

# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

**Friday  
June 1, 2018  
10:00 A.M.**

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

ITEM	PRESENTER
<b>A. Administration</b>	
1. April 2, 2018 Board Meeting Minutes	THOMAS
2. Director Appointment	
3. Director's Report	RODEMAN
a. Forward-Looking Calendar	
b. OPERF Investment Report	
c. Budget Execution Report	
d. Board Scorecard Report on Agency Performance Measures	RICKARD, STANLEY
<b>B. Administrative Rulemaking</b>	
1. Notice of Rules Implementing 2018 Legislation	VAUGHN
a. HB 4012 (Work After Retirement)	
b. SB 1546 (OPSRP Vesting for Judge Members)	
2. Notice of PHIP Enrollment Rule	
3. Temporary Adoption and Notice of Rulemaking for Employer Side Account Rules	
<b>C. Action and Discussion Items</b>	
1. 2019 Retiree Health Insurance Plan Renewals and Rates	KOBBERVIG
2. IAP TDF/Member Choice Implementation Update	ELLEDGE-RHODES
3. Senate Bill 1566 Implementation Update	DUNN, HEMBREE
4. 2019-21 Agency Budget Development	BARNETT, DUNN
5. Reconsideration of Jackson/Josephine County 2017-19 Employer Rates	VAUGHN

**The Board may meet in Executive Session during this agenda pursuant to ORS 192.660(2)(a) or ORS 192.660(2)(h).**

*Public testimony will be taken on action items at the Chair's discretion.*

*Please contact 503.603.7621 in advance of the meeting to notify staff of your request to provide testimony at the meeting.*

*Refreshments will be provided immediately following the Board meeting. This is an opportunity to say farewell to retiring Executive Director Steve Rodeman and meet the new director finalist Kevin Olineck.*

<http://www.oregon.gov/PERS/>

2018 Meetings: August 3\*    October 5\*    December 7\*    \* Audit Committee

Stephen Buckley    Steve Demarest    Lawrence Furnstahl, Vice Chair    Krystal deAsis    John Thomas, Chair    Steve Rodeman, Executive Director  
SL1

# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING MINUTES

April 2, 2018

## **Board members present:**

Chair John Thomas, Stephen Buckley, Krystal deAsis, and Steve Demarest were present. Vice-Chair Lawrence Furnstahl later joined the meeting by phone.

## **Staff present:**

Linda Barnett, Dean Carson, Melanie Chandler, Mary Dunn, Yvette Elledge-Rhodes, Greg Gabriel, Alyse Greer, Brian Harrington, Neil Jones, Amanda Marble, Jordan Masanga, Shane Perry, Beth Porter, Janice Richards, Steve Rodeman, Jason Stanley, Marjorie Taylor, Phuongnam Tran, Stephanie Vaughn, AnneMarie Vu, Joli Whitney, Yong Yang

## **Others present:**

Gay Lynn Bath, Kelli Blechschmidt, Bob Burket, Nate Carter, Shawn Cross, Bob Eastabrook, Dennis Erickson, Craig Havner, Patrick Heath, Richard Green, Jeff Gudman, Greg Hartman, Michelle Kunec-North, Matt Larrabee, David Lacy, Elizabeth McCann, Rhonda Miller, Tim Nesbitt, Scott Preppernau, Carol Samuels, Deborah Tremblay, Trudy Vidal, Scott Winkles, Peter Wong

Chair John Thomas called the meeting to order at 10:00 a.m.

## **ADMINISTRATION**

### **A.1. MEETING MINUTES OF FEBRUARY 2, 2018**

Board member Demarest moved to approve the minutes submitted from the February 2, 2018 Board meeting. Board member deAsis seconded approval of the minutes. The motion passed unanimously.

### **A.3. DIRECTOR'S REPORT**

Executive Director Steve Rodeman presented. He reviewed the Forward Looking Calendar and highlighted the important items to be considered by the Board during future meetings. Of note is the possibility of the need to schedule an additional meeting in May as the recruitment of a new executive director progresses. Rodeman presented the Oregon Investment Council (OIC) Investment Report of the Oregon Public Employees Retirement Fund (OPERF) for the period ending January 2018.

Rodeman presented the Budget Execution Report.

## **ADMINISTRATIVE RULEMAKING**

### **B.1. ADOPTION OF IRC AND SOCIAL SECURITY LIMITATIONS RULE**

Stephanie Vaughn, Policy Analysis and Compliance Section Manager, presented. Vaughn reviewed the modifications to the IRC and Social Security rules, OAR 459-005-0525, -0545; -017-0060; and -080-0500. These rules are updated every year to incorporate federal adjustments to the limits on the amount of annual compensation allowed for determining contributions and benefits, annual benefits, and annual additions to PERS. A rulemaking hearing was held February 27, 2018, at PERS Headquarters. No members of the public attended. The public comment period ended on March 7, 2018. No public comments were received.

DeAsis moved to adopt modifications to the IRC and Social Security Limitations rules as presented. Board member Buckley seconded the motion. The motion passed unanimously.

## **ACTION AND DISCUSSION ITEMS**

### **C.1. 2018 LEGISLATIVE SESSION REVIEW**

Marjorie Taylor, Senior Policy Director, presented. Taylor reviewed PERS related legislation which passed in the 2018 Legislative Session which ended March 3. Additionally, she reviewed budget requests which were approved and presentations which were given to update the Joint Committee on Information Management and Technology on several key projects.

No Board action was required.

### **C.2 RULES FOR LEGISLATIVE IMPLEMENTATION**

Stephanie Vaughn, Policy Analysis and Compliance Section Manager, presented. Vaughn reviewed three memos regarding implementation of four rules.

- HB 4159 (2018) directs PERS Board to adopt rules allowing members with Individual Account Program (IAP) accounts to elect to have the Oregon Investment Council (OIC) invest their accounts into any of the new Target Date Fund (TDF) options rather than having member accounts only assigned by date of birth, as is the current process. HB 4159 allows the Oregon State Treasurer the opportunity to advise the PERS Board by December 31, 2018, to not move forward with implementing this option if they determine there is an issue with legal or fiduciary standards in doing so. Given the effective date of January 1, 2019, and the time it will take to establish a process for members to select a TDF of their choice, PERS must move forward with implementation before we receive the results of Treasury's legal analysis. Staff anticipate temporary rules will be presented at the June 2018 Board meeting along with notice of permanent rulemaking with adoption of the permanent rules calendared for the August 2018 Board meeting agenda.
- SB 1566 (2018) was presented by the Governor from concepts developed by the Governor's UAL Task Force which was created in 2017. There are three sections; one creates an Employer Incentive Fund, establishes a School District Employer Rate Pool; and establishes the Unfunded Actuarial Liability Resolution Program. Rules implementing this legislation will in part come to the Board at the August Board meeting, other areas will be scheduled for the October Board meeting.
- HB 4012 & SB 1546 (2018) require amendments to existing administrative rules as part of the implementation process. Staff anticipate bringing forward rule amendments for notice at the June 1, 2018 Board meeting.

No Board action was required.

### **C.3 IAP TDF IMPLEMENTATION UPDATE**

Yvette Elledge-Rhodes, Deputy Director, presented. She reviewed the ongoing activities to implement the new target date fund (TDF) investment structure into the IAP. The addition of Member Choice as presented by the passage of House Bill 4159 has required this project to be re-baselined to reflect increased deliverables as most of the processes and staff resources overlap.

No Board action was required.

C.4. IAP MEMBER CHOICE IMPLEMENTATION

Yvette Elledge-Rhodes, Deputy Director, and Mary Dunn, Chief Administration Officer, presented. House Bill 4159 passed in the recent 2018 legislative session which requires PERS to implement a Member Choice option into the existing IAP TDF structure. Staff are evaluating the impact of this new requirement with a January 1, 2019 effective date. Dunn reviewed the challenges with processing IAP payments given the much more complicated funding structure now in place with target date funds.

No Board action was required.

Vice Chair Lawrence Furnstahl joined the meeting by phone.

C.5. FINAL 2017 EARNINGS CREDITING AND RESERVING

Mary Dunn, Chief Administration Officer, and Amanda Marble, Financial Reporting Coordinator, presented. Marble reviewed the final rates for 2017.

The final crediting rates as presented include:

Tier One member regular accounts:	7.5%
Tier Two member regular accounts	15.23%
Individual Account Program accounts	14.72%
OPSRP Pension	15.37%

DeAsis moved to adopt the final crediting of earnings as presented for calendar year 2017. Buckley seconded.

C.6. MAY E-BOARD REQUESTS

Linda Barnett, Budget Officer, and Mary Dunn, Chief Administration Officer, presented an overview of budget items which will be sent to the May Emergency Board for consideration.

No Board action was required.

C.7. 2019-2021 BUDGET DEVELOPMENT

Linda Barnett, Budget Officer, and Mary Dunn, Chief Administration Officer, provided an update on the latest activities in development of the agency's next budget request. A preliminary budget package will be presented to the Board at the June meeting.

No Board action was required.

A.2. EXECUTIVE DIRECTOR RECRUITMENT

This item was delayed from earlier in the meeting agenda until Vice Chair Furnstahl was able to join the meeting to participate by phone.

Thomas reviewed the Board's options to have the pool of applicants narrowed. This could be done by establishing a sub-committee to review applications, asking DAS HR to provide their top screened candidates for interview, or have the Board review all applications.

Public comments were invited from the audience on the proposed process and standards. Greg Hartman appeared before the Board and suggested that the Board consider offering an opportunity to other stakeholders to meet with the finalists. Thomas noted that there were external stakeholder meetings coordinated by the Governor's office to receive feedback on the desired qualities and skills for the next Executive Director of PERS.

Buckley moved to have DAS review applicants and forward the top applicants to the Board for further consideration. In addition to the Board, the review process will include current Executive Director Steve Rodeman and the Governor's Policy Advisor Elana Pirtle-Guiney. Demarest seconded the motion. The motion passed unanimously.

Jessica Kneiling Deputy Chief Human Resources Officer, Department of Administrative Services, presented the proposed process and timeline for recruitment and standards, criteria, and policy directives for adoption.

DeAsis moved to approve the process and timeline of recruitment and standards, criteria, and policy directives for adoption. Demarest seconded the motion. The motion passed unanimously.

Elana Pirtle-Guiney, Policy Advisor for the Governor, appeared before the Board and confirmed that the timeline and standards will be acceptable to all of the needs of the Governor's office in the near future.

Thomas adjourned the Board meeting at 11:15 p.m.

Respectfully submitted,



Steven Patrick Rodeman  
Executive Director

## **PERS Board Meeting Forward-Looking Calendar**

### **Friday, August 3, 2018**

Adoption of 2018 Legislation Rules  
Adoption of PHIP Enrollment Rule  
2019-21 Agency Request Budget  
2017 System Wide Valuation Results  
OSGP Advisory Committee Appointments  
Audit Committee Meeting

### **Friday, October 5, 2018**

Adoption of Employer Side Account Rules  
Member & Employer Survey Results  
2017 Actuarial Valuation and 2019-21 Employer Rates

### **Friday, December 7, 2018**

Board Scorecard Report on Agency Performance Measures  
Financial Modeling  
Audit Committee Meeting

Returns for periods ending APR-2018

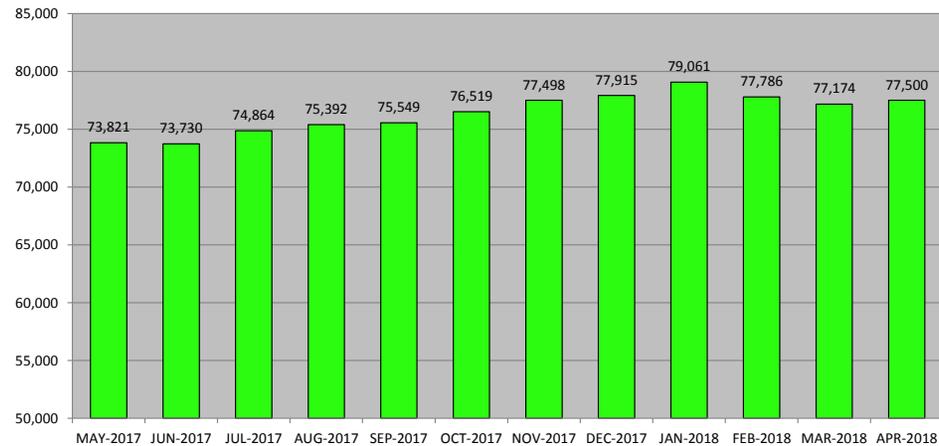
Oregon Public Employees Retirement Fund

OPERF	Regular Account			Historical Performance (Annual Percentage)								
	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	7 YEARS	10 YEARS
Public Equity	32.5-42.5%	37.5%	\$ 29,119,949	37.9%	0.05	15.11	15.83	8.31	8.21	9.73	8.22	6.06
Private Equity	13.5-21.5%	17.5%	\$ 15,129,869	19.7%	4.59	19.14	13.86	11.52	10.92	12.84	12.29	9.19
<b>Total Equity</b>	<b>50.0-60.0%</b>	<b>55.0%</b>	<b>\$ 44,249,819</b>	<b>57.5%</b>								
Opportunity Portfolio	0-3%	0%	\$ 1,757,853	2.3%	2.45	7.60	8.51	6.47	6.27	7.72	7.85	8.04
<b>Total Fixed</b>	<b>15-25%</b>	<b>20.0%</b>	<b>\$ 17,522,778</b>	<b>22.8%</b>	<b>(1.34)</b>	<b>0.37</b>	<b>1.49</b>	<b>1.39</b>	<b>1.84</b>	<b>1.67</b>	<b>3.33</b>	<b>4.95</b>
Real Estate	9.5-15.5%	12.5%	\$ 7,470,233	9.7%	2.00	7.25	7.88	8.44	9.77	9.91	10.66	5.22
Alternative Investments	0-12.5%	12.5%	\$ 5,892,856	7.7%	1.42	7.66	8.09	4.71	3.85	3.91		
Cash w/Overlay	0-3%	0%	\$ 20,860	0.0%	0.45	1.30	1.23	1.06	0.94	0.88	0.85	0.96
<b>TOTAL OPERF Regular Account</b>		<b>100.0%</b>	<b>\$ 76,914,400</b>	<b>100.0%</b>	<b>0.97</b>	<b>11.00</b>	<b>10.64</b>	<b>7.18</b>	<b>7.30</b>	<b>8.28</b>	<b>8.09</b>	<b>6.30</b>
<b>OPERF Policy Benchmark</b>					<b>1.61</b>	<b>11.78</b>	<b>11.38</b>	<b>7.64</b>	<b>7.89</b>	<b>9.10</b>	<b>8.63</b>	<b>6.77</b>
Value Added					<b>(0.64)</b>	<b>(0.78)</b>	<b>(0.74)</b>	<b>(0.47)</b>	<b>(0.59)</b>	<b>(0.82)</b>	<b>(0.55)</b>	<b>(0.47)</b>
<b>TOTAL OPERF Variable Account</b>			<b>\$ 586,075</b>		<b>0.21</b>	<b>14.69</b>	<b>15.28</b>	<b>8.09</b>	<b>7.97</b>	<b>9.36</b>	<b>7.92</b>	<b>5.77</b>

Asset Class Benchmarks:

Russell 3000	(0.27)	13.05	15.78	10.20	10.83	12.75	11.98	9.13
OREGON MSCI ACWI EX US IMI NET	0.45	16.27	14.41	5.50	4.77	5.82	4.03	2.65
MSCI ACWI IMI NET	0.03	14.27	14.83	7.63	7.56	8.97	7.52	5.44
RUSSELL 3000+300 BPS QTR LAG	7.14	24.75	20.34	14.44	14.80	19.01	16.87	12.28
OREGON CUSTOM FI BENCHMARK	(1.51)	0.15	0.92	1.00	1.46	1.19	2.79	3.72
OREGON CUSTOM REAL ESTATE BENCHMARK	2.51	7.36	7.57	9.46	10.04	10.23	10.84	6.10
CPI +4%	2.96	6.55	6.42	6.00	5.44	5.56	5.61	5.58
91 Day Treasury Bill	0.49	1.17	0.78	0.57	0.43	0.36	0.28	0.34

**Total OPERF NAV**  
(includes Variable Fund asset)  
**One year ending APR-2018**  
(\$ in Millions)



<sup>1</sup>OIC Policy revised June 2015.

<sup>2</sup>Includes impact of cash overlay management.

<sup>3</sup>For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF. YTD is not annualized.



# Oregon

Kate Brown, 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)

June 1, 2018

TO: Members of the PERS Board  
FROM: Linda M. Barnett, Budget Officer  
SUBJECT: June 2018 Board Report

### 2017-19 OPERATIONS BUDGET

Operating expenditures for March 2018 and preliminary expenditures for April 2018 were \$4,680,537 and \$3,336,007 respectively. Final expenditures for April closed in the Statewide Financial Management System (SFMS) on May 18, 2018, and will be included in the August 2018 report to the Board.

- To date, through the first ten months (or 41.7%) of the 2017-19 biennium, the Agency has expended a total of \$36,283,735 or 35.7% of PERS' legislatively approved operations budget of \$101,458,179.
- The current projected positive variance is \$4,683,364 or approximately 4.6% of the operations budget.

### 2017-19 NON-LIMITED BUDGET

Previously, I reported to the Board that we would continue to monitor the trend of increasing growth in IAP payments. This monitoring will continue through September 2018, as we complete processing July 1, 2018 retirements (our highest volume retirement month). We will then review our projections for the balance of the year and request any needed Non-Limited budget increases through DAS' Chief Financial Office and the Legislative Fiscal Office.

### MAY 2018 EMERGENCY BOARD REQUESTS

Governor Brown called a Legislative Special Session to begin Monday, May 21, 2018, which coincided with the previously scheduled interim legislative days. During legislative days, PERS had anticipated that the Emergency Board would consider four budget and position requests that we had made. With the Special Session, the Emergency Board may not meet, so agency requests have effectively been deferred to a later date. The attached flier, which we will distribute to Salem stakeholders after the Special Session adjourns, summarizes our interim administrative solutions until we can submit new requests to a subsequent Emergency Board.

A.3.c. Attachment 1 – *2017-19 Agency-wide Budget Execution Summary Analysis*

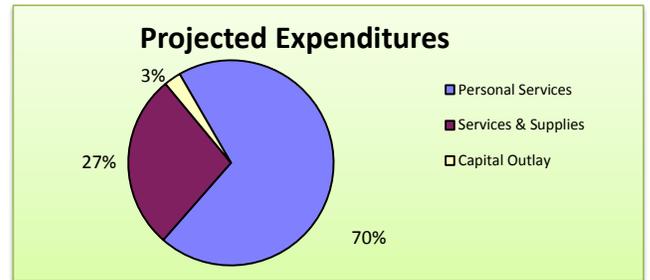
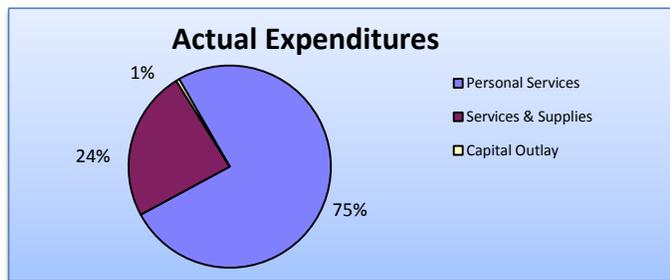
A.3.c. Attachment 2 – *May 2018 E-Board Requests and Subsequent Administrative Resolution*

**2017-19 Agency-wide Budget Execution  
Summary Budget Analysis  
Preliminary For the Month of April 2018**

**Limited - Operating Budget**

**2017-19 Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expenditures	2017-19 LAB	Variance
Personal Services	27,377,345	42,217,861	69,595,206	73,332,965	3,737,759
Services & Supplies	8,713,765	16,659,290	25,373,055	26,830,862	1,457,807
Capital Outlay	192,625	1,613,929	1,806,554	1,294,352	(512,202)
<b>Total</b>	<b>36,283,735</b>	<b>60,491,080</b>	<b>96,774,815</b>	<b>101,458,179</b>	<b>4,683,364</b>



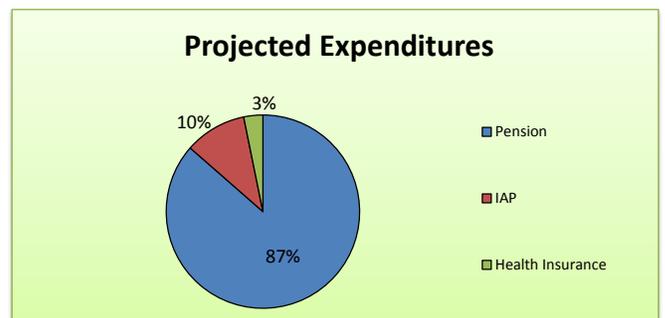
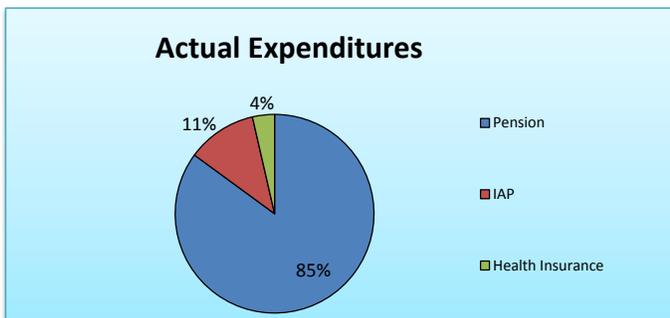
**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	2,825,153	3,000,423	175,270	2,737,734	3,015,562
Services & Supplies	510,854	556,863	46,009	871,376	1,189,949
Capital Outlay	0	0	0	19,263	115,281
<b>Total</b>	<b>3,336,007</b>	<b>3,557,286</b>	<b>221,279</b>	<b>3,628,373</b>	<b>4,320,792</b>

**Non-Limited Budget**

**2017-19 Biennial Summary**

Programs	Actual Exp To Date	Projected Expenditures	Total Est. Expenditures	Non-Limited LAB	Variance
Pension	3,544,938,801	5,981,262,912	9,526,201,713	9,122,000,000	(404,201,713)
IAP	473,153,473	716,638,062	1,189,791,535	1,056,900,000	(132,891,535)
Health Insurance	149,450,873	220,972,573	370,423,446	815,271,000	444,847,554
<b>Total</b>	<b>4,167,543,147</b>	<b>6,918,873,547</b>	<b>11,086,416,694</b>	<b>10,994,171,000</b>	<b>(92,245,694)</b>





# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board  
FROM: Mary Dunn, Chief Administration Officer  
SUBJECT: PERS May 2018 E-Board Requests and Subsequent Administrative Resolution

### BACKGROUND

The 2018 Session was a busy one for PERS – legislatively-adopted program changes were discussed throughout the session (as detailed below). As these concepts were refined, PERS submitted “indeterminate” fiscal impact statements with the understanding that we would return to the May 2018 Emergency Board for the necessary implementation resources. We thought this was more prudent than submitting speculative fiscal impact statements since these concepts were under constant revision in the short session. But the May 2018 Emergency Board did not meet, so PERS is taking administrative actions to implement these bills. This summary of those actions is a prelude to further requests that we expect to make in September 2018.

### SENATE BILL 1566 – PERS UAL REDUCTION

Governor Brown convened a citizen task force to review options that would reduce the current unfunded actuarial liability (UAL). Two concepts were then put into law:

- Establish a special “side account” for school employers from the School Districts Unfunded Liability Fund that would provide some relief from rising PERS employer contributions
- Help employers develop a “UAL Resolution Program” which qualifies those employers for matching funds from the Employer Incentive Fund which would augment their contributions towards reducing their PERS UAL

Agency Impact: To be ready should future revenue streams capitalize these employer accounts, the agency first wants to hire an Operations and Policy Analyst 4 to design the implementation plans for these new programs. This planning will define further resources or positions that we will need to support these programs (to be requested from the September or December E-Board).

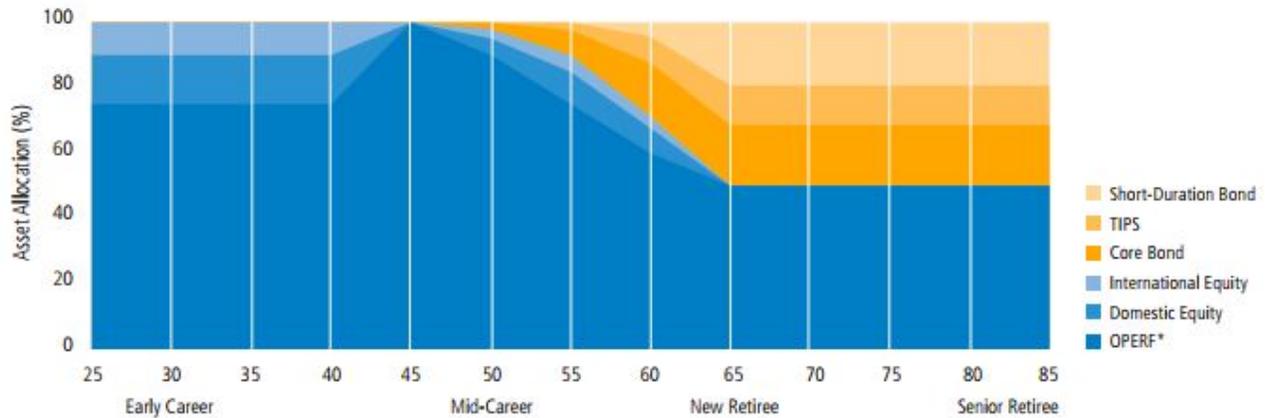
Post-May Administrative Resolution: PERS has opened a double-fill, limited duration recruitment for this position, using its existing positive variance from already approved agency budget limitation for funding. PERS expects to request this as a permanent position in September, as well as any other implementation resources that are identified by that time.

### HOUSE BILL 4159 – MEMBER CHOICE FOR IAP INVESTMENTS

PERS members in the Individual Account Program (IAP) contribute 6% of their salary towards their retirement savings. Those contributions are invested by the Oregon Investment Council (OIC) on the members’ behalf as part of the PERS Fund (which includes all member and employer accounts and reserves). In September 2017, the OIC changed the IAP investment policy to align member investments into Target Date Funds (TDFs), so a member’s investment

allocation evolves as they near retirement. The chart on the next page shows how the asset mix changes over time as the member ages:

Investments Become More Conservative over Time



\*OPERF is managed by the OST and contains a mix of the following asset classes: public and private equity, fixed income, alternatives and real estate. For more information, please refer to the OST website.

This bill allows members to choose among the TDFs instead of being locked into the one they are assigned by age. By January 1, 2019, the bill directed PERS to create a system that allows members to direct their IAP account into a different TDF if they so select; members could choose a different TDF no more often than once per calendar year.

The bill also allowed the State Treasurer to review the legal and fiduciary standards applicable to the Oregon Investment Council. With that evaluation, the State Treasurer has determined that implementation of member choice is not feasible under the bill as written (see the attached memo from Darren Bond, Deputy State Treasurer). This shift in implementation significantly changes the Emergency Board request, but does not diminish the fact that PERS must continue to educate members about the OIC transition to TDF investments.

Agency Impact: These program changes to IAP have several ripple effects:

- *Member Communication* – Our Member Information Center has already seen service levels slip with the large increase in retirements (calls are up 28% from 2014-2018); the TDF change will further increase those pressures as more members learn of this investment shift. We are asking for positions now, which we had planned to request in 2019-21, so we can meet this higher demand without service levels falling further. This request is for one permanent full time Principal Executive/Manager E to centralize communication efforts and three Retirement Counselor 1 positions to restore Member Information Center service levels.
- *Earnings Crediting and Financial Reporting* – The TDF investment policy required PERS to increase financial tracking and reporting: instead of a single earnings rate for IAP accounts, PERS must now derive earnings rates across 10 TDFs. Member Choice adds further complexity by moving accounts from one TDF to another, aligning investment returns to the shifting balances among the TDFs. This request is for one permanent full time Principal Executive/Manager E to manage the increased workload and coordination and one permanent full time Accountant 4 to perform the necessary calculations and financial reporting analysis. Further positions and budget limitation were requested to implement Member Choice, such as one permanent full time Operations and Policy Analyst 2 to reconcile and validate data and one permanent full time Procurement and Contract Specialist 3 to manage the outside

vendors needed to provide services to support Member Choice, as well as \$130,000 in Professional Services to establish the necessary vendor relationships and a further \$180,000 in Professional Services to develop the database to retain TDF election records. These requests will be re-evaluated should Member Choice re-emerge in future legislative discussions.

Post-May Administrative Resolution: PERS will not request additional staff for the Member Information Center until it is clear they are necessary to support implementation of HB 4159. In September, or through the 2019-2021 Agency Budget Request process, PERS will seek the addition of a PE/M E to centralize management of all agency communications. Whether members have choice in their investment or not, PERS must continue to track and report on all TDFs, which has increased workload in the Financial and Administrative Services Division (FASD). FASD has hired two limited duration, double-fill positions to continue the required work on TDFs, with the intent of requesting permanent positions at the September 2018 Emergency Board.

#### TECHNICAL ADJUSTMENTS

For the first time, the agency's 2017-19 budget was divided across organizational divisions instead of one budget for the entire agency. That means, when the agency wants to move positions or budget limitation across divisions (such as when we switch functions from one division to the next), we need to return to the legislature for acknowledgement of those adjustments. These technical adjustments result in no overall change to position count, FTE, or limitation for the agency.

Post-May Administrative Resolution: PERS will return to the September 2018 Emergency Board and resubmit the request.

A.3.c. Attachment 2.a. – *HB 4159 Implementation Memo from Treasury*

**TOBIAS READ**  
STATE TREASURER

**DARREN BOND**  
DEPUTY STATE TREASURER



PHONE 503-373-1029  
FAX 503-378-2870

**OREGON STATE TREASURY**  
350 WINTER STREET NE, SUITE 100  
SALEM, OR 97301-3896

May 17, 2018

TO: The Public Employees Retirement Board

FROM: Darren Q. Bond, Deputy State Treasurer

SUBJECT: House Bill 4159

House Bill 4159 of the 2018 legislative session required this office to review the legal and fiduciary standards applicable to the Oregon Investment Council and the office of the State Treasurer regarding the implementation of changes to the individual account program adopted in the bill. This office has conducted that review and, with this memorandum is notifying the Public Employees Retirement Board of Treasury's determination that legal and fiduciary standards prohibit implementation of House Bill 4159 as written.

While implementation of the bill as drafted is not viable, some of the legal and fiduciary issues related to providing IAP participants a choice among target date funds could potentially be addressed through amendments to the legislation.

To implement IAP choice, we recommend that PERS engage its outside counsel and the Department of Justice:

- To determine how to develop a plan implementing IAP choice in a manner that is consistent with applicable law and fiduciary concerns.
- To ensure that any communications to participants related to IAP choice address the appropriate legal requirements, including any necessary disclosures.

The respective statutory authority of PERS and Treasury should be clear:

- The PERS board and PERS are responsible for plan implementation and administration.
- The OIC and Treasury are responsible for investments made under the plan.

To avoid confusion of roles, PERS, advised by their counsel, should sponsor the necessary legislative changes with Treasury assisting, if needed, for technical accuracy regarding investment-related matters.



# Oregon

Kate Brown., 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)

June 1, 2018

TO: Members of the PERS Board  
FROM: POBMS Council  
SUBJECT: Board Scorecard Report on Agency Performance Measures

A key part of PERS' Outcome-Based Management System (POBMS) is a Quarterly Target Review of scorecards that evaluate our effectiveness in a number of Outcome and Process Measures. These measures foster accountability and transparency in key operating areas. The scorecard results help direct strategic planning, resource allocation, and risk assessment.

The attached Board Scorecard Report for first quarter 2018 focuses on several measures we currently track based on essential business operations. A targeted performance range is created for each measure:

- “Green” – Performance is at or above acceptable levels.
- “Yellow” – Performance is marginally below acceptable levels.
- “Red” – Performance is significantly below; corrective action such as assigning a problem solving team should be directed.

Highlights for this quarter include:

- An upward or equal trend with five of the eight measures.
- Half of the highlighted measures in the Green range.
- An improvement from the Yellow range to Green for Recruiting/Onboarding.

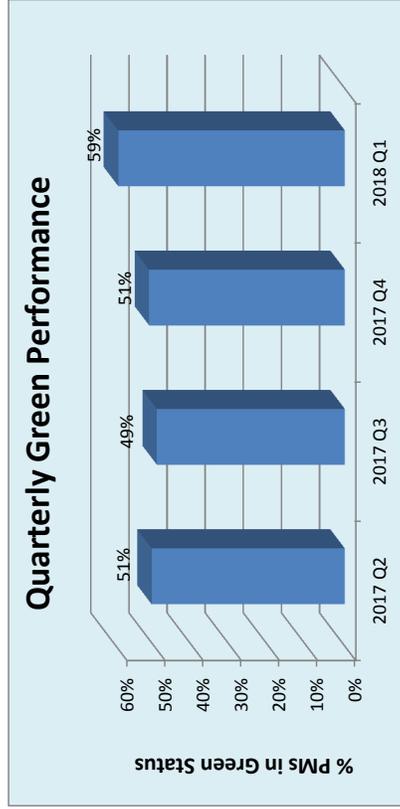
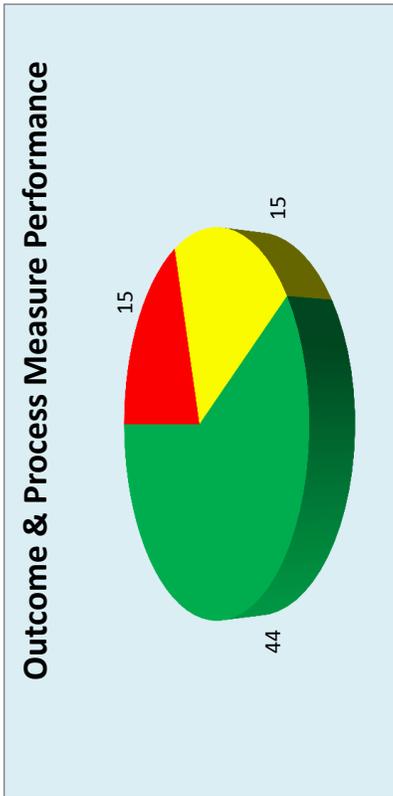
The next report will be presented at the December 7, 2018 board meeting, showing the scorecard results for the third quarter. If you would like us to report on any different measures, please let us know.

A.3.d. Attachment 1 – *Board Scorecard Report for First Quarter 2018*

# PUBLIC EMPLOYEES RETIREMENT SYSTEM

## Outcome-Based Performance Review

### PERS Board Scorecard Report - QTR: 2018 Q1 - Quarter ended March 31, 2018



### Operating Processes - Highlighted Measures

Measure Name	Measure Calculation	RANGE			Target	Desired Perform Trend	Data Collection Frequency	Q2 2017	Q3 2017	Q4 2017	Q1 2018	Trend	Corrective Action & Comments
		Red	Yellow	Green									
OP3c	% of estimate requests completed within 30 days of receipt	<75%	75-85	>85%	95%	↑	Quarterly	23.6%	34.4%	19.0%	30.0%	+	New Hires still in training. Resources constrained from other integrated mechanism. Met with POBMS Council for brainstorming to generate new avenues for measure improvement.
OP4a	% of applications completed by the eligibility team within 30 days of the effective retirement	<50%	50-70	>70%	80%	↑	Monthly	83.7%	84.0%	86.0%	84.0%	-	
OP5b	% of sample calculations that are accurate within plus or minus \$5	<95%	95-99	>99%	100%	↑	Monthly	100.0%	100.0%	100.0%	100.0%	=	
OP5c	% of calculations completed within 15 calendar days from completed application date	<95%	95-99	>99%	100%	↑	Monthly	91.5%	96.6%	95.0%	95.6%	+	Measure is yellow due to data follow up and/or additional information required before completing the calculation.

# PUBLIC EMPLOYEES RETIREMENT SYSTEM

## Outcome-Based Performance Review

### Supporting Processes - Highlighted Measures

Measure Name	Measure Calculation	RANGE			Target	Desired Perform Trend	Data Collection Frequency	Q2 2017	Q3 2017	Q4 2017	Q1 2018	Trend	Corrective Action & Comments
		Red	Yellow	Green									
OP1f	Average length of wait before caller reaches live person	>6 minutes	6-4 minutes	<4 minutes	2 minutes	↓	Monthly	9.9	10.0	16.0	24.1	-	Call volume remains high; 3 vacancies through this period; business plan in the works for additional Call Agents
SP2c	% of staff determinations that are reversed on appeal	>15%	15-10	<10%	5%	↓	Quarterly	1.0%	8.0%	2.8%	28.0%	-	Most reversed cases are tax remedy cases and often because we receive the certification late in December or due to technical difficulties with DOR reporting.
SP3h	% of time systems are available during the service window	<97%	97-98	>98%	100%	↑	Monthly	99.03%	99.03%	99.31%	99.59%	+	
SP5c	% of employees completing trial service	<85%	85-94	>94%	100%	↑	Quarterly	91%	78%	87%	100%	+	No trial service removals this quarter.



# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Notice of Rulemaking for Work After Retirement Exception rule:  
OAR 459-017-0060, *Reemployment of Retired Members*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Implement House Bill 4012 (2018) to extend the sunset date for the work after retirement exception for career and technical education teachers.
- Policy Issue: None identified.

### BACKGROUND

By statute, a Tier One or Tier Two retired member who returns to PERS-covered employment may continue to receive PERS retirement benefits so long as they work less than 1,040 hours in a calendar year. If the retiree meets or exceeds 1,040 hours of employment in a calendar year, and their employment continues into the following month, PERS will cancel the member's retirement and return the retired member to active membership status. This is sometimes referred to as the "1,040 Hour Rule" for Tier One/Tier Two retirees. However, some statutory exceptions allow retirees who work for certain employers or in certain positions to be excluded from the 1,040 Hour Rule. Retired members who meet the statutory requirements can work unlimited hours.

During the 2015 legislative session, House Bill 3058 (2015) established a new exception to the 1,040 Hour Rule for Tier One and Tier Two retired members who are re-employed by school districts or education service districts as teachers of career and technical education (CTE). Retired members who are certified by the Teacher Standards and Practices Commission (TSPC) as teachers of CTE may be re-employed and work unlimited hours in these CTE teacher positions, without loss of retirement benefits. The exception was scheduled to expire June 30, 2018, but House Bill 4012 (2018) extended the exception to June 30, 2023. The rule amendment reflects this sunset extension.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held June 26, 2018, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends July 6, 2018, at 5:00 p.m.

### LEGAL REVIEW

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

Notice – Work After Retirement Exception Rule

06/01/18

Page 2 of 2

IMPACT

Mandatory: Yes, implements 2018 legislation.

Impact: Changes to internal process and staff training.

Cost: May be absorbed in regular course of business.

RULEMAKING TIMELINE

May 29, 2018	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
June 1, 2018	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
June 1, 2018	PERS Board notified that staff began the rulemaking process.
June 26, 2018	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
July 6, 2018	Public comment period ends at 5:00 p.m.
August 3, 2018	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A rulemaking hearing will be held June 26, 2018, at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the August 3, 2018 Board meeting.

B.1.a. Attachment 1 - 459-017-0060, *Reemployment of Retired Members*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 017 – REEMPLOYED RETIRED MEMBERS**

1 **459-017-0060**

2 **Reemployment of Retired Members**

3 (1) For purposes of this rule, “retired member” means a member of the PERS  
4 Chapter 238 Program who is retired for service.

5 (2) Reemployment under ORS 238.082. A retired member may be employed under  
6 ORS 238.082 by a participating employer without loss of retirement benefits provided:

7 (a) The period or periods of employment with one or more participating employers  
8 total less than 1,040 hours in a calendar year; or

9 (b) If the retired member is receiving retirement, survivors, or disability benefits  
10 under the federal Social Security Act, the period or periods of employment total less than  
11 either 1,040 hours in a calendar year, or the total number of hours in a calendar year that,  
12 at the retired member’s specified hourly rate of pay, would cause the annual  
13 compensation of the retired member to exceed the following Social Security annual  
14 compensation limits, whichever is greater.

15 (A) For retired members who have not reached full retirement age under the Social  
16 Security Act, the annual compensation limit is \$17,040; or

17 (B) For the calendar year in which the retired member reaches full retirement age  
18 under the Social Security Act and only for compensation for the months before reaching  
19 full retirement age, the annual compensation limit is \$45,360.

20 (3) The limitations on employment in section (2) of this rule do not apply if the  
21 retired member has reached full retirement age under the Social Security Act.

22 (4) The limitations on employment in section (2) of this rule do not apply if:

1 (a) The retired member meets the requirements of ORS 238.082(4), (5), (6), (7) or  
2 (8), and did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2) or  
3 (3);

4 (b) The retired member retired at a reduced benefit under ORS 238.280(1), (2) or  
5 (3), is employed in a position that meets the requirements of ORS 238.082(4), the date of  
6 employment is more than six months after the member’s effective retirement date, and  
7 the member’s retirement otherwise meets the standard of a bona fide retirement;

8 (c) The retired member is employed by a school district or education service district  
9 as a speech-language pathologist or speech-language pathologist assistant and:

10 (A) The retired member did not retire at a reduced benefit under the provisions of  
11 ORS 238.280(1) or (3); or

12 (B) If the retired member retired at a reduced benefit under the provisions of ORS  
13 238.280(1) or (3), the retired member is not so employed until more than six months after  
14 the member’s effective retirement date and the member’s retirement otherwise meets the  
15 standard of a bona fide retirement;

16 (d) The retired member meets the requirements of section 2, chapter 499, Oregon  
17 Laws 2007, as amended by section 1, chapter 108, Oregon Laws 2015;

18 (e) The retired member meets the requirements of section 2, chapter 475, Oregon  
19 Laws 2015;

20 (f) The retired member is employed for service during a legislative session under  
21 ORS 238.092(2);

22 (g) The retired member meets the requirements of ORS 238.088(2), and did not  
23 retire at a reduced benefit under the provisions of ORS 238.280(1), (2) or (3); or

1            (h) The retired member is on state active duty in the organized militia and meets the  
2 requirements under ORS 399.075(8).

3            (5) For purposes of population determinations referenced by statutes listed in this  
4 rule, the latest federal decennial census shall first be operative on the first day of the  
5 second calendar year following the census year.

6            (6) For purposes of ORS 238.082(6), a retired member replaces an employee if the  
7 retired member:

8            (a) Is assigned to the position of the employee; and

9            (b) Performs the duties of the employee or duties that might be assigned to an  
10 employee in that position.

11           (7) If a retired member is reemployed subject to the limitations of ORS 238.082 and  
12 section (2) of this rule, the period or periods of employment subsequently exceed those  
13 limitations, and employment continues into the month following the date the limitations  
14 are exceeded:

15           (a) If the member has been retired for six or more calendar months:

16           (A) PERS will cancel the member's retirement.

17           (i) If the member is receiving a monthly service retirement allowance, the last  
18 payment to which the member is entitled is for the month in which the limitations were  
19 exceeded.

20           (ii) If the member is receiving installment payments under ORS 238.305(4), the last  
21 installment payment to which the member is entitled is the last payment due on or before  
22 the last day of the month in which the limitations were exceeded.

1            (iii) If the member received a single lump sum payment under ORS 238.305(4) or  
2 238.315, the member is entitled to the payment provided the payment was dated on or  
3 before the last day of the month in which the limitations were exceeded.

4            (iv) A member who receives benefits to which he or she is not entitled must repay  
5 those benefits to PERS.

6            (B) The member will reestablish active membership the first of the calendar month  
7 following the month in which the limitations were exceeded.

8            (C) The member’s account must be rebuilt in accordance with the provisions of  
9 section (9) of this rule.

10           (b) If the member has been retired for less than six calendar months:

11           (A) PERS will cancel the member’s retirement effective the date the member was  
12 reemployed.

13           (B) All retirement benefits received by the member must be repaid to PERS in a  
14 single payment.

15           (C) The member will reestablish active membership effective the date the member  
16 was reemployed.

17           (D) The member account will be rebuilt as of the date that PERS receives the single  
18 payment. The amount in the member account must be the same as the amount in the  
19 member account at the time of the member’s retirement.

20           (8) For purposes of determining period(s) of employment in section (2) of this rule:

21           (a) Hours of employment are hours on and after the retired member’s effective  
22 retirement date for which the member receives wages, salary, paid leave, or other  
23 compensation.

1            (b) Hours of employment that are performed under the provisions of section (4) of  
2 this rule on or after the later of January 1, 2004, or the operative date of the applicable  
3 statutory provision, are not counted.

4            (9) Reemployment under ORS 238.078(1). If a member has been retired for service  
5 for more than six calendar months and is reemployed in a qualifying position by a  
6 participating employer under the provisions of 238.078(1):

7            (a) PERS will cancel the member’s retirement effective the date the member is  
8 reemployed.

9            (b) The member will reestablish active membership on the date the member is  
10 reemployed.

11           (c) If the member elected a benefit payment option other than a lump sum option  
12 under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to  
13 which the member is entitled is for the month before the calendar month in which the  
14 member is reemployed. Upon subsequent retirement, the member may choose a different  
15 benefit payment option.

16           (A) The member’s account will be rebuilt as required by ORS 238.078 effective the  
17 date active membership is reestablished.

18           (B) Amounts from the Benefits-In-Force Reserve (BIF) credited to the member’s  
19 account under the provisions of paragraph (A) of this subsection will be credited with  
20 earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement  
21 to the date of active membership.

22           (d) If the member elected a partial lump sum option under ORS 238.305(2), the last  
23 monthly service retirement allowance payment to which the member is entitled is for the

1 month before the calendar month in which the member is reemployed. The last lump sum  
2 or installment payment to which the member is entitled is the last payment due before the  
3 date the member is reemployed. Upon subsequent retirement, the member may not  
4 choose a different benefit payment option unless the member has repaid to PERS in a  
5 single payment an amount equal to the lump sum and installment benefits received and  
6 the earnings that would have accumulated on that amount.

7        (A) The member’s account will be rebuilt as required by ORS 238.078 effective the  
8 date active membership is reestablished.

9        (B) Amounts from the BIF credited to the member’s account under the provisions of  
10 paragraph (A) of this subsection, excluding any amounts attributable to repayment by the  
11 member, will be credited with earnings at the BIF rate or the assumed rate, whichever is  
12 less, from the date of retirement to the date of active membership.

13        (e) If the member elected the total lump sum option under ORS 238.305(3), the last  
14 lump sum or installment payment to which the member is entitled is the last payment due  
15 before the date the member is reemployed. Upon subsequent retirement, the member may  
16 not choose a different benefit payment option unless the member has repaid to PERS in a  
17 single payment an amount equal to the benefits received and the earnings that would have  
18 accumulated on that amount.

19        (A) If the member repays PERS as described in this subsection the member’s  
20 account will be rebuilt as required by ORS 238.078 effective the date that PERS receives  
21 the single payment.

1            (B) If any amounts from the BIF are credited to the member’s account under the  
2 provisions of paragraph (A) of this subsection, the amounts may not be credited with  
3 earnings for the period from the date of retirement to the date of active membership.

4            (f) If the member received a lump sum payment under ORS 238.315:

5            (A) If the payment was dated before the date the member is reemployed, the member  
6 is not required or permitted to repay the benefit amount. Upon subsequent retirement:

7            (i) The member may choose a different benefit payment option.

8            (ii) The member’s retirement benefit will be calculated based on the member’s  
9 periods of active membership after the member’s initial effective retirement date.

10           (B) If the payment was dated on or after the date the member is reemployed, the  
11 member must repay the benefit amount. Upon subsequent retirement:

12           (i) The member may choose a different benefit payment option.

13           (ii) The member’s retirement benefit will be calculated based on the member’s  
14 periods of active membership before and after the member’s initial effective retirement  
15 date.

16           (iii) The member’s account will be rebuilt as described in ORS 238.078(2).

17           (g) A member who receives benefits to which he or she is not entitled must repay  
18 those benefits to PERS.

19           (10) Reemployment under ORS 238.078(2). If a member has been retired for less  
20 than six calendar months and is reemployed in a qualifying position by a participating  
21 employer under the provisions of 238.078(2):

22           (a) PERS will cancel the member’s retirement effective the date the member is  
23 reemployed.

1            (b) All retirement benefits received by the member must be repaid to PERS in a  
2 single payment.

3            (c) The member will reestablish active membership effective the date the member is  
4 reemployed.

5            (d) The member account will be rebuilt as of the date that PERS receives the single  
6 payment. The amount in the member account must be the same as the amount in the  
7 member account at the time of the member’s retirement.

8            (e) Upon subsequent retirement, the member may choose a different benefit payment  
9 option.

10           (11) Upon the subsequent retirement of any member who reestablished active  
11 membership under ORS 238.078 and this rule, the retirement benefit of the member must  
12 be calculated using the actuarial equivalency factors in effect on the effective date of the  
13 subsequent retirement.

14           (12) The provisions of paragraphs (9)(c)(B), (9)(d)(B), and (9)(e)(B) of this rule are  
15 applicable to retired members who reestablish active membership under ORS 238.078  
16 and this rule and whose initial effective retirement date is on or after March 1, 2006.

17           (13) Reporting requirement. A participating employer that employs a retired member  
18 must notify PERS in a format acceptable to PERS under which statute the retired member  
19 is employed.

20           (a) Upon request by PERS, a participating employer must certify to PERS that a  
21 retired member has not exceeded the number of hours allowed under ORS 238.082 and  
22 section (2) of this rule.

1 (b) Upon request by PERS a participating employer must provide PERS with  
2 business and employment records to substantiate the actual number of hours a retired  
3 member was employed.

4 (c) Participating employers must provide information requested under this section  
5 within 30 days of the date of the request.

6 (14) Sick leave. Accumulated unused sick leave reported by an employer to PERS  
7 upon a member’s retirement, as provided in ORS 238.350, may not be made available to  
8 a retired member returning to employment under sections (2) or (9) of this rule.

9 (15) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2026.

10 (16) Subsection (4)(e) of this rule is repealed effective June 30, ~~2018~~ 2023.

11 Stat. Auth.: ORS 238.650

12 Stats. Implemented: ORS 238.078, 238.082, 238.088, 238.092, 399.075, 2007 OL  
13 Ch. 499 & 774, 2015 OL Ch. 108 & 475



# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Notice of Rulemaking for OPSRP Member Vesting rule:  
OAR 459-075-0060, *Vesting in the OPSRP Pension Program*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update rule to reflect Senate Bill 1546 (2018), which allows judge members to use hours of service worked as a judge member toward vesting as an OPSRP Pension Program member.
- Policy Issue: None identified.

### BACKGROUND

Prior to passage of Senate Bill 1546 (2018), if an unvested OPSRP member became a judge and subsequently performed fewer than 600 hours of service as an OPSRP member in each of five consecutive calendar years, that member forfeited their OPSRP retirement credit at the end of the fifth calendar year. The statutes for OPSRP members specifically exclude judge members as “eligible employees” so they were statutorily blocked from using their judge service time to vest in their OPSRP membership.

Senate Bill 1546 allows judge members to use hours of service worked as a judge toward vesting as an OPSRP member. The modifications to the OPSRP vesting rule add hours of service as a judge member as a consideration when determining whether an OPSRP member is vested. The new statutory provision applies to judge members who retire on or after January 1, 2018.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held June 26, 2018, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends July 6, 2018, at 5:00 p.m.

### LEGAL REVIEW

The attached draft rule was 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: Yes, implements 2018 legislation.

Impact: There are approximately 199 judges participating in PERS of which an unknown number have unvested OPSRP time.

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

RULEMAKING TIMELINE

May 29, 2018	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
June 1, 2018	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
June 1, 2018	PERS Board notified that staff began the rulemaking process.
June 26, 2018	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
July 6, 2018	Public comment period ends at 5:00 p.m.
August 3, 2018	Staff will propose adopting the new rule, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A rulemaking hearing will be held June 26, 2018, at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the August 3, 2018 Board meeting.

B.1.b. Attachment 1 - 459-075-0060, *Vesting in the OPSRP Pension Program*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 075 – OPSRP PENSION PROGRAM**

1 **459-075-0060**

2 **Vesting in the OPSRP Pension Program**

3 For the purpose of determining vesting under ORS 238A.115(1)(a):

4 (1) Hours of service performed for all participating public employers during a  
5 calendar year are included.

6 (2) Hours of service performed during the six-month period required to establish  
7 membership under ORS 238A.100 are included.

8 (3) For calendar years beginning on or after January 1, 2004, hours of service will be  
9 determined based on hours reported to PERS by the member’s employer(s) pursuant to  
10 OAR 459-070-0100.

11 (4) An eligible employee first employed by a participating public employer on or  
12 after August 29, 2003 and before January 1, 2004 is presumed to have performed less  
13 than 600 hours of service in calendar year 2003 unless records provided to PERS  
14 establish that the eligible employee performed at least 600 hours of service in the  
15 calendar year.

16 (5) Hours of service attributable to periods of active membership before termination  
17 of membership under ORS 238.095 and hours of service excluded under ORS 238A.120  
18 and 238A.145 may not be included.

19 **(6) An eligible employee who has established membership in the OPSRP**  
20 **Pension Program but has not vested in that program prior to becoming a judge**  
21 **member, as defined in ORS 238.500(3), may use hours of service worked as a judge**  
22 **member solely for the purpose of vesting in the OPSRP Pension Program so long as:**

1        **(a) The membership of the person has not been terminated under the provisions**  
2 **of ORS 238.545 or 238A.110; and**

3        **(b) The judge member’s effective date of retirement is on or after January 1,**  
4 **2018.**

5        Stat. Auth.: ORS 238A.450

6        Stats. Implemented: ORS 238A.010, 238A.115



# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Notice of Rulemaking for Health Insurance Program Rule:  
OAR 459-035-0070, *Enrollment*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Expand enrollment opportunities in the PERS Health Insurance Program (PHIP).
- Policy Issue: None identified.

### BACKGROUND

A retired member is eligible to enroll in the PERS-sponsored health insurance plans (PHIP) within specific time periods outlined in rule. Two of those time periods are: 1) within 90 days of the retire member's effective date of retirement; and 2) within 90 days of Medicare eligibility. While these standards work in most situations, there are certain circumstances in which a member can have a retroactive retirement date and thereby miss an opportunity to enroll in PHIP.

The effective retirement date for a disability retirement is the first of the month following the date of disability. A member cannot apply for disability retirement before the date of disability and a disability application takes, on average, six months to process. Therefore, the effective date of disability retirement is always a retroactive date. In addition, if a member who is eligible for service retirement applies for disability retirement and is denied, the member can apply for a service retirement with a retroactive effective retirement date of the first of the month in which the disability application was received. Similarly, members who are initially denied Social Security and are later approved will also have a retroactive Medicare eligibility date. Under the current PHIP enrollment rule, these members do not have an opportunity to enroll in PHIP due to the retroactive retirement date.

The amendments to the rule address these retroactive effective date situations and provide an enrollment window for eligible persons in these circumstances. If enrolled, PHIP coverage would only be prospective from the enrollment date.

Additional edits to the rule have been made to: update the name of the PHIP application form and clarify information requirements for a completed application; clarify that all Medicare-enrolled individuals (member, spouse, dependents) enrolling in PHIP are required to be in the same Medicare Companion Plan; and remove the requirement of a new application form from a surviving spouse or dependent who is already enrolled in PHIP at the time of a member's death.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held June 26, 2018, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends July 6, 2018, at 5:00 p.m.

### LEGAL REVIEW

The attached draft rule was 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.

Impact: Provides direction to retirees regarding updated enrollment requirements.

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

### RULEMAKING TIMELINE

May 29, 2018	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
June 1, 2018	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
June 1, 2018	PERS Board notified that staff began the rulemaking process.
June 26, 2018	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
July 6, 2018	Public comment period ends at 5:00 p.m.
August 3, 2018	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### NEXT STEPS

A rulemaking hearing will be held June 26, 2018, at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the August 3, 2018 Board meeting.

B.2. Attachment 1 - 459-035-0070, *Enrollment*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0070**

2 **Enrollment**

3 (1) Enrollment requirements of PERS-sponsored health insurance plans for eligible  
4 persons are as follows:

5 (a) An eligible person must complete all applicable parts of the PERS *[Medical &*  
6 *Dental]* Health Insurance *[Application]* Program Enrollment Request *[f]*Form, and  
7 *[file]* submit the form with all required supporting documents to the Third Party  
8 Administrator prior to the requested effective date of enrollment *[including, in the*  
9 *case of a dependent domestic partner, an Affidavit of Dependent Domestic Partnership]*.

10 The PERS Health Insurance Program Enrollment Request *[f]*Form must:

11 (A) *[i]*Indicate which plan is desired;

12 (B) *[and it must]* List individually all dependents, including the spouse, that are to  
13 be enrolled*[.]*; and

14 (C) Have signatures of all members, dependents over the age of 18, and spouses  
15 that are to be enrolled.

16 *[The form can be obtained from the Third Party Administrator or PERS.]*

17 (b) An eligible person who is a retiree may enroll:

18 (A) Within 90 days of the retiree’s effective date of retirement;

19 (B) Within 90 days of the date of submitting a service retirement application  
20 under OAR 459-015-0025(4)(c);

21 (C) Within 90 days of the date of the Disability Approval Letter generated  
22 under OAR 459-015-0025(5)(a);

1 ~~[(B)]~~**(D)** At any time if covered under another group health insurance plan for 24  
 2 consecutive months immediately preceding enrollment, provided that the application for  
 3 enrollment is filed within 30 days of loss of coverage. Health care coverage under  
 4 workers' compensation, Medicare or any other governmental entitlement program for  
 5 health care do not qualify as other group health insurance coverage for purposes of this  
 6 paragraph;

7 ~~[(C)]~~**(E)** Within 90 days of initial Medicare eligibility, if the retiree is enrolled in  
 8 Parts A and B of Medicare; *[or]*

9 **(F) Within 90 days of the date of the Notice of Award letter issued by the Social**  
 10 **Security Administration; or**

11 ~~[(D)]~~**(G)** During an open enrollment period designated by the Board.

12 (c) Except as provided in subsections (f) **and (g)** of this section, an eligible spouse, dependent domestic partner, or dependent must be enrolled at the same time *[and in*  
 13 *the same plan]* as the eligible retiree. **An eligible spouse, dependent domestic partner**  
 14 **or dependent enrolling in Parts A and B of Medicare must be enrolled in the**  
 15 **Medicare Companion Plan offered by the same carrier that covers the eligible**  
 16 **retiree.**

18 (d) An eligible surviving spouse or dependent who is enrolled under the deceased  
 19 retiree's plan at the time of death may continue coverage under that plan. *[, and must*  
 20 *complete a Medical & Dental Insurance Application form as soon as possible following*  
 21 *the retiree's death;]*

22 (e) An eligible surviving spouse or dependent who is not covered under the retiree's  
 23 plan at the time of the retiree's death, may enroll:

24 (A) Within 90 days of the retiree's death;

1 (B) At any time if covered under another group health insurance plan for 24  
2 consecutive months immediately preceding enrollment, provided that the application for  
3 enrollment is filed within 30 days of loss of coverage. Health care coverage under  
4 workers' compensation, Medicare or any other governmental entitlement program for  
5 health care do not qualify as other group health insurance plan coverage for purposes of  
6 this paragraph;

7 (C) Within 90 days of initial Medicare eligibility, if he or she is enrolled in Parts A  
8 and B of Medicare; *[or]*

9 **(D) Within 90 days of the date of the Notice of Award letter issued by the Social**  
10 **Security Administration; or**

11 *[(D)](E)* During an open enrollment period designated by the Board.

12 (f) A new spouse, dependent domestic partner, or dependent may be enrolled:

13 (A) Within 30 days of becoming a spouse, a dependent domestic partner or  
14 dependent; and

15 *[(B) If not enrolled in Medicare, only with the same carrier that the eligible retiree*  
16 *is enrolled in;]*

17 *[(C)](B)* If enrolled in Parts A and B of Medicare, only in the Medicare Companion  
18 Plan offered by the same carrier that covers the eligible retiree.

19 (g) An eligible retiree's spouse may enroll within 90 days of initial Medicare  
20 eligibility, if he/she is enrolled in Parts A & B of Medicare even though the retiree  
21 remains enrolled in a non-PERS health plan.

22 (2) Special enrollment requirements for dental insurance plans:

23 (a) Only persons who are enrolled in a PERS-sponsored health insurance plan may  
24 enroll in a PERS-sponsored dental insurance plan. Enrollment in a PERS-sponsored

1 dental insurance plan must be made under the enrollment conditions for the PERS-  
2 sponsored health insurance that are described in section (1) of this rule.

3        (b) Dental insurance coverage is not available to any eligible person unless all family  
4 members (the retiree, spouse, dependent domestic partner and dependent(s)) who are  
5 enrolled in a PERS-sponsored health insurance plan also enroll in the same PERS-  
6 sponsored dental insurance plan.

7        Stat. Auth.: ORS 238.410 & 238.650

8        Stats. Implemented: ORS 238.410, 238.415 & 238.420



# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: Temporary Adoption and Notice of Rulemaking for Employer Side Account Rules:  
OAR 459-009-0084, *Employer Unfunded Actuarial Liability Lump-Sum Payments With an Actuarial Calculation*  
OAR 459-009-0086, *Employer Unfunded Actuarial Liability Lump-Sum Payments, Generally*

### OVERVIEW

- Action: Adopt temporary modifications to the Employer Side Account rules, and begin permanent rulemaking.
- Reason for Temporary Rules: Senate Bill 1566 (2018) will be effective as of June 2, 2018. While other aspects of the bill will require more time to implement, these temporary rules allow implementation of Section 3b of the bill on the effective date of the bill.
- Policy Issues: None identified.

### BACKGROUND

Section 3b of Senate Bill 1566 (2018) allows participating PERS employers that make a lump sum payment of \$10 million or more that is not sourced from pension obligation bonds the option to select an amortization period of 6, 10, 16, or 20 years for that payment.

Currently, employer side accounts are amortized over 20 years. With the option of selecting a different amortization period, employer lump sum payments made under this new provision will require the employer to establish a new side account with the different amortization period. As with all lump sum payments establishing a new side account, they will also require an actuarial calculation. Accordingly, OAR 459-009-0084 and 459-009-0086 have been amended to reflect this new option and clarify its administration.

Note that staff continues to work on implementation of the other provisions in Senate Bill 1566 and anticipates additional changes to these rules. Therefore, we do not anticipate adoption of these as permanent rules until the October 5, 2018 meeting.

### JUSTIFICATION FOR TEMPORARY RULEMAKING

Senate Bill 1566 will be effective as of June 2, 2018, and there is currently at least one employer that is looking to make a large UAL lump sum payment pursuant to section 3b of the bill.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held June 26, 2018, at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends July 6, 2018, at 5:00 p.m.

### LEGAL REVIEW

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

### EFFECTIVE DATE

The temporary rules will become effective upon filing. The maximum period they can remain in effect is 180 days, so staff has initiated permanent rulemaking to replace the temporary rules.

### IMPACT

Mandatory: Yes, because Senate Bill 1566 will be effective as of June 2, 2018.

Impact: Clarifies administration of new lump sum payment option for employers under Senate Bill 1566.

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

### RULEMAKING TIMELINE

May 29, 2018	Staff began the permanent rulemaking process by filing Notice of Rulemaking with the Secretary of State.
June 1, 2018	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
June 1, 2018	PERS Board may adopt the proposed temporary rule modifications; PERS staff will proceed with permanent rulemaking unless otherwise directed.
June 26, 2018	Rulemaking hearing to be held at 2:00 p.m. at PERS in Tigard.
July 6, 2018	Public comment period ends at 5:00 p.m.
October 5, 2018	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt temporary modifications to the Employer Side Account Rules, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Senate Bill 1566 (2018) will be effective as of June 2, 2018. While other aspects of the bill will require more time to implement, these temporary rules allow implementation of Section 3b of the bill on the effective date of the bill.

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

NEXT STEPS

A rulemaking hearing will be held June 26, 2018, at 2:00 p.m. at PERS headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the October 5, 2018 Board meeting.

B.3. Attachment 1 – 459-009-0084, *Employer Unfunded Actuarial Liability Lump-Sum Payments With an Actuarial Calculation*

B.3. Attachment 2 – 459-009-0086, *Employer Unfunded Actuarial Liability Lump-Sum Payments, Generally*

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

1 **459-009-0084**

2 **Employer Unfunded Actuarial Liability Lump-Sum Payments With an Actuarial**  
3 **Calculation**

4 The words and phrases used in this rule have the same meaning given them in OAR  
5 459-009-0086.

6 (1) An actuarial calculation is required before an employer may make a UAL lump-  
7 sum payment if the employer:

8 (a) Has a transition liability;

9 (b) Intends to establish a new side account with a new employer contribution rate as  
10 of a date specified by the employer; *[or]*

11 (c) Has requested an actuarial calculation where a calculation is not otherwise  
12 required; or

13 **(d) Intends to make a UAL lump-sum payment as specified in OAR 459-009-**  
14 **0086(9).**

15 (2) At least 45 calendar days before the date the employer intends to make a UAL  
16 lump-sum payment with an actuarial calculation, the employer must notify PERS  
17 Actuarial Services in writing that it intends to make such a UAL lump-sum payment. The  
18 notification must specify:

19 (a) The amount of the intended lump-sum payment;

20 **(b) Whether it is a lump-sum payment pursuant to OAR 459-009-0086(9);**

21 **[(b)](c) [No more than two] At least one** potential date*[s]* for the payment; and

1 ~~[(c)]~~(d) If the employer so elects, a specific effective date for the contribution rate  
2 change resulting from the UAL lump-sum payment. Such date must be the first of any  
3 month following the employer’s intended payment date but may not be more than 12  
4 months after the employer’s intended payment date.

5 (3) PERS staff must notify the employer within five business days of receipt of a  
6 notification in section (2) of this rule if the notification is incomplete or the process  
7 cannot be completed by the earliest intended date of the UAL lump-sum payment.

8 (4) The PERS consulting actuary must provide an invoice charging the employer for  
9 the cost of the UAL calculation requested by the employer. At least 30 calendar days  
10 before the date the employer intends to make a UAL lump-sum payment, the employer  
11 must remit payment for the cost of the UAL calculation directly to the PERS consulting  
12 actuary according to the instructions on the invoice. Failure to remit payment according  
13 to the terms of this section may result in the PERS consulting actuary not completing the  
14 employer’s UAL calculation by the proposed UAL lump-sum payment date.

15 (5) Upon receipt of notification that an employer has made payment in full for the  
16 requested UAL calculation, PERS staff shall request that the PERS consulting actuary  
17 calculate:

18 (a) For an employer participating in an employer actuarial pool, 100 percent of the  
19 employer’s share of the UAL for the employer actuarial pool. This calculation will be:

20 (A) Based on the fair value UAL of the employer actuarial pool, from the most  
21 recent actuarial valuation;

22 (B) Based on the employer’s covered salary, as a proportion of the pool, as reported  
23 in the most recent actuarial valuation; and

1 (C) Adjusted to reflect the effect of time from the most recent actuarial valuation to  
2 the intended date(s) of payment, using generally recognized and accepted actuarial  
3 principles and practices.

4 (b) For an employer not participating in an employer actuarial pool, 100 percent of  
5 the individual employer’s UAL. This calculation will be:

6 (A) Based on the fair value UAL of the individual employer, from the most recent  
7 actuarial valuation; and

8 (B) Adjusted to reflect the effect of time from the most recent actuarial valuation to  
9 the intended date(s) of payment, using generally recognized and accepted actuarial  
10 principles and practices.

11 (c) For a UAL lump-sum payment to establish a new side account, the effect of the  
12 following UAL lump-sum payment amounts on the individual employer’s contribution  
13 rates using the *[one or two potential dates for payment]* information specified by the  
14 employer in its notification in section (2) of this rule:

15 (A) 100 percent of the individual employer’s UAL calculated in subsection (5)(a) or  
16 (b) of this rule;

17 (B) The UAL lump-sum payment amount(s) specified by the employer in its  
18 notification, if provided; and

19 (C) The minimum amount of the UAL lump-sum payment, if any.

20 (d) For a UAL lump-sum payment as specified in OAR 459-009-0086(9), the  
21 maximum lump-sum payment amount that will not result in a contribution rate of  
22 less than 0.00%, if the amount of the intended lump-sum payment specified by the

1 employer in subsection (2)(a) of this rule would in effect result in a surplus lump-  
2 sum payment as defined under OAR 459-009-0090(1)(g).

3 ~~[(d)]~~(e) For a UAL lump-sum payment into an existing side account, the estimated  
4 effect of the additional deposit on the individual employer’s contribution rates effective  
5 July 1 of the year following publication of the actuarial valuation for the year in which  
6 the additional deposit is made.

7 (6) PERS staff must notify the employer in writing of the results of the individual  
8 employer’s calculation in section (5) of this rule otherwise designated by the employer  
9 under subsection (2)(c) of this rule. In addition, PERS must send the employer a  
10 notification describing risks and uncertainties associated with the calculation of the  
11 individual employer’s UAL if such notification has not already been provided.

12 (7) The employer must notify PERS Actuarial Services in writing at least three  
13 business days before making a UAL lump-sum payment. This notification shall be in  
14 addition to the notification in section (2) of this rule and must specify:

- 15 (a) The amount of the payment;
- 16 (b) The date the employer intends to make the payment;
- 17 (c) Whether the payment is to establish a new side account or to be deposited into an  
18 existing side account; and
- 19 (d) If the payment is to be deposited into an existing side account and the employer  
20 has more than one side account, which side account is to receive the deposit.

21 (8) For a UAL lump-sum payment to establish a new side account, PERS must  
22 receive the correct funds no later than five business days after the intended date of the  
23 UAL lump-sum payment specified by the employer in the notification described in

1 section (7) of this rule in order to adjust the employer contribution rate to that reported by  
2 PERS in section (6) of this rule.

3 (a) If the UAL lump-sum payment is received by PERS on or before the intended  
4 payment date specified in the notification described in section (7) of this rule or within  
5 the five business days following the intended payment date, the new employer  
6 contribution rate shall be effective for payrolls dated on or after:

7 (A) The first of the month following receipt of the UAL lump-sum payment by  
8 PERS; or

9 (B) The date specified by the employer in subsection (2)(c) of this rule, whichever is  
10 later.

11 (b) If the UAL lump-sum payment is received by PERS more than five business days  
12 after the intended payment date, the employer’s contribution rate shall be adjusted based  
13 on the next actuarial valuation after the date of receipt of the UAL lump-sum payment  
14 and effective July 1 of the year following publication of that valuation.

15 (c) If the UAL lump-sum payment received is other than any amount specified in the  
16 notification under section (7) of this rule, the employer’s contribution rate shall be  
17 adjusted to the rate the payment amount fully funds using the actuarial calculation in  
18 subsection (5)(c) of this rule.

19 (d) If the UAL lump-sum payment received is less than the minimum amount  
20 described in OAR 459-009-0086, the payment will be returned to the employer and no  
21 adjustment will be made to the employer contribution rate.

22 (9) When an employer makes a UAL lump-sum payment into an existing side  
23 account:

1 (a) The final rate adjustment from the additional UAL lump-sum payment(s) will be  
2 calculated in the actuarial valuation for the year in which the payment is made, and will  
3 be effective on July 1 of the year following publication of that valuation.

4 (b) The calculation in subsection ~~[(9)]~~(a) of this section will supersede any estimate  
5 provided in an actuarial calculation under subsection (5)(d) of this rule.

6 (10) Nothing in this rule shall be construed to prevent the Board from:

7 (a) Adjusting employer contribution rates based upon the date of receipt of funds or  
8 errors in the notification described in section (7) of this rule; or

9 (b) Taking action pursuant to ORS 238.225.

10 Stat. Auth.: ORS 238.650

11 Stats. Implemented: ORS 238.225 - 238.229

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

**459-009-0086**

**Employer Unfunded Actuarial Liability Lump-Sum Payments, Generally**

(1) Definitions. For the purposes of this rule:

(a) “Amortized amount” means the amount of a side account used to offset pension contributions due from the employer.

(b) “Employer actuarial pool” means a grouping of employers for actuarial purposes such as the School District Pool and the State and Local Government Rate Pool.

(c) “Fair value UAL” means the unfunded actuarial liability calculated using the fair market value of assets.

(d) “Side account” means an account in the Public Employees Retirement Fund into which a UAL lump-sum payment that is not used to satisfy a transition liability is deposited.

(e) “Transition liability” means the unfunded actuarial liability attributed to an individual employer for the period before entry into the State and Local Government Rate Pool.

(f) “Transition surplus” means the actuarial surplus attributed to an individual employer for the period before entry into the State and Local Government Rate Pool.

(g) “Unfunded actuarial liability” or “UAL” means the excess of the actuarial liability over the actuarial value of assets for the specified pension program.

(h) “UAL lump-sum payment” means any employer payment that is:

(A) Not regularly scheduled;

(B) Not paid as a percentage of salary;

1            (C) Made for the express purpose of reducing the pension contributions that would  
2 otherwise be required from the employer, or reducing or paying off the employer’s  
3 transition liability; and

4            (D) Paid at the employer’s election instead of at the PERS Board’s direction.

5            (2) A UAL lump-sum payment must be made by either wire transfer or check payable  
6 to the Public Employees Retirement System.

7            (3) An employer may make a UAL lump-sum payment to pay 100 percent of its  
8 transition liability.

9            (4) A UAL lump-sum payment shall first be applied to the employer’s transition  
10 liability, if any. The remainder of the payment, if any, shall be held in a side account.

11           (5) An actuarial calculation must be performed prior to an employer making a UAL  
12 lump-sum payment if the employer:

13           (a) Has a transition liability;

14           (b) Intends to establish a new side account with rate relief beginning on a date  
15 specified by the employer; or

16           (c) Requests an actuarial calculation where a calculation is not otherwise required.

17           (6) The amount of a UAL lump-sum payment that is held in a side account will be  
18 used to reduce the pension contributions that would otherwise be required from the  
19 employer making the UAL lump-sum payment. The amortized amount for each payroll  
20 reporting period shall be transferred from the side account to the appropriate employer  
21 reserve account.

22           (7) The minimum UAL lump-sum payment required to establish a new side account is  
23 the lesser of:

1 (a) 25 percent of the individual employer’s UAL calculated under OAR 459-009-0084  
2 or 459-009-0085; or

3 (b) \$250,000.

4 (8) An employer with one or more existing side accounts may make additional UAL  
5 lump-sum payments into such side account(s).

6 (a) An employer may not make more than two additional UAL lump-sum payments  
7 per side account in a calendar year.

8 (b) Additional UAL lump-sum payments into an existing side account will not affect  
9 the amortization period of the existing side account.

10 (c) Adjustment to the employer’s contribution rates from a UAL lump-sum payment  
11 into an existing side account will be effective on July 1 of the calendar year following  
12 completion of the actuarial valuation for the year in which the additional deposit is made.

13 **(9) An employer making a UAL lump-sum payment equal to or greater than \$10**  
14 **million, not sourced from a pension obligation bond, and electing an amortization**  
15 **period of 6 years, 10 years, or 16 years must establish a new side account for the**  
16 **lump-sum payment.**

17 ~~[(9)]~~**(10)** Each employer side account shall be charged an administration fee of \$1,500  
18 for the year in which the side account is established, and \$500 per year thereafter.

19 ~~[(10)]~~**(11)** Side accounts shall be credited with earnings and losses in accordance with  
20 OAR 459-007-0530.

21 ~~[(11)]~~**(12)** Nothing in this rule shall be construed to prevent the PERS Board from  
22 taking action pursuant to ORS 238.225.

1        ~~[(12)]~~(13) Nothing in this rule shall be construed to convey to an employer making a  
2        UAL lump-sum payment any proprietary interest in the Public Employees Retirement  
3        Fund or in the UAL lump-sum payment made to the fund by the employer.

4        Stat. Auth.: ORS 238.650

5        Stats. Implemented: ORS 238.225 - 238.229



# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board

FROM: Mini Kobbervig, PERS Health Insurance Program Manager

SUBJECT: PERS Health Insurance Program (PHIP) 2019 Plans and Rates

### BACKGROUND

For the 2019 Plan Year, the PERS Health Insurance Program (PHIP) shifted focus from the standard renewal process it used for many years, and instead issued a formal Request for Proposal (RFP). PERS had contracted with the same four carriers for 20+ years and determined that a fresh look at both carriers and plan types would best serve member and program needs. Consequently, PERS issued an RFP for medical, pharmacy, and optional dental services.

The RFP was released on June 14, 2017, with proposals due from interested parties on July 27, 2017. Five health insurance carriers submitted proposals:

- Kaiser Permanente NW
- Moda Health
- PacificSource Health Plans
- Providence Health Assurance
- United Healthcare

The RFP Evaluation Team reviewed and scored the proposals; developed numerous sets of clarification and information-gathering questions and evaluated proposer responses; held multiple day-long informational meetings and interviews with each proposer; reviewed several rounds of preliminary and final benefit offerings and proposed rates; invested hundreds of hours drafting, reviewing, analyzing, and discussing each element of the RFP process and each proposer's documents; and methodically went through each step of the formal RFP process.

In addition, the Evaluation Team spent significant time deliberating impacts of the strategic changes to PHIP that were raised by the RFP process, with the goal of offering long-term sustainable plans and Contracted Health Plan (CHP) partners that provide value to current and future membership, consistent with PHIP's Mission and Core Values.

Overall, the 24-month long RFP process resulted in refreshing both the range of health plan offerings and the group of CHP providers. PHIP appreciates the dedicated effort of the Proposers and Evaluation Team to the completion of the RFP process.

## 2019 PLAN OVERVIEW

PHIP membership as of March 2018:

- 2,087 non-Medicare members (4% of enrollees)
- 57,104 Medicare members (96% of enrollees)
- 37,932 Dental members

### **Non-Medicare**

Reduction in number of CHPs: PHIP currently provides coverage through four different CHPs: Kaiser, Moda, PacificSource, and Providence, with each CHP offering two separate plans. Given the small size of the non-Medicare pool and the large number of carrier and plan choices, the risk pool for non-Medicare is significantly diluted. PHIP determined to mitigate some of this risk by reducing the number of CHPs offering non-Medicare plans from four to two. The two selected CHPs will offer two separate non-Medicare plans, although the nature of one of these plans changes from the current Select Value offering as described below.

High Deductible Health Plan (HSA-qualified): Beginning with the 2019 Plan Year, PHIP will offer a Health Savings Account (HSA)-qualified High Deductible Health Plan (HDHP). The HSA-qualified HDHP fills a different need for our members. It is consistent with the current health care environment as well as providing members the option of a high deductible plan at a lower monthly premium.

Neither PHIP nor the CHP will be involved in or sponsor the HSA component of the HDHP, nor will PHIP or the CHP offer any tax advice to members. Whether a member chooses to use an HSA is solely the member's decision and responsibility. However, PHIP will provide general member education regarding the new product at Plan Change meetings and through other member materials.

A traditional Core Value plan continues to be available.

Both of the UHC Core Value and HDHP plans have nationwide network coverage.

### **Medicare**

Medicare Supplement: In 2019, PHIP will offer a Medicare Supplement plan providing members with nationwide coverage. A PHIP member living anywhere within the United States is able to participate in this plan.

Medicare Advantage: PHIP will also offer one Medicare Advantage-Preferred Provider Organization (PPO) plan with a nationwide coverage; three Medicare Advantage-Health Maintenance Organization (HMO) plans; and one Medicare Advantage-Point of Service (POS) plan. This mix gives our membership a broad choice of plans and provider networks.

PHIP is pleased that its Medicare offerings give members a choice of two plans with nationwide coverage: the Medicare Supplement and the Medicare Advantage PPO.

## **Dental**

PHIP will continue to offer two dental plans in 2019: a Dental Maintenance Organization (DMO) and an Indemnity plan with a passive PPO.

### **Kaiser - Northern/Southern California**

PHIP has been offering Medicare and non-Medicare coverage to members living in Northern and Southern California through separate Kaiser California contracts, distinct from Kaiser Permanente NW coverage. Kaiser Northern/Southern California did not submit a response to the RFP; consequently, the coverage for members in this area will be discontinued after 2018.

However, these members have the option of enrolling in one of the two Medicare plans with nationwide coverage. This change impacts about 69 Medicare members.

PHIP is working with the CHPs to develop a communication transition plan for all Medicare and non-Medicare affected membership.

### **Next Steps**

PHIP staff and consultants are pleased to present these proposals. With the PERS Board's approval today, PHIP's third-party administrator (TPA) and consultants will begin updating the PHIP member materials. Following the Board's decision, PHIP, the TPA, and CHP staff will prepare for Plan Change meetings throughout the state (to begin in mid-September); provide updated information on the PHIP website; and prepare other informational materials for member distribution.

Traditionally, Plan Change meetings have been very well attended and we anticipate the same or greater attendance this year. The change in CHP options and the inclusion of new products will garner added retiree interest in the program. We anticipate a period of higher member calls and walk-in traffic as well, and are proactively preparing for these events.

*See next page for "Summary of Action Requiring Board Approval" table and Board decision options*

SUMMARY OF ACTION REQUIRING BOARD APPROVAL

**Recommendations presented for the 2019 Plan Year**

Plans	Kaiser	Moda	PacificSource	Providence	United Healthcare
<b>Non-Medicare</b>					
<b>Core Value - \$0 Deductible</b>	✓				
<b>Core Value - \$1,000 Deductible</b>					✓ Nationwide Coverage
<b>HSA-Qualified HDHP \$3,000 Deductible 20% Coinsurance</b>	✓				✓ Nationwide Coverage
<b>Medicare</b>					
<b>Supplement</b>		✓ Nationwide Coverage			
<b>Advantage-PPO</b>					✓ Nationwide Coverage
<b>Advantage-HMO</b>	✓		✓	✓	
<b>Advantage-POS</b>				✓	
<b>Dental</b>					
<b>Kaiser Dental</b>	✓				
<b>Moda-Delta Dental</b>		✓			
✓ denotes contract award See Attachment I for Rates					

BOARD OPTIONS

The Board may:

1. Pass a motion to “approve the proposed PHIP RFP contract awards, benefits, and rates for the 2019 Plan Year as presented”; or
2. Direct staff to make changes to these terms or explore other options.

STAFF RECOMMEDATION

Staff recommends the Board choose Option #1

- Reason: These recommendations are the results of a 24-month long process of engagement with the RFP process and with our Proposers. Further discussions or negotiations jeopardizes the development of material and other member information needed for the plan renewal cycle this fall.

If the Board does not adopt: Staff will return with proposed terms or other modifications that more closely fit the Board's policy direction if the Board determines that a change is warranted.

C.1. Attachment 1 – *2018-2019 Contracted Health Plan Rates*

 <b>PHIP 2019 PROPOSED RATES</b> 2018 vs. 2019 Contracted Health Plan Rates Effective January 1, 2019				
SUMMARY				
	Enrollment as of March 2018	Current 2018 Rates	2019 Proposed Medical/RX and Dental Rates	Percentage Change 2019 vs. 2018
<b>Medicare Plans</b>				
Kaiser Permanente Northwest Sr. Advantage Medical / Rx	10,145	\$ 226.87	\$ 233.68	3.0%
Moda Health Medicare Supplement Medical / Rx	25,246	\$ 303.09	\$ 292.09	-3.6%
PacificSource Medicare Essentials Medical / Rx	1,209	\$ 338.07	\$ 257.37	-23.9%
Providence Health Assurance Medicare Align Medical / Rx	9,410	\$ 288.84	\$ 298.51	3.3%
Providence Health Assurance Medicare Flex Medical / Rx	3,584	\$ 245.77	\$ 250.56	1.9%
United Healthcare Medicare Advantage PPO Medical / Rx - <b>New*</b> (assumes Moda PPO membership, but member makes ultimate selection)	7,442	\$ 410.47	\$ 257.42	-37%
<b>Non-Medicare Plans</b>				
<b>Core Value</b>				
Kaiser Permanente Core Value HMO Medical / Rx	367	\$ 944.15	\$ 944.15	0.0%
United Healthcare Core Value 1000 PPO Medical / Rx - (assumes all non-Kaiser membership, but member makes ultimate selection)	974	<b>New**</b>	\$ 1,025.49	<b>New CHP 2019</b>
<b>HDHP - New Option</b>				
Kaiser Permanente HDHP 3000 Medical / Rx***	122	<b>New***</b>	\$ 561.59	
United Healthcare HDHP 3000 Medical / Rx (assumes all non-Kaiser membership, but member makes ultimate selection)	624	<b>New***</b>	\$ 737.90	<b>New CHP 2019</b>
<b>Dental Plans</b>				
Kaiser Permanente Northwest Dental HMO Plan	4,723	\$ 64.35	\$ 64.84	0.8%
Delta Dental of Oregon Premier Dental with Passive PPO	33,209	\$ 66.88	\$ 61.92	-7.4%
<b>Notes to Rate Sheet:</b>				
- Rates illustrated are "Adult" only premium (retiree or spouse)				
- Child rates are calculated as a percentage of the "Adult" rate as follows:				
<ul style="list-style-type: none"> <li>• Child with Medicare coverage = 80%</li> <li>• Child with non-Medicare Coverage = 30%</li> <li>• Child with dental coverage = 40%</li> </ul>				
<b>New*</b>				
<b>United Healthcare (UHC) Medicare Advantage - PPO Plan Change over 2018</b>				
Illustrates a -37% change to members over the current 2018 Moda Medicare Advantage PPO plan				
<b>New**</b>				
<b>UHC CV1000 Non-Medicare Plan Change over 2018</b>				
Moda to UHC -23%				
PacificSource to UHC -13%				
Providence to UHC -1%				
<b>New***</b>				
<b>High Deductible Health Plan (HDHP) \$3,000, replaces the 2018 Select Value (SV) Plan</b>				
Because these are two different plan designs, a true rate comparator is not available, however for illustrative purposes, changes over 2018 are as follows:				
Kaiser SV to Kaiser HDHP -28%				
Moda SV to UHC HDHP -41%				
PacificSource SV to UHC HDHP -29%				
Providence SV to UHC HDHP -14%				
-Enrollment numbers listed for the new HDHP \$3000 plan are illustrative only using current Select Value non-Kaiser plan enrollment. Members will have the ability to select either the revised Core Value plan or the new HDHP 3000 plan.				
- Medical / Rx rates do not include any subsidies				



# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board  
FROM: Yvette Elledge-Rhodes, Deputy Director  
SUBJECT: IAP TDF/Member Choice Implementation Update

### BACKGROUND

At the September 20, 2017 Oregon Investment Council (OIC) meeting, the OIC adopted a new Target-Date Fund (TDF) investment strategy for the Individual Account Program (IAP) effective January 1, 2018. This decision resulted in changes to the IAP investment structure by establishing TDFs in five-year vintages that reflect gradually more conservative investment mixes as a member ages.

Additionally, the passage of “Member Choice” (House Bill 4159) in the 2018 legislative session added more complexity to the IAP investment model. Under that bill, the Oregon State Treasurer can prevent implementation of Member Choice if he determines that legal or fiduciary standards prohibit implementation. As mentioned in the materials for Agenda Item A.2.c. above, the Treasurer has made that determination. PERS has been notified that a legislative remedy may be introduced during the 2019 session but, for now, PERS does not have authority to move forward with a January 1, 2019 implementation date. Still, the OIC’s move to TDFs without Member Choice is continuing to be integrated into IAP operations through a project methodology.

### PROJECT ACTIVITIES

Recent TDF project activities include:

- The most critical tools, workflows and applications needed for TDF are either nearing completion or are deployed.
- Staff continue to refine policies related to TDF as we develop procedures for some of the specific populations such as deceased accounts.
- Data transfers and processes between Voya and PERS continue to be reviewed for efficiency and accuracy. This area has been particularly challenging and can have an impact on financial transactions.
- A flyer announcing the TDF change to the IAP was included with the 2017 Annual Statements, mailed mid-May.

Member Choice, as a sub-project, was being scoped and planned until the Treasurer issued his determination. Here are some updates of activities we performed that, if Member Choice is later restored, will come back into relevance at that later time:

- Policy Review and Development
  - Work on modifying the existing TDF OARs for Member Choice is in process.

- Contracting Resources
  - PERS is working with a contractor, Cammack, to determine what work can continue while OST evaluation is on-going.
- Member Education and Communication
  - A high-level communication plan is under development and will be implemented when results of the OST evaluation are clear.
- Budget and Personnel Resources
  - As directed during the February legislative session, PERS filed a request to the May 2018 Emergency Board for initial funding and personnel resources associated with implementation. We expected to return to the September 2018 Emergency Board with an additional request that would reflect actual mailing costs and other yet-to-be-determined resources.
  - The May 21, 2018 Special Session will pre-empt the Emergency Board, so PERS is evaluating critical resource needs that can be funded with the current operating budget.

PERS staff will update the Board as project implementation progresses.



# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board

FROM: Mary Dunn, Chief Administration Officer  
Debra Hembree, Actuarial Services Coordinator

SUBJECT: Senate Bill 1566 Implementation Update

### BACKGROUND

Senate Bill 1566, the PERS Unfunded Actuarial Liability (UAL) Reduction bill, was approved during the 2018 legislative session. The bill created several new programs for PERS including: the Employer Incentive Fund; the Unfunded Actuarial Liability (UAL) Resolution Program; the School Districts Unfunded Liability Fund; and optional shorter amortization periods for qualifying lump sum payments.

### IMPLEMENTATION ACTIVITIES

Since the end of legislative session, PERS began analyzing all of the law's components and directives. The following are the high level activities we have completed so far:

- Prioritized the individual programs in this bill based on when the program was to be in place and/or funded;
- Developed a position description along with justification for additional staff;
- Held an initial conversation with the PERS Employer Advisory Group to gather questions and input;
- Established a dedicated e-mail address for communications related to SB 1566;
- Developed a short- and long-term employer communication plan, including a page on the PERS website to provide updated implementation details; and
- Developed temporary administrative rules to implement the optional shorter amortization period provision of the bill.

The following items will be addressed in the next few months:

- Draft housekeeping amendments to resolve inconsistencies in the bill's time lines for consideration during the 2019 legislative session;
- Prepare requests to the September Emergency Board for additional resources;
- Further engage with stakeholders around implementation;
- Continue administrative rule development and revision work;
- Identify additional resource needs for the different components of the bill and build out the timeline for when they are required;
- Identify a cross-divisional team to ensure that all affected program areas are involved in implementation moving forward;
- Provide training to PERS staff whose programs are impacted by the new programs; and
- Coordinate with Milliman to ensure that valuation information reflects any changes or additions needed under the new programs.

PERS staff will continue to update the Board as project implementation progresses.



# Oregon

Kate Brown, 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)

June 1, 2018

TO: Members of the PERS Board  
FROM: Linda M. Barnett, Budget Officer  
Mary Dunn, Chief Administration Officer  
SUBJECT: 2019-21 Agency Budget Development

### BACKGROUND

PERS is continuing to prepare the 2019-21 Agency Request Budget (ARB) to be approved by the PERS Board for consideration during the 2019 legislative session. PERS' 2019-21 ARB will align with the agency's mission and key long-term strategic initiatives. After Board approval at the August 3, 2018 meeting, PERS staff will submit the budget to the Department of Administrative Services Chief Financial Office (DAS/CFO) for review and inclusion in the Governor's Recommended Budget (GRB).

Building the agency's 2019-21 requested budget starts with the agency's 2017-19 Legislatively Adopted Budget (LAB), which is the foundation for the next biennium's budget. The LAB, along with essential packages, establish the agency Current Service Level (CSL) budget. PERS submitted the CSL budget to DAS/CFO at the end of May 2018. The CSL budget will be audited and confirmed by DAS/CFO in June 2018, after which PERS will add in any proposed 2019-21 policy option packages which, combined with the CSL budget, will comprise the ARB.

### PROPOSED 2019-2021 POLICY OPTION PACKAGES

In support of the PERS mission and our vision and core values, staff have developed business cases for the following policy packages in the 2019-21 budget cycle.

- Compliance Initiative: PERS requests the establishment of two permanent positions and one limited duration position to address an extensive backlog of work and requirements, to ensure successful and compliant continuity of operations, to ensure that policy determinations made in relation to appeals and contested cases are consistent, and to provide PERS managers the proper resources for appropriate performance management.

Additionally, PERS is proposing to migrate the PERS data center to the Salem data center, as directed by a joint memo from the Legislative Fiscal Office (LFO) and the Oregon State Chief Information Officer (OSCIO).

Finally, PERS requests an increase in the operating budget to conduct a location feasibility study to comply with the Governor's directive to evaluate the use of space in state buildings and review innovative solutions for a growing workforce. The total budget request for this package is approximately \$3.1 million.

- Financial and Administrative Services Strategic Fulfillment: PERS requests the establishment of five permanent positions, two limited duration positions, and the upward

reclassification of four positions to make progress in fulfilling the Financial and Administrative Services Division (FASD) enterprise strategic initiative for financial management that, in concert with FASD's existing initiative for organizational management and development, raises the profile of FASD mission within the agency.

The financial management strategic initiative has two focus areas, investing in staff and additional resources as well as a thorough evaluation of current technology with the aim of eliminating manual processes. This request will allow the division to focus on staff by investing in more robust training plans, hiring additional staff to begin work that the division has unable to address for years, and by developing a continuity and succession plan which includes thorough documentation of all policies and procedures. This total budget request is approximately \$1.6 million.

- Maintain Current Services: PERS requests the establishment of eleven permanent positions to ensure continuity of business operations by eliminating the need for contracted temporary positions; to improve the Operations Division's management functions and oversight; to meet changing and growing requirements that includes a new Information Security and Risk Program within the Compliance and Risk Division; and to allow the Information Services Division more nimbly evolve with the demands of an increasingly complex retirement system. The total budget request is approximately \$2.2 million.
- Modern Communications and Self-Service Platform: PERS proposes to develop a communications solution with modern features such as customer relationship management (CRM) capability that will allow PERS to efficiently communicate with members early and often in their careers, to promote and facilitate proactive retirement planning. This solution, with interactive functionality, will allow PERS to empower members with the information and transparency needed to review and verify their own employment data. The system will allow members to conveniently and efficiently perform most retirement management activities with PERS online. The total budget request is approximately \$1.5 million.
- PERS 2017-19 E-Board Requests: PERS requests the establishment of four permanent positions in the Financial and Administrative Services Division; a manager of agency communications permanent position in Central Administration; and four permanent positions in Operations Division. These resources are needed to support the change to Target Date Funds for the Individual Account Program and implement 2018 legislation. The total budget request is approximately \$2 million. These requests may not be considered or approved during the 2017-19 biennium, so we are including them in the ARB if they are not otherwise approved by the Emergency Board during the current biennium.
- Deferred Maintenance: PERS requests a \$625,000 increase in operating budget to ensure that deferred maintenance is at least two percent of the current replacement value of the PERS Headquarters building and infrastructure. The deferred maintenance will be used for the planned replacement of the HVAC system and roof, both of which are now over 20 years old.



# Oregon

Kate Brown, 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Reconsideration of Employer Rates for Jackson County and Josephine County

### OVERVIEW

On September 30, 2016, the Board adopted 2017-19 employer rates for all but two employers: Jackson County and Josephine County (“the Counties”). The Board delayed adoption of the employer rates for the Counties because staff was recommending that the transition liability of The Job Council (“TJC”) be divided equally between the two counties and the Counties objected. The Board directed staff to continue working on options for allocating the transition liability for the dissolved TJC and discuss with the Counties. Staff did additional research, evaluated the options again, and met with representatives from the Counties; however, staff’s recommendation did not change. On November 18, 2016, staff renewed its recommendation that the outstanding transition liability of TJC be assigned equally to the Counties and the Board adopted the employer rates for the Counties that included the outstanding transition liability of TJC.

Two options considered by staff at that time were: 1) determining that TJC was insolvent and, therefore, the Board would have the option of using a portion of the Contingency Reserve to pay the outstanding transition liability under ORS 238.670(1)(a); and 2) identifying a successor entity and assigning the outstanding transition liability to the successor entity. These analyses were performed prior to the adoption of our insolvent employer rule, OAR 459-009-0400. Staff is now asking the Board to reconsider and reaffirm the Counties’ rate orders in light of the analysis under the insolvent employer rule and the successor employer provision in OAR 459-009-0070(12).

### INSOLVENT EMPLOYER/CONTINGENCY RESERVE

The Board’s discretion to use a portion of the Contingency Reserve for an insolvent employer under ORS 238.670(1)(a) is triggered only once an employer is determined to be insolvent. The insolvent employer rule was adopted in May 2017, after adoption of the Counties’ employer rates, but staff had been working on developing the policy and definition for some time. The definition of “insolvent employer” outlined in OAR 459-009-0400(1) is consistent with the analysis staff applied when evaluating whether TJC was an insolvent employer:

- (a) The employer has dissolved either by statute or administrative action as an ongoing entity;
- (b) There are no assets from which PERS can collect to cover the dissolved employer’s PERS liability or there are inadequate assets to cover all PERS liability; and

- (c) There is no entity either by operation of law or contractual agreement that is responsible for the dissolved employer's remaining liability, or PERS is unable to assign the remaining liability to an entity.

TJC appears to meet the first two criteria listed, as they dissolved effective June 30, 2015, and indicated to PERS that they did not have assets sufficient to pay their outstanding PERS liability. However, staff's analysis was, and still is, that TJC does not meet the last criteria because the Counties are responsible for the remaining transition liability.

TJC was created by the Counties through an intergovernmental agreement (IGA) under ORS Chapter 190. ORS 190.080(3) and (5)(b) address the debts and liabilities of the intergovernmental entity:

- (3) The debts, liabilities and obligations of an intergovernmental entity *shall* be, jointly and severally, the debts, liabilities and obligations of the parties to the intergovernmental agreement that created the entity, unless the agreement specifically provides otherwise.

\* \* \*

- (5) Any moneys collected by or credited to an intergovernmental entity shall not accrue to the benefit of private persons. Upon dissolution of the entity, title to all assets of the intergovernmental entity shall vest in the parties to the intergovernmental agreement. The agreement creating the entity *shall* provide a procedure for:

- (a) The disposition, division and distribution of any assets acquired by the intergovernmental entity; and

- (b) The assumption of any outstanding indebtedness or other liabilities of the entity *by the parties to the intergovernmental agreement that created the entity.*

(Emphasis added.)

Staff's plain language interpretation of ORS 190.080(3) and (5)(b) was, and still is, that the liabilities of TJC must be assumed "...by the parties to the intergovernmental agreement that created the entity," namely, Jackson and Josephine counties. Since the Counties are required by statute to assume the liabilities of TJC, there is "an entity...by operation of law...that is responsible for the dissolved employer's remaining liability..."; therefore, TJC does not meet the third criteria outlined in OAR 459-009-0400(1) and is not an insolvent employer.

This is further supported by the Liabilities and Transfers section of the most recent IGA between the Counties regarding TJC, which states in part:

Any liability which may accrue to the Governments due to TJC's acts, errors, or omissions, or TJC's performance or failure to perform pursuant to the requirement of state or federal law shall be apportioned among the Governments equally.

\* \* \*

Upon any termination of this Agreement, TJC shall pay or make provisions for payment of its creditors, including reimbursement to the federal government or other governmental agencies of amounts required to be paid to them upon termination of this Agreement and the liquidation of TJC. Thereafter, the assets remaining shall be distributed equally to the Governments.

As mentioned previously, the Board's discretion to use a portion of the Contingency Reserve arises only if the employer is insolvent. Under OAR 459-009-0400(1), TJC was not an insolvent employer; therefore, the Contingency Reserve was not available to pay all or part of TJC's outstanding transition liability under ORS 238.670(1)(a).

### SUCCESSOR ENTITY

OAR 459-009-0070(12) allows the Board to determine an employer's successor and assign the employer's unfunded actuarial liability to that successor:

Dissolution of an employer or non-participating employer. In the event a public employer is dissolved, no longer has PERS eligible employees, or is no longer eligible to participate in PERS, the employer or its successor will be required to make the contributions necessary to fund any remaining unfunded actuarial liability, as provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, for PERS benefits. The Board will determine the method and amount of funding this unfunded actuarial liability or the return of any surplus, as well as the determination of the employer's successor.

Although this paragraph does not specifically mention a transition liability, it references paragraph (9)(b) of the same rule, which describes the transition liability.

While staff did not previously recommend the Board make an official decision regarding a successor employer, in September 2016, staff researched whether the Rogue Workforce Partnership or another entity could be a successor entity to which the outstanding transition liability could be assigned. Indeed, the language of the Counties' Amendment to their IGA, adopted in June 2015 for purposes of winding down TJC, states in part:

For the purpose of this paragraph, winding down and terminating the operations of TJC includes, but is not limited to:

- a. Transferring assets of TJC, with or without consideration, in one or more installments to an organization that has a mission similar to the mission of TJC, all as determined by the liquidating agent in his/her sole discretion, if the liquidating agent, in his/her sole discretion, determines that the financial assets of TJC are sufficient to pay remaining operating expenses and current liabilities of TJC.

Staff's assessment is that this language cannot relieve the Counties' responsibility for TJC's liabilities. Based on ORS 190.080(3) and (5)(b) mentioned above, as well as OAR 459-009-

0400(1), staff now recommends the Board officially declare that the Counties are the successor employer of TJC for PERS purposes according to OAR 459-009-0070(12).

### BOARD OPTIONS

The Board may:

1. Do nothing.
2. Pass a motion to “reaffirm the adoption of the 2017-19 individual employer contribution rates for Jackson County and Josephine County, having determined that Contingency Reserve funds are not available to pay all or part of The Job Council’s transition liability, as The Job Council was not insolvent, and declare that Jackson and Josephine Counties are the successors to The Job Council for PERS purposes.”
3. Pass a motion to “withdraw the individual employer contribution rate orders adopted by the Board on November 18, 2016, for Jackson County and Josephine County and adopt new individual employer contribution rates for Jackson County and Josephine County for 2017-19 that do not include the transition liability of The Job Council.”

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #2.

- Reason: Reaffirmation of the employer rates complies with the Board’s rate-setting principles and fulfills its statutory obligation to set employer rates for the 2017-19 biennium, and also ensures that neither the system as a whole nor the State and Local Government Rate Pool incurs liability for employer-specific decisions.

C.5. Attachment 1 – *Relevant Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR)*

C.5. Attachment 2 – *The Job Council Intergovernmental Entity Agreement, Article VII – Liabilities and Transfers*

**190.080 Powers of intergovernmental entity created by intergovernmental agreement; limits; debts of entity; procedure for distribution of assets; rules.** (1) An intergovernmental entity created by an intergovernmental agreement under ORS 190.010 may, according to the terms of the agreement:

(a) Issue revenue bonds under ORS chapter 287A or enter into financing agreements authorized under ORS 271.390 to accomplish the public purposes of the parties to the agreement, if after a public hearing the governing body of each of the units of local government that are parties to the agreement approves, by resolution or order, the issuance of the revenue bonds or entering into the financing agreement;

(b) Enter into agreements with vendors, trustees or escrow agents for the installment purchase or lease, with option to purchase, of real or personal property if the period of time allowed for payment under an agreement does not exceed 20 years; and

(c) Adopt all rules necessary to carry out its powers and duties under the intergovernmental agreement.

(2) Except as provided in ORS 190.083, an intergovernmental entity may not levy taxes or issue general obligation bonds.

(3) The debts, liabilities and obligations of an intergovernmental entity shall be, jointly and severally, the debts, liabilities and obligations of the parties to the intergovernmental agreement that created the entity, unless the agreement specifically provides otherwise.

(4) A party to an intergovernmental agreement creating an intergovernmental entity may assume responsibility for specific debts, liabilities or obligations of the intergovernmental entity.

(5) Any moneys collected by or credited to an intergovernmental entity shall not accrue to the benefit of private persons. Upon dissolution of the entity, title to all assets of the intergovernmental entity shall vest in the parties to the intergovernmental agreement. The agreement creating the entity shall provide a procedure for:

(a) The disposition, division and distribution of any assets acquired by the intergovernmental entity; and

(b) The assumption of any outstanding indebtedness or other liabilities of the entity by the parties to the intergovernmental agreement that created the entity.

(6) An intergovernmental entity created by intergovernmental agreement under ORS 190.010 may be terminated at any time by unanimous vote of all the parties to the intergovernmental agreement or as provided by the terms of the agreement. [1991 c.583 §4; 2001 c.840 §3; 2003 c.195 §7; 2007 c.783 §71]

**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, but the board may not credit further amounts to the reserve account if the amounts in the reserve account exceed \$50 million. 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.

(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; 2017 c.746 §11]

#### **459-009-0400**

##### **Insolvent Employer**

(1) For the purposes of this rule, an “insolvent employer” is an employer that meets all of the following requirements:

(a) The employer has dissolved either by statute or administrative action as an ongoing entity;

(b) There are no assets from which PERS can collect to cover the dissolved employer’s PERS liability or there are inadequate assets to cover all PERS liability; and

(c) There is no entity either by operation of law or contractual agreement that is responsible for the dissolved employer’s remaining liability, or PERS is unable to assign the remaining liability to an entity.

(2) If PERS determines an employer is insolvent, the board may take action to satisfy some or all of the outstanding liability of an insolvent employer to the fund through the Contingency Reserve established under ORS 238.670(1).

**Statutory Authority:** ORS 238.650 & 238A.450

**Statutes Implemented:** ORS 238.670

#### **459-009-0070**

##### **Actuarial Pooling of Employer Liability**

(9) Unfunded actuarial liabilities or surplus.

(b) If a political subdivision elects to join the State and Local Government Rate Pool as provided in section (4) of this rule, any transition unfunded actuarial liabilities or surplus as of the day immediately preceding the effective date of entering the pool will remain part of the actuarial calculation of employer costs for each individual political subdivision, until fully amortized, and will not be pooled with other public employers in the State and Local Government Rate Pool.

(12) Dissolution of an employer or non-participating employer. In the event a public employer is dissolved, no longer has PERS eligible employees, or is no longer eligible to participate in PERS, the employer or its successor will be required to make the contributions necessary to fund any remaining unfunded actuarial liability, as provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, for PERS benefits. The Board will determine the method and amount of funding this unfunded actuarial liability or the return of any surplus, as well as the determination of the employer's successor.

**Statutory Authority:** ORS 238.650

**Statutes Implemented:** 2005 OL, Ch. 808, Sec. (12), (13), (14), ORS 238.225 & 238.605

**Article VI**

**Amendment**

Any amendment to this Agreement must be agreed to by each member Government.

**Article VII**

**Liabilities and Transfers**

1. Any liability which may accrue to the Governments due to TJC's acts, errors, or omissions or TJC's performance or failure to perform pursuant to the requirements of state or federal law shall be apportioned among the Governments equally. Nothing in this provision shall be interpreted as any waiver of the rights and immunities to which Jackson and Josephine County are subject due to the respective status as an Oregon Public Body. Each Governmental entity hereby expressly retains all the provisions of the Oregon Tort Claims Act found at ORS 30.260-300.

2. Upon any termination of this Agreement, TJC shall pay or make provision for payment of its creditors, including reimbursement to the federal government or other governmental agencies of amounts required to be paid to them upon termination of this Agreement and the liquidation of TJC. Thereafter, the assets remaining shall be distributed equally to the Governments.

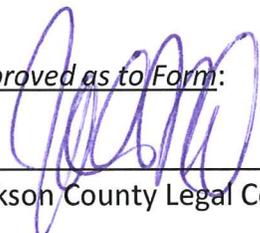
IN WITNESS WHEREOF, this Agreement is executed by the parties hereto effective on and after March 15, 2012. (Date of adoption by majority vote of both Governments)

**JACKSON COUNTY  
BOARD OF COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Don Skundrick Chair                      3/15/12  
Date

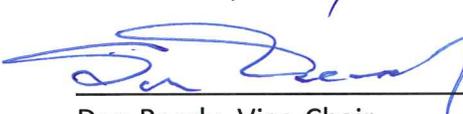
  
\_\_\_\_\_  
John Rachor, Vice-Chair                      3-15-12  
Date

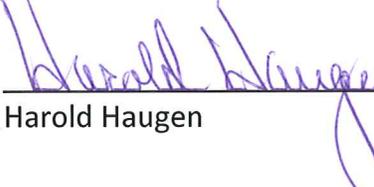
  
\_\_\_\_\_  
Dennis C.W. Smith                      3/15/12  
Date

Approved as to Form:  
  
\_\_\_\_\_  
Jackson County Legal Counsel                      3/15/12  
Date

**JOSEPHINE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Simon Hare, Chair                      3/26/12  
Date

  
\_\_\_\_\_  
Don Reedy, Vice-Chair                      3/26/12  
Date

  
\_\_\_\_\_  
Harold Haugen                      3/26/12  
Date

Approved as to Form:  
  
\_\_\_\_\_  
Josephine County Legal Counsel                      3-23-12  
Date



# JACKSON COUNTY

Oregon

## Office of County Counsel

Joel C. Benton  
County Counsel

10 South Oakdale, Room 214  
Medford, OR 97501  
Phone: (541) 774-6160  
Fax: (541) 774-6722  
bentonjc@jacksoncounty.org

www.jacksoncounty.org

VIA ELECTRONIC MAIL only to:

Joli.A.Whitney@state.or.us

PERS.BOARD@pers.state.or.us

May 31, 2018

Chair John Thomas  
Oregon Public Employees Retirement Board  
11410 SW 68<sup>th</sup> Parkway  
Tigard, OR 97281

RE: Written Testimony for June 1, 2018 PERS Board Meeting - Agenda Item C.5 - Reconsideration of Jackson/Josephine County 2017-19 Employer Rates

Dear Chair Thomas:

I submit this written testimony regarding the above agenda item scheduled for consideration at the June 1, 2018 PERS Board Meeting. Because Jackson County was provided less than 48 hours' notice regarding this agenda item, I am not able to appear in person at this Board Meeting.

In November 2016, the Board adopted 2017-19 employer rates for Jackson and Josephine Counties ("Rate Order"). Over the Counties' objection, that Rate Order allocated to the Counties the transition liability of a separate dissolved entity, The Job Council ("TJC"). The Counties timely filed a petition for judicial review from that order in Marion County Circuit Court (Case No. 17CV01027). Although the staff memorandum for the June 1 Board Meeting omits any mention of this Court Action, it remains pending and is scheduled for trial on August 13, 2018.

I urge the Board to adopt Option #3, which is consistent with past practice of PERS to not assign liability to a third party without an agreement. It would also provide finality to this issue and require looking to the proper parties or using the Contingency Fund to address TJC's transition liability.

In all events, the Board should decline to reaffirm the Rate Order at the June 1, 2018 Board meeting for two reasons.

*First*, the Board lacks authority to pass a motion reaffirming the Rate Order as proposed in the staff memorandum. Under the Oregon Administrative Procedures Act ("APA"), while the Court Action is pending, an agency's authority regarding the Rate Order is limited to withdrawal of the order "for purposes of reconsideration." The Court then may set a time frame for the agency to take further action on the order. *See* ORS 183.484(4). But an agency may not simply "reaffirm" an order while a court action is pending without first involving the Court. PERS has not done so here. Should the Board "reaffirm" the Rate Order, that action would be procedurally invalid.

May 31, 2018

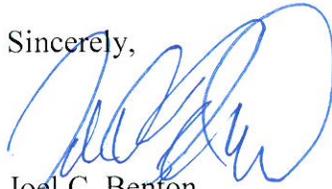
Page 2 of 2

*Second*, the Board should not condone PERS staff's effort to create a new record solely for litigation purposes by purporting to have the Board ratify analysis that was not completed by PERS staff or the Board at the time the Rate Order was adopted in November 2016, and to retroactively apply to The Job Council and the Counties an administrative rule (OAR 459-009-0400) that had not been adopted (or even proposed to the Board) in November 2016.

At minimum, the Board should defer decision on "reaffirming" of the Rate Order until its next scheduled meeting on August 1, 2018. The parties completed depositions of PERS representatives in the Court Action in May, with the last deposition (of Ms. Vaughn as a designated representative of PERS) completed on Friday May 25. During these depositions, PERS staff did not disclose that they intended to request that the Board reaffirm the Rate Order or that PERS staff had completed any additional analysis regarding the authority of the Board to assign the Transition Liability to the Counties.

Instead, the Counties were provided less than 48 hours' notice of the Board meeting or that an issue significantly affecting the Counties' interests would be a topic of discussion at the meeting. The Counties have not been given any opportunity to provide to staff information or analysis which may materially impact the staff recommendation or the Board's action. At the very least, the Board should postpone its decision to allow time for the Counties to fully consider the proposed "reaffirmance" and direct PERS staff to engage in substantive conversations with the Counties regarding possible negotiated resolution of the Court Action in the interim period.

Sincerely,



Joel C. Benton  
County Counsel



# Oregon

Kate Brown, Governor

Walk in C.5.

## 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  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

June 1, 2018

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Reconsideration of Employer Rates for Jackson County and Josephine County

### ADDENDUM

Mr. Joel Benton from Jackson County has raised a procedural issue in his letter of May 31, 2018, to the Board. While staff does not necessarily agree with Mr. Benton's position, out of an abundance of caution, staff is altering the options for the Board's consideration:

The Board may:

1. Do nothing.
2. Pass a motion to "notify the court of the Board's intent to withdraw, reconsider, and affirm the 2017-19 individual employer contribution rate orders for Jackson County and Josephine County based on the following issues: 1) The Job Council was not insolvent under ORS 238.670(1)(a) or OAR 459-009-0400 and therefore contingency reserve funds should not be used to pay any part of The Job Council's transition liability; and 2) Jackson and Josephine Counties are the successors to The Job Council under OAR 459-009-0070(12)."
3. Pass a motion to "notify the court of the Board's intent to withdraw, reconsider, and modify the 2017-19 individual employer contribution rate orders to adopt new individual employer contribution rates for Jackson County and Josephine County for 2017-19 that do not include the transition liability of The Job Council."

If the Board selects Option #2 or #3, following notice to the court, staff intends to schedule a special Board meeting for the Board to withdraw, reconsider, and either affirm or modify the rate orders for the Counties. We anticipate that meeting will be scheduled for the end of June or beginning of July.

Staff recommends the Board choose Option #2.

- Reason: Notifying the court assures that there are no potential procedural concerns, while withdrawal and reconsideration of the employer rates that addresses the insolvency and successor entity issues for The Job Council complies with the Board's rate-setting principles, fulfills its statutory obligation to set employer rates for the 2017-19 biennium, and also ensures that neither the system as a whole nor the State and Local Government Rate Pool incurs liability for employer-specific decisions.