NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED
05/29/2018 4:09 PM
ARCHIVES DIVISION
SECRETARY OF STATE

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

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/06/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Daniel Rivas
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HEARING(S)

Auxilary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/26/2018
TIME: 2:00 PM
OFFICER: Daniel Rivas
ADDRESS: Boardroom, PERS
11410 SW 68th Parkway
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NEED FOR THE RULE(S):

Senate Bill 1566 (2018) is effective June 2, 2018. The rules are needed for implementation of Section 3b of the bill.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Senate Bill 1566 (2018), available at
https://olis.leg.state.or.us/liz/2018R1/Downloads/MeasureDocument/SB1566/Enrolled

FISCAL AND ECONOMIC IMPACT:

There are no discrete costs attributable to the rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rule does not affect small businesses and therefore small businesses were not involved in the development of the rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A public hearing will be held and the PERS Board solicits input on rules from any interested parties.

RULES PROPOSED:
459-009-0084, 459-009-0086

AMEND: 459-009-0084

RULE SUMMARY: 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.

CHANGES TO RULE:

459-009-0084
Employer Unfunded Actuarial Liability Lump-Sum Payments With an Actuarial Calculation ¶

The words and phrases used in this rule have the same meaning given them in OAR 459-009-0086.¶
(1) An actuarial calculation is required before an employer may make a UAL lump-sum payment if the employer:¶
(a) Has a transition liability;¶
(b) Intends to establish a new side account with a new employer contribution rate as of a date specified by the employer;~~ or~~¶
(c) Has requested an actuarial calculation where a calculation is not otherwise required; or¶
(d) Intends to make a UAL lump-sum payment as specified in OAR 459-009-0086(9).¶
(2) At least 45 calendar days before the date the employer intends to make a UAL lump-sum payment with an actuarial calculation, the employer must notify PERS Actuarial Services in writing that it intends to make such a UAL lump-sum payment. The notification must specify:¶
(a) The amount of the intended lump-sum payment;¶
(b) ~~No more th~~Whether it is a lump-sum payment pursuant t~~wo~~ OAR 459-009-0086(9);¶
(c) At least one potential date~~s~~ for the payment; and¶
(~~c~~d) If the employer so elects, a specific effective date for the contribution rate change resulting from the UAL lump-sum payment. Such date must be the first of any month following the employer's intended payment date but may not be more than 12 months after the employer's intended payment date.¶
(3) PERS staff must notify the employer within five business days of receipt of a notification in section (2) of this rule if the notification is incomplete or the process cannot be completed by the earliest intended date of the UAL

lump-sum payment.¶
(4) The PERS consulting actuary must provide an invoice charging the employer for the cost of the UAL calculation requested by the employer. At least 30 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer must remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's UAL calculation by the proposed UAL lump-sum payment date.¶
(5) Upon receipt of notification that an employer has made payment in full for the requested UAL calculation, PERS staff shall request that the PERS consulting actuary calculate:¶
(a) For an employer participating in an employer actuarial pool, 100 percent of the employer's share of the UAL for the employer actuarial pool. This calculation will be:¶
(A) Based on the fair value UAL of the employer actuarial pool, from the most recent actuarial valuation;¶
(B) Based on the employer's covered salary, as a proportion of the pool, as reported in the most recent actuarial valuation; and¶
(C) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.¶
(b) For an employer not participating in an employer actuarial pool, 100 percent of the individual employer's UAL. This calculation will be:¶
(A) Based on the fair value UAL of the individual employer, from the most recent actuarial valuation; and¶
(B) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.¶
(c) For a UAL lump-sum payment to establish a new side account, the effect of the following UAL lump-sum payment amounts on the individual employer's contribution rates using the ~~one or two potential dates for payment~~information specified by the employer in its notification in section (2) of this rule:¶
(A) 100 percent of the individual employer's UAL calculated in subsection (5)(a) or (b) of this rule;¶
(B) The UAL lump-sum payment amount(s) specified by the employer in its notification, if provided; and¶
(C) The minimum amount of the UAL lump-sum payment, if any.¶
(d) For a UAL lump-sum payment as specified in OAR 459-009-0086(9), the maximum lump-sum payment amount that will not result in a contribution rate of less than 0.00%, if the amount of the intended lump-sum payment specified by the employer in subsection (2)(a) of this rule would in effect result in a surplus lump-sum payment as defined under OAR 459-009-0090(1)(g).¶
(e) For a UAL lump-sum payment into an existing side account, the estimated effect of the additional deposit on the individual employer's contribution rates effective July 1 of the year following publication of the actuarial valuation for the year in which the additional deposit is made.¶
(6) PERS staff must notify the employer in writing of the results of the individual employer's calculation in section (5) of this rule otherwise designated by the employer under subsection (2)(c) of this rule. In addition, PERS must send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL if such notification has not already been provided.¶
(7) The employer must notify PERS Actuarial Services in writing at least three business days before making a UAL lump-sum payment. This notification shall be in addition to the notification in section (2) of this rule and must specify:¶
(a) The amount of the payment;¶
(b) The date the employer intends to make the payment;¶
(c) Whether the payment is to establish a new side account or to be deposited into an existing side account; and¶
(d) If the payment is to be deposited into an existing side account and the employer has more than one side account, which side account is to receive the deposit.¶
(8) For a UAL lump-sum payment to establish a new side account, PERS must receive the correct funds no later than five business days after the intended date of the UAL lump-sum payment specified by the employer in the notification described in section (7) of this rule in order to adjust the employer contribution rate to that reported

by PERS in section (6) of this rule.¶
(a) If the UAL lump-sum payment is received by PERS on or before the intended payment date specified in the notification described in section (7) of this rule or within the five business days following the intended payment date, the new employer contribution rate shall be effective for payrolls dated on or after:¶
(A) The first of the month following receipt of the UAL lump-sum payment by PERS; or¶
(B) The date specified by the employer in subsection (2)(c) of this rule, whichever is later.¶
(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted based on the next actuarial valuation after the date of receipt of the UAL lump-sum payment and effective July 1 of the year following publication of that valuation.¶
(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (7) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (5)(c) of this rule.¶
(d) If the UAL lump-sum payment received is less than the minimum amount described in OAR 459-009-0086, the payment will be returned to the employer and no adjustment will be made to the employer contribution rate.¶
(9) When an employer makes a UAL lump-sum payment into an existing side account:¶
(a) The final rate adjustment from the additional UAL lump-sum payment(s) will be calculated in the actuarial valuation for the year in which the payment is made, and will be effective on July 1 of the year following publication of that valuation.¶
(b) The calculation in subsection ~~(9)~~(a) of this section will supersede any estimate provided in an actuarial calculation under subsection (5)(d) of this rule.¶
(10) Nothing in this rule shall be construed to prevent the Board from:¶
(a) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (7) of this rule; or¶
(b) Taking action pursuant to ORS 238.225.
Statutory/Other Authority: ORS 238.650
Statutes/Other Implemented: ORS 238.225 - 238.229

AMEND: 459-009-0086

RULE SUMMARY: 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.

CHANGES TO RULE:

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;¶
(C) Made for the express purpose of reducing the pension contributions that would otherwise be required from the employer, or reducing or paying off the employer's transition liability; and¶
(D) Paid at the employer's election instead of at the PERS Board's direction.¶
(2) A UAL lump-sum payment must be made by either wire transfer or check payable to the Public Employees Retirement System.¶
(3) An employer may make a UAL lump-sum payment to pay 100 percent of its transition liability.¶
(4) A UAL lump-sum payment shall first be applied to the employer's transition liability, if any. The remainder of the payment, if any, shall be held in a side account.¶
(5) An actuarial calculation must be performed prior to an employer making a UAL lump-sum payment if the employer:¶
(a) Has a transition liability;¶

(b) Intends to establish a new side account with rate relief beginning on a date specified by the employer; or¶
(c) Requests an actuarial calculation where a calculation is not otherwise required.¶
(6) The amount of a UAL lump-sum payment that is held in a side account will be used to reduce the pension contributions that would otherwise be required from the employer making the UAL lump-sum payment. The amortized amount for each payroll reporting period shall be transferred from the side account to the appropriate employer reserve account.¶
(7) The minimum UAL lump-sum payment required to establish a new side account is the lesser of:¶
(a) 25 percent of the individual employer's UAL calculated under OAR 459-009-0084 or 459-009-0085; or¶
(b) $250,000.¶
(8) An employer with one or more existing side accounts may make additional UAL lump-sum payments into such side account(s).¶
(a) An employer may not make more than two additional UAL lump-sum payments per side account in a calendar year.¶
(b) Additional UAL lump-sum payments into an existing side account will not affect the amortization period of the existing side account.¶
(c) Adjustment to the employer's contribution rates from a UAL lump-sum payment into an existing side account will be effective on July 1 of the calendar year following completion of the actuarial valuation for the year in which the additional deposit is made.¶
(9) An employer making a UAL lump-sum payment equal to or greater than $10 million, not sourced from a pension obligation bond, and electing an amortization period of 6 years, 10 years, or 16 years must establish a new side account for the lump-sum payment.¶
(10) Each employer side account shall be charged an administration fee of $1,500 for the year in which the side account is established, and $500 per year thereafter.¶
(1~~0~~1) Side accounts shall be credited with earnings and losses in accordance with OAR 459-007-0530.¶
(1~~1~~2) Nothing in this rule shall be construed to prevent the PERS Board from taking action pursuant to ORS 238.225.¶
(1~~2~~3) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.
Statutory/Other Authority: ORS 238.650
Statutes/Other Implemented: ORS 238.225 - 238.229