove the requirement to actuarially reduce a Tier Two member's disability retirement allowance and that would extend the deadline for commencing a disability retirement benefit payment to 15 business days.

### BOARD OPTIONS

1. Accept the staff recommendation.
2. Direct staff to develop the concept with modifications.
3. Direct staff not to develop any legislative concept on this topic.

### LEGISLATIVE CONCEPT DEVELOPMENT TIMELINE

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March 28, 2008	PERS Board gives final approval for submitting those concepts it chooses to put forth to the DAS/Governor's office for consideration.

LC: Tier Two & Disability Benefits

2/15/08

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- |                   |                                                                                                                                                                      |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| April 4, 2008     | Deadline for submitting concepts to the DAS/Governor's office for 2009 legislative session.                                                                          |
| June 20, 2008     | Finalize response to DAS/Governor's office inquiries (e.g., language for placeholder concepts) as all agency additional information is due to them by July 14, 2008. |
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| December 15, 2008 | Deadline for Governor to pre-session file agency bills.                                                                                                              |
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February 15, 2008

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Legislative Concept: Tax Qualification

MEETING DATE	2/15/08
AGENDA ITEM	C.2. Enc. 5: Tax Qualification

### OVERVIEW

- Concept: Adopt statutory changes deemed necessary to present the PERS Plan for determination of its tax qualified status to the federal Internal Revenue Service.
- Reason: Maintaining tax qualified status of PERS Plan.
- Policy Issues: None.

### BACKGROUND

Retirement plans are now required to submit their plans for a determination of their tax qualified status on a three-year cycle. The cycle for government plans, like PERS, runs until January 31, 2009. Before that time, PERS will need to submit its application for a plan determination letter.

Since the last determination letter PERS received after the 2003 reform legislation, federal tax law has changed in many respects. This concept would adopt the statutory changes necessary to conform our statutes to these new provisions. Most notably, Internal Revenue Code provisions are often referred to in our statutes with specific dates that they were enacted. To be effective, our statutory references also need to be updated to the most current version of the IRC provisions.

PERS staff is working closely with outside federal tax counsel, the Ice Miller firm, to identify these changes before the deadline for introducing legislative concepts. We expect to have specific areas identified when this concept is presented for the PERS Board's recommendation at its March 28, 2008 meeting.

### LAC AND OTHER STAKEHOLDER COMMENTS

This concept was discussed briefly with the Legislative Advisory Committee at its January 23, 2008 meeting. As tax counsel had not completed its analysis by then, we weren't able to share the details of these changes but did express our expectation that there would not be any significant changes necessary.

### STAFF RECOMMENDATION

Staff supports development of a concept that would make the necessary changes to the PERS Plan to meet federal tax qualification requirements.

BOARD OPTIONS

1. Accept the staff recommendation.
2. Direct staff to develop the concept with modifications.
3. Direct staff not to develop any legislative concept on this topic.

LEGISLATIVE CONCEPT DEVELOPMENT TIMELINE

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