

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Thursday April 27, 2006 11:00 A.M. & 1:00 P.M.	PERS 11410 SW 68th Parkway Tigard, OR
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	ITEM	PRESENTER
A. Contested Case Hearings – 11:00 A.M.		
<ol style="list-style-type: none"> 1. 2. 3. 4. 5. 	Contested Case Hearing for Brian Metke Contested Case Hearing for Richard McQueen Contested Case Hearing for Larry Lenon Contested Case Hearing for Lawrence Oglesby Petition for Reconsideration for Debbie L. McIntosh	KUTLER / RODEMAN
Lunch Break		
B. Administration – 1:00 P.M.		
<ol style="list-style-type: none"> 1. 2. 	March 31, 2006 Board Meeting Minutes Director's Report <ol style="list-style-type: none"> a. Forward-Looking Calendar b. OIC Investment Report c. Budget Report d. HB2020 Update e. Miscellaneous 	CLEARY
C. Consent Action and Information Items		
<ol style="list-style-type: none"> 1. 2. 	Action on Contested Case Hearings & Petitions First Reading of Contested Case Rules	KUTLER / RODEMAN RODEMAN
D. Action and Discussion Items		
<ol style="list-style-type: none"> 1. 2. 	IAP Policy Decisions and Notice of Rulemaking Adoption of Actuarial Methods	RODEMAN / TYLER MERCER
E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225		
<ol style="list-style-type: none"> 1. 	Litigation Update	LEGAL COUNSEL

<p style="font-size: small; margin: 0;"><i>Note: If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.</i></p> <p style="font-size: small; margin: 0; text-align: center;"> Michael Pittman, Chair * James Dalton * Thomas Grimsley * Eva Kripalani * Brenda Rocklin * Paul R. Cleary, Executive Director </p> <p style="font-size: x-small; margin: 0; text-align: center;">Level 1 - Public</p>
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MEETING	4/27/06
DATE	
AGENDA	B.1.
ITEM	Minutes

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
1:00 P.M.

March 31, 2006
Tigard, Oregon

MINUTES

Board Members:

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

Staff:

Steve Delaney, Deputy Director
Donna Allen
Howard Brandell
Brendalee Wilson
Joe DeLillo

David Crosley
Steve Rodeman
Dale Orr
Rick Howitt
Craig Stroud
Karen Garrison

Others:

Karla Alderman
Dallas Weyand
BethAnne Darby
Joe DeNicola
Brian DeLashmutt
Karen Artiaco
Maria Keltner
Deborah Tremblay

Greg Hartman
Pat West
Alan Willis
Hasina Squires
Michelle Deister
Lance Colley
Jim Green
Martha Sartain

Danelle Romain
Bill McGee
Cathy Bloom
Ardis Belknap
David Wimmer
Bill Hallmark
Annette Strand
Francis Charbonnier

Betsy Hammond
Linda Ely
Myrnie Daut
Peg Stakeholder
Dean Hulbert
Denise Yunker
Bruce Adams
Steve Manton

Board Chair Mike Pittman called the meeting to order at 1:05 P.M.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF FEBRUARY 24, 2006

Brenda Rocklin moved and Eva Kripalani seconded to approve the minutes of the February 24, 2006 meeting. The motion passed unanimously.

A.2. DIRECTOR'S REPORT

Deputy Director Steve Delaney presented the Forward-Looking Calendar and said that the Individual Account Program (IAP) remediation policies would be presented for discussion at the April meeting. Delaney reported the negative variance of projected expenditures for February was due to contract payments and software purchases for three large projects. Delaney noted that employers are becoming more familiar with the new reporting system and that employer reporting for 2004 is 100% complete. Delaney indicated that penalties for late reporting and non-compliance are currently scheduled to be imposed beginning May 1, 2006.

CONSENT ACTION AND INFORMATION ITEMS

B.1. CONTESTED CASE FOR SUSAN L. BORACCI

Steve Rodeman, Policy, Planning and Legislative Analysis Division (PPLAD) administrator, requested a postponement for the contested case of Susan L. Boracci.

It was moved by Brenda Rocklin and seconded by James Dalton to postpone deliberation in the contested case hearing of Susan L. Boracci and address the case at the June Board meeting. The motion passed unanimously.

B.2. NOTICE OF CONTESTED CASE RULES

Rodeman presented the notice of rulemaking that would help streamline the contested case process, provide additional flexibility, and continue to comply with statutory requirements. Rodeman said the rule would be presented to the PERS Board for the first reading at the April 27, 2006 Board meeting.

B.3. NOTICE OF OAR 459-001-0005, MODEL RULES OF PROCEDURE

Rodeman presented the notice of rulemaking that would adopt the Attorney General's updated Model Rules of Procedure to reflect current state law. Rodeman reported that a rulemaking hearing was held on March 28, 2006 and that the rule would be presented to the Board for adoption at the June 16, 2006 meeting.

B.4. ADOPTION OF 2005 LEGISLATION RULEMAKING

Rodeman presented the adoption of various 2005 legislation implementation rulemaking. Rodeman said that there has been little or no public attendance at the hearings, and no public comment was received on any of the proposed rules.

The Board acted on each rule item separately as follows:

B.4.a. OAR 459-011-0115, MILITARY FULL COST PURCHASE

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the permanent rule modifications to OAR 459-011-0115 as presented. The motion passed unanimously.

B.4.b. OAR 459-070-0001, OPSRP DEFINITIONS

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the permanent rule modifications to OAR 459-070-0001 as presented. The motion passed unanimously.

B.4.c. OAR 459-075-0010, MEMBERSHIP AND ELIGIBILITY

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the permanent rule modifications to OAR 459-075-0010 as presented. The motion passed unanimously.

B.4.d. OAR 459-050-0060, OSGP DESIGNATION OF BENEFICIARY

It was moved by Brenda Rocklin and seconded by Mike Pittman to adopt the permanent rule modifications to OAR 459-050-0060 as presented. The motion passed unanimously.

B.5. ADOPTION OF FINAL AVERAGE SALARY RULES

Rodeman presented the permanent rule modifications that were a result of the 2005 legislative enactments (HB 2189 and HB 3262) that modified provisions relating to the definition and calculation of Final Average Salary (FAS) and the definition of “salary” for the purpose of determining contributions to the Individual Account Program (IAP).

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the permanent rule modifications to OAR 459-005-0001, 459-070-0001, 459-075-0030, and 459-080-0150 as presented, and repeal OAR 459-010-0040 as presented. The motion passed unanimously.

B.6. ADOPTION OF OAR 459-014-0030, PERS DESIGNATION OF BENEFICIARY

Rodeman presented the permanent rule modifications to update the PERS designation of beneficiary rules to comply with statutory changes and remove the requirement that a beneficiary must have an insurable interest in the life of the member.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the permanent rule modifications to OAR 459-014-0030 as presented. The motion passed unanimously.

B.7. 2005 FINAL EARNINGS CREDITING AND RESERVING

Rodeman presented the background for the final crediting of 2005 earnings and the reserve deployment decisions that were preliminarily approved by the Board at its February 24, 2006 Board meeting. Chair Pittman said that the Board had reviewed this item in detail and agreed on all items except for the amount of contingency reserve funds to be retained. After a brief discussion, Chair Pittman said he felt confident regarding ongoing litigation exposure and called for a motion to accept staff’s recommendation to ratify the preliminary earnings crediting and reserving decisions as final.

It was moved by James Dalton and seconded by Tom Grimsley to ratify the Board’s preliminary crediting of 2005 earnings and reserve deployment decisions as final. Brenda Rocklin and Eva Kripalani voted no. The motion passed.

C.1. 2004 VALUATION RESULTS – REVISED ACTUARIAL COST METHODS

PERS actuaries Bill Hallmark and Annette Strand presented the 2004 valuation results using revised actuarial cost methods. Hallmark detailed the development of alternative actuarial methods and approaches that could be used to better reflect liabilities and manage contribution rates. Hallmark provided a presentation that explained the objectives for actuarial methods and included an analysis of affects on employer rates, normal cost and unfunded accrued liabilities. Delaney indicated the Board would be asked to vote on accepting one or more of the alternative methods at their April 27, 2006 meeting.

C.2. 2007 LEGISLATIVE CONCEPTS DRAFTING APPROVAL

Delaney provided nine legislative concepts for the Board’s approval to send to the Department of Administrative Services (DAS) for drafting. Delaney said the Legislative Advisory Committee (LAC) had reviewed these concepts that morning. Delaney also provided additional comments from Keith Kutler of the Department of Justice, recommending that *LC 459/09 – Work After Retirement Restrictions for Retirees Who Elected Total Lump Sum* be reviewed by the Ice Miller

PERS Board meeting

3/31/06

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legal firm to determine if there are unforeseen tax issues with the Internal Revenue Service (IRS). The Board authorized staff to submit seven of the concepts as presented. *LC 459/05 OPSRP Pension Program Death Benefits* was not approved. *LC 459/07 – Police and Fire* will be addressed alternatively through rulemaking.

Delaney introduced two additional concepts that had come forward that day. At the request of the Governor's Office, the Board authorized submission of *LC 459/10 OIC Membership*, and at the request of the LAC the Board also authorized submission of *LC 459/11 Break In Service Exception*.

EXECUTIVE SESSION

Pursuant to ORS 192.660 (2) (f), (h) and ORS 40.255, the Board went into executive session at 3:10 P.M.

The Board reconvened to open session.
Chair Pittman adjourned the meeting at 3:25 P.M.

Respectfully submitted,



Paul R. Cleary
Executive Director

Prepared by Donna R. Allen, Executive Assistant

MEETING	4-27-06
DATE	
AGENDA	B.2.a
ITEM	Calendar

PERS Board Meeting Forward-Looking Calendar

May 2006

No Meeting Scheduled

June 2006

Meeting: 11:00 A.M. and 1:00 P.M. June 16, 2006

Contested Case Hearing for Susan L. Boracci (tentative)
Contested Case Hearing for Larry Lenon
Contested Case Hearing for Lawrence Oglesby
Adoption of Contested Case Rules
Adoption of Model Rules of Procedure Rules
Adoption of IAP Remediation Rules
IAP Remediation Project Plan
2007 – 2009 Budget Overview and Concepts
2007 retiree Health Insurance Premiums
2005 Experience Study Results
2005 Valuation Methods and Assumptions Approval

July 2006

Meeting: 1:00 P.M. July 21, 2006

2007 – 2009 Agency Request Budget

August 2006

No Meeting Scheduled

September 2006

Meeting: 1:00 P.M. September 15, 2006

2005 Valuation System-wide Results

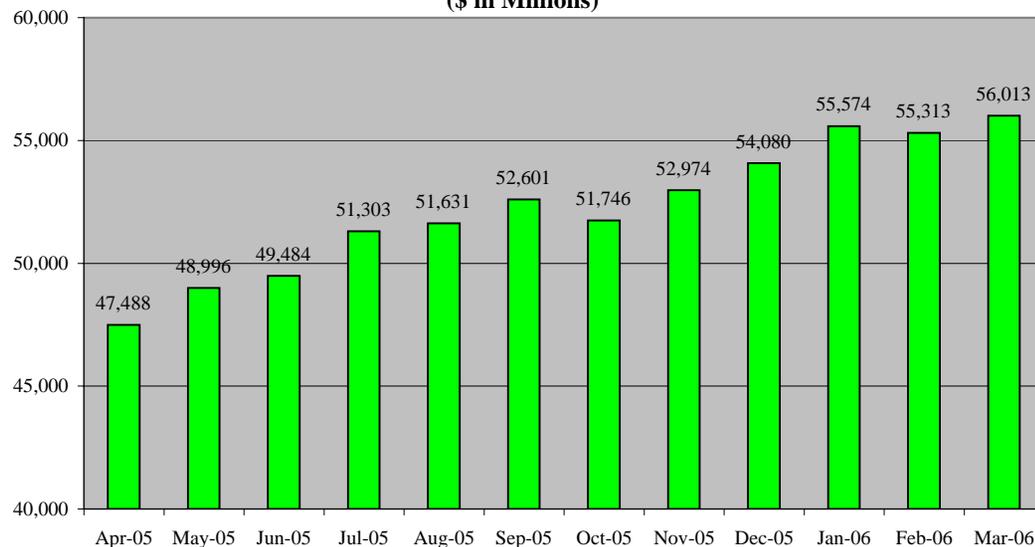
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OPERF	Regular Account				Historical Performance					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	30-40%	35%	\$ 19,071,068	35.1%	5.39	16.66	11.73	20.59	7.22	6.32
International Equity	15-25%	20%	11,740,787	21.6%	10.54	30.93	23.01	34.49	17.31	12.44
Alternative Equity	7-13%	10%	4,688,689	8.6%	2.29	26.91	29.98	23.84	15.27	8.00
Total Equity	60-70%	65%	35,500,544	65.3%						
Total Fixed	22-32%	27%	15,158,189	27.9%	0.00	4.03	3.56	5.47	6.94	6.62
Real Estate	5-11%	8%	3,691,395	6.8%	12.69	41.48	30.09	28.70	22.28	19.28
Cash	0-3%	0%	-	0.0%	1.05	3.66	2.65	2.19	2.14	2.41
TOTAL OPERF Regular Account	100%		\$ 54,350,128	100.0%	5.13	18.22	14.31	19.42	11.11	8.84
OPERF Policy Benchmark					4.42	13.89	11.49	17.44	9.33	7.67
Value Added					0.71	4.33	2.82	1.98	1.78	1.17

Asset Class Benchmarks:

Russell 3000 Index	5.31	14.28	10.63	19.14	6.24	5.33
MSCI ACWI Free Ex US	9.76	28.13	21.99	33.51	16.66	11.78
Russell 3000 Index + 300 bps--Quarter Lagged	2.76	9.48	13.24	20.48	10.27	6.97
LB Universal--Custom FI Benchmark	(0.40)	3.00	2.48	3.73	5.54	5.41
NCREIF Property Index--Quarter Lagged	5.43	20.06	17.24	14.42	12.45	11.40
91 Day T-Bill	1.02	3.53	2.59	2.09	1.98	2.25

TOTAL OPERF NAV
 (includes variable fund assets)
 One year ending March 2006
 (\$ in Millions)



SL1

¹OIC Policy 4.01.18

²Includes impact of cash overlay management.



Oregon

Theodore R. Kulongoski, Governor

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April 27, 2006

TO: Members of the PERS Board
FROM: Brian DeForest, Budget and Fiscal Operations Manager
SUBJECT: April 2006 Budget Report

MEETING DATE	4/27/06
AGENDA ITEM	B.2.c. Budget Report

2005-07 ACTUAL EXPENDITURES AND PROJECTIONS

Operating expenditures for the month of March totaled \$3,551,777, an increase of \$253,439 from February actuals. The variance from projected expenditures for March was (\$498,615), or 16.33% above projections. This is the second consecutive instance of the 9-month-old biennium that the Agency has exceeded projected expenditures for a given month. Contributing factors were once again contract payments for key projects that were not projected to be made specifically in March. More than one-third of the biennium has expired (37.50%) and the Agency has expended just 32.26% of the Legislatively Approved Budget for Operations.

BUDGET VARIANCES

As noted above, some contract expenditures for key projects have been recorded, but not necessarily in the same month in which they were projected. This can occur in two ways. First, for example, expenditures can be projected for April, but contract payments might be made in either March or May. This type of projection/payment combination is common when a tentative payment schedule is known. If a payment schedule is unknown, then the contract can be posted as an 'encumbrance' on the budget tracking spreadsheets. This records the potential obligation against the operations limitation without restricting it to a specific time period. This is the situation that has occurred in each of the last two months.

Vacancy savings contributed an additional \$100,000 of positive variance for the month. The Budget Unit continues to anticipate the rate of accumulated vacancy savings to slow in the near term. The vacancy rate now stands at approximately 10%, which is an acceptable rate for a State agency. There will be an estimated \$1.5 million of accumulated vacancy savings by the end of the first fiscal year of the biennium. Coincidentally, initial analysis indicates that the fiscal impact of full implementation of the agency's *Strunk /Eugene* planning efforts will increase expenditures by approximately \$1.5 million. The application of accumulated savings appears to mitigate the necessity for a formal request to the Legislative Emergency Board at this time. However, final *Strunk /Eugene* fiscal impact analysis has not yet been completed, and it will be necessary to continually monitor those expenditures to ensure they stay in line with projections and available budget limitation.

2007-09 BUDGET DEVELOPMENT

Budget staff has begun the process of putting together the 2007-09 Agency Request Budget. From a technical standpoint, staff is ahead of schedule and farther along than at the same point two years ago. Below is a summary of activities necessary to prepare the budget request:

April – Division administrators and section managers complete estimated needs for policy packages to support Agency priorities and forward to the Budget Unit. Budget staff completes Essential package information and fiscal impacts including standard inflation factors. Begin inputting data into the State's budget system, ORBITS. Anticipated policy packages include:

- Continuation of Strunk/Eugene Project
- Continuation of the RIMS Conversion Project
- IAP Remediation Project
- Continuation of Operational and Infrastructure Support for the above packages
- Packages to support Agency proposed legislative concepts, if necessary

May – Complete fiscal impacts and position classifications of requested positions. Continue inputting data into ORBITS. Approximately one-half of the input data will be audited by DAS during the month. Human Resources is evaluating proposed position descriptions for appropriate classification prior to submission to DAS. Begin drafting narrative to support the requested budget.

June – Complete input into ORBITS and the Position Inventory Control System (PICS) for all requested positions and operational needs. Notify the PERS Board on updated fiscal impact information for the Policy Packages and overall budget request. Seek preliminary Board approval to forward the agency requested budget to the Governor. Continue drafting narrative.

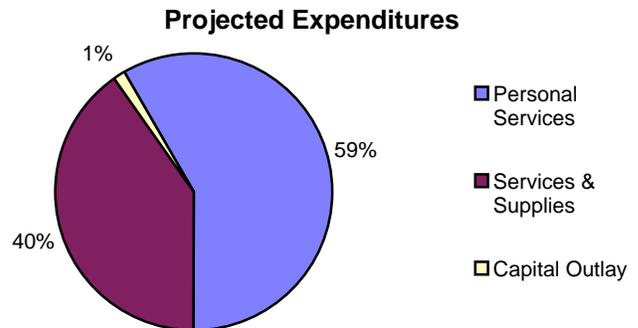
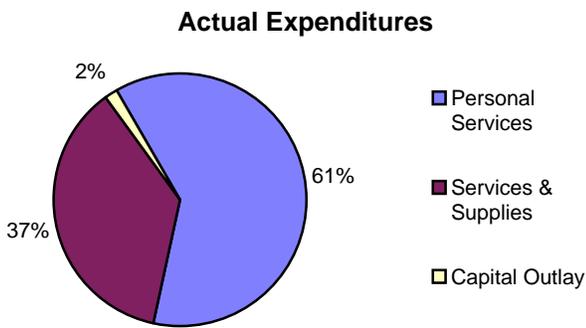
July – Complete necessary ORBITS and PICS audits with DAS. Seek final Board approval to forward the agency requested budget to the Governor. Complete supporting narrative and prepare the 2007-09 Agency Request budget binders for submission to the Governor.

August – PERS is scheduled as an 'early submittal' agency with a deadline of August 1st for submission of the Agency Request Budget. This is one month earlier than last biennium when the Agency was granted a one-time extension.

2005-07 Agency-wide Operations - Budget Execution Summary Budget Analysis For the Month of: March 2006

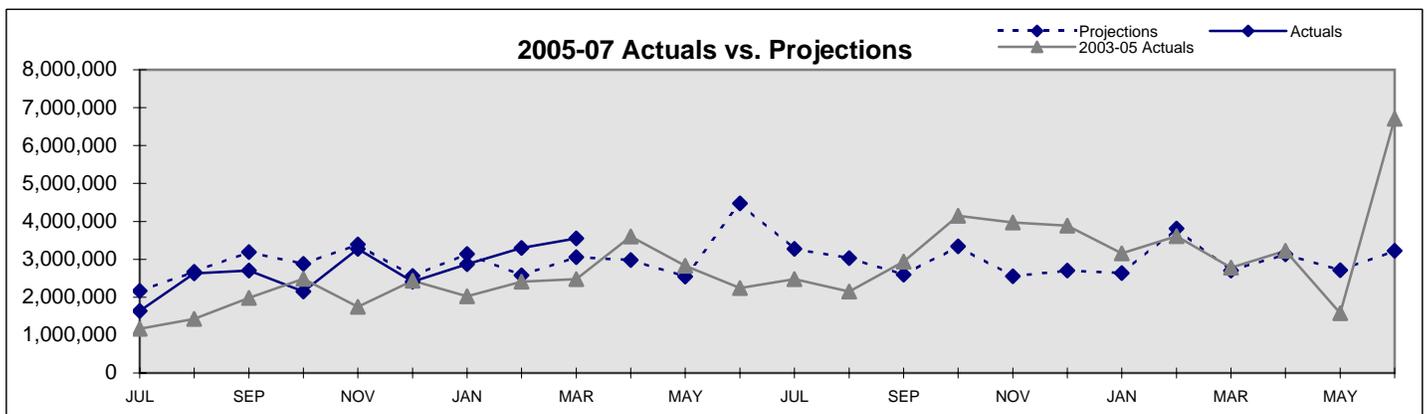
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	15,120,790	29,262,441	44,383,231	44,564,938	181,707
Services & Supplies	9,012,400	20,156,194	29,168,594	30,384,327	1,215,733
Capital Outlay	379,660	752,103	1,131,763	1,033,494	(98,269)
Special Payments					
Total	24,512,850	50,170,738	74,683,588	75,982,759	1,299,171



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,774,516	1,883,223	108,707	1,680,088	1,950,829
Services & Supplies	1,777,261	1,169,940	(607,321)	1,001,378	1,343,746
Capital Outlay				42,184	50,140
Special Payments					
Total	3,551,777	3,053,163	(498,615)	2,723,650	3,344,716



2005-07 Agency-wide Operations - Budget Execution
Spending Plan - Actual and Estimated Expenditures
 2005-07 Summary

B.2.c.

	1st QTR	2nd QTR	3rd QTR	4th QTR	5th QTR	6th QTR	7th QTR	8th QTR	ACTUAL EXPEND. TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.	05-07 LAB BUDGET	VARIANCE
Personal Services														
Salaries & Wages	3,102,084	3,128,099	3,252,118	3,638,593	3,648,848	3,730,293	3,841,762	3,895,439	9,482,302	18,754,935		28,237,237	28,490,581	253,344
Temporary Appointments	40,406	43,071	29,041	5,600	1,600	6,200	21,600	25,137	112,518	60,137		172,655	156,924	(15,731)
Overtime	33,466	71,029	79,550	42,700	18,100	14,230	52,130	36,330	184,045	163,490		347,535	540,501	192,966
Shift Differential	1,326	1,615	2,139	375	375	375	375	375	5,080	1,875		6,955	1,978	(4,977)
All Other Differential	34,599	54,556	65,171	18,385	17,462	17,554	17,704	17,757	154,327	88,861		243,188	209,351	(33,837)
ERB Assessment	1,289	1,311	1,341	1,843	1,843	1,843	1,843	1,843	3,941	9,214		13,155	12,096	(1,059)
Workers' Comp. Insurance (SA PERS)	449,000	451,927	439,938	541,684	539,084	550,447	572,321	577,870	1,340,865	2,781,407		4,122,271	4,278,123	155,852
Pension Bond Contribution	207,759	205,184	207,139	234,851	235,351	240,604	247,794	251,256	620,082	1,209,855		1,829,937	1,375,395	(454,542)
Social Security Taxes	243,827	249,974	261,324	283,674	282,008	288,302	300,918	304,090	755,125	1,458,993		2,214,118	2,249,083	34,965
Unemployment Comp.		16,576							16,576			16,576	37,390	20,814
Workers' Comp. Assess.	2,484	2,335	2,370	3,345	3,345	3,345	3,345	3,345	7,189	16,727		23,916	26,835	2,919
Mass Transit Tax	19,249	19,844	20,556	21,847	21,893	22,382	23,051	23,373	59,649	112,545		172,193	177,399	5,206
Flexible Benefits	756,424	772,987	849,681	872,046	872,046	906,928	976,692	976,692	2,379,092	4,604,403		6,983,495	6,976,368	(7,127)
Vacancy Savings													(155,537)	(155,537)
Reconciliation Adj. Unscheduled P.S.													188,451	188,451
Total Personal Services	4,891,915	5,018,508	5,210,367	5,664,941	5,641,956	5,782,502	6,059,535	6,113,506	15,120,790	29,262,441		44,383,231	44,564,938	181,707
	<i>actual</i>				<i>estimated</i>									
Services & Supplies														
Instate Travel	12,995	24,326	14,906	25,285	23,185	29,085	21,485	26,130	52,227	125,170	142	177,539	116,894	(60,645)
Out-of-state Travel			40		300	300	300	300	40	1,200		1,240	31,127	29,887
Employee Training	30,385	44,332	39,369	36,615	37,815	37,815	37,815	38,915	114,086	188,975		303,061	488,069	185,008
Office Expenses	91,727	121,888	283,010	228,343	232,572	242,481	232,140	275,349	496,625	1,210,883		1,707,507	2,063,722	356,215
Telecommunications	25,713	69,518	65,443	68,249	68,249	68,249	68,249	68,249	160,674	341,246		501,920	537,685	35,765
St. Gov. Svc. Chg.	595,854	135,567	109,154	69,317	589,000	89,000	24,000	24,000	840,575	795,317		1,635,892	1,504,171	(131,721)
Data Processing	266,701	506,983	426,702	555,000	555,000	555,000	555,000	555,000	1,200,386	2,775,000	1,974	3,977,360	5,256,990	1,279,630
Publicity/Publications	7,318	6,251	18,487	12,100	28,600	16,100	14,200	22,100	32,057	93,100		125,157	292,704	167,547
Professional Services	545,896	1,213,796	1,638,044	342,950	326,050	330,900	485,550	407,600	3,397,736	1,893,050	207,528	5,498,314	2,862,534	(2,635,780)
IT Professional Services		360,233	1,343,483	2,576,009	979,563	1,026,185	1,227,303	1,035,966	1,703,717	6,845,026	3,500,000	12,048,743	13,897,953	1,849,210
Attorney General	48,913	72,187	88,628	141,000	141,000	141,000	141,000	146,500	209,728	710,500		920,228	947,681	27,453
Dispute Res. Svc.	957	3,910	16,510	5,900	8,300	5,500	6,200	10,000	21,376	35,900		57,276	73,736	16,460
Empl. Recruit./Devel.	8,863	24,770	39,593	15,000	15,000	15,000	15,000	15,000	73,227	75,000		148,227	58,036	(90,191)
Dues & Subscriptions	4,943	10,106	5,799	3,305	1,675	1,775	2,175	2,275	20,848	11,205		32,053	50,702	18,649
Facility Rental	104,691	95,696	96,140	94,068	94,068	97,368	99,018	132,024	296,527	516,546		813,073	703,597	(109,476)
Fuels/Utilities	23,497	25,490	30,773	15,000	15,000	15,000	15,000	20,000	79,760	80,000		159,760	121,063	(38,697)
Facility Maint.	47,868	43,335	47,231	76,251	76,251	76,251	76,251	101,668	138,434	406,672		545,106	724,698	179,592
Agency/Program S & S														
Other COP Costs		371	1,090						1,460			1,460	6,500	5,040
Other S & S	1,095	8,915	(3,237)						6,773			6,773	2,700	(4,073)
Expendable Property	72,658	19,094	16,087	10,350	7,350	7,350	7,350	7,600	107,839	40,000	1,760	149,599	193,465	43,866
IT Expendable Property		23,267	35,037	60,000	60,000	60,000	60,000	60,000	58,304	300,000		358,304	450,300	91,996
Unscheduled S & S														
Total Services & Supplies	1,890,074	2,810,037	4,312,289	4,334,742	3,258,978	2,814,359	3,088,035	2,948,675	9,012,400	16,444,790	3,711,404	29,168,594	30,384,327	1,215,733
Capital Outlay														
Office Furn./Fixture				1,000						1,000		1,000	30,868	29,868
Telecomm. Equip.													5,589	5,589
Technical Equipment													57,161	57,161
Data Proc.-Software			197,783						197,783		362,246	560,029	447,019	(113,010)
Data Proc.-Hardware	181,877								181,877		388,857	570,734	492,857	(77,877)
Building & Structure														
Total Capital Outlay	181,877		197,783	1,000					379,660	1,000	751,103	1,131,763	1,033,494	(98,269)
Special Payments														
Total Special Payments														
Total Expenditures	6,963,866	7,828,545	9,720,439	10,000,684	8,900,934	8,596,862	9,147,570	9,062,182	24,512,850	45,708,231	4,462,507	74,683,588	75,982,759	1,299,171

Percent of 2005-07 LAB Expended: 32.26%
 Percent of Biennium Expired: 37.50%

SL11



Oregon

Theodore R. Kulongoski, Governor

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April 27, 2006

TO: Members of the PERS Board
FROM: Paul Cleary, Executive Director
SUBJECT: HB2020 Update

MEETING DATE	04-27-06
AGENDA ITEM	B.2.d. HB2020

The agency is in its third year of administering the HB2020 program and using the new employer electronic reporting system. The Membership and Employer Relations Section (MERS) is working with 875 employer-reporting units to process outstanding 2004, 2005 and 2006 employer reports and records. The table below shows the status of employer reports and member records for 2004 to 2006, inclusive.

	Calendar Year 2004 (As of 04-07-06)	Calendar Year 2005 (As of 04-07-06)	Calendar Year 2006 (As of 04-07-06)
Reports due (estimated):			
▪ Number	12,540	12,796	3,279
▪ Percent	100 %	99 %	95%
Outstanding reports	-	130	176
Reports fully posted at 100%:			
▪ Number	12,423	12,245	2,609
▪ Percent	99.7 %	96 %	80 %
Records due (estimated)	3,083,146	3,063,519	763,686
Records not posted	784	5,499	17,009
Contributions posted	\$ 388,179,601	\$ 405,683,910	\$ 103,313,776
Contributions not posted	\$ 19,979	\$ 394,649	\$ 702,261

In March 2006, PERS finished the 2005 Annual Reconciliation process and finished the collection of all 2004 reports. For 2004, the remaining records to be posted are predominantly adjustments submitted by employers to correct previously reported data. For 2005, 99% of reports due were submitted and 99.9% of expected contributions were posted. PERS continues to work with employers to collect the remaining 2005 data and contributions. For 2006, the reporting statistics have improved since last month, and we anticipate that by the second quarter of 2006 the reporting statistics will mimic the levels previously shown for 2005.

Beginning in late spring 2006, PERS will implement penalties for late reporting, late remittances, and non-compliance with the electronic payment (automated clearing house - ACH) requirement. Employers have been informed and will be reminded monthly as the penalty implementation dates approach. Currently, PERS is working with employers to complete the mandatory ACH enrollment process. As of mid-April, 96% of all employers have submitted ACH agreements. PERS is issuing monthly letters to employers who have not yet completed the ACH enrollment process. Of the employers who have enrolled, 68% have chosen to remit contributions via a debit payment and 32% have chosen to remit contributions via a credit payment.

Besides assisting employers with overdue reports and electronic payment, PERS implemented an accounts receivable plan to proactively collect receivable balances that are more than 30 days overdue. As of April 10, 2006, we have an aggregate outstanding balance of \$527,000 for invoices that are 31 or more days past due. We are following up with these employers by phone and letters each month.



Oregon

Theodore R. Kulongoski, Governor

April 27, 2006

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TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Action on Contested Cases

MEETING DATE	4/27/06
AGENDA ITEM	C.1. Contested Cases

OVERVIEW

- Actions: Staff recommends the following actions be taken in relation to these cases:
 1. Adopt the draft final orders as presented in the contested cases of Brian Metke and Richard McQueen.
 2. Adopt a motion to delay consideration of the contested cases of Larry Lenon and Lawrence Oglesby to the June 2006 Board meeting.
 3. Deny the Petition for Reconsideration in the contested case of Deborah L. McIntosh.

BOARD OPTIONS

The Board may:

1. Adopt the staff recommendations as presented above.
2. Adopt one of the alternative directions specified in the memos related to each of these contested cases.
3. Take no action. The proposed orders would become final as their respective deadlines passed.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

If the Board does not adopt: The specific outcomes and alternatives vary but are more fully explained in the memos accompanying each individual case.

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April 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING DATE	4/27/06
AGENDA ITEM	C.2. Contested Cases

SUBJECT: First Reading for OAR 459-001-0035, *Contested Case Hearing* and 459-001-0040, *Petitions for Reconsideration*

OVERVIEW

- Action: None. This is the First Reading of the rule.
- Reason: To streamline the contested case process and comply with statutory requirements.
- Subject: PERS Contested Case Rules.
- Policy Issues:
 1. *Should the Board be able to deny a request for a hearing under certain circumstances, e.g., where PERS has no authority to grant the relief requested?*
 2. *Should the Board be able, on a case-by-case basis, to deliberate electronically or via a telephone conference?*

BACKGROUND

ORS Chapter 183 (the Administrative Procedures Act) and its administrative rules generally govern the contested case process. Although there are specific requirements under the APA and rules, e.g. service of process for orders, state agencies have some flexibility to administer their appeals and contested cases.

The contested case process for PERS is set out in administrative rule OAR 459-001-0035 and -0040. This rulemaking is to update and improve the processes and to incorporate the results of the policy decisions made by the PERS Board that started in discussions at the December 2005 planning session.

SUMMARY OF RULE MODIFICATIONS AND POLICY ISSUES

1. *Should the Board be able to deny a request for a hearing under certain circumstances, e.g., where PERS has no authority to grant the relief requested?*

Contested case hearings are the next level of review after the Executive Director has upheld the staff's determination on appeal. These rules establish the process that aggrieved parties must follow to request such a hearing. Periodically, parties request hearings where they perceive that a remedy might be available from PERS but, in fact, the relief requested is not within the agency's authority. Rather than take that request to hearing, the rule modifications would allow the Board to deny that request. Doing so

would save the agency the hearing costs (around \$15,000 for attorneys, hearing officer, and staff) and streamline the process by reaching a final determination sooner. The downside to this approach is that the denial would be an Order in Other than a Contested Case, which would immediately trigger the right to judicial review by the Marion County Circuit Court or the circuit court where the party resides.

Staff Recommendation: Amend the rules to allow for a denial of a request for a hearing. In cases where PERS has no authority to grant the relief requested, a contested case is not beneficial to either the complaining party or the system. The rule modifications require consultation with legal counsel, who can provide oversight to ensure the refusal is warranted.

2. Should the Board be able to choose, on a case-by-case basis, to deliberate electronically or via a telephone conference?

Although the Board already has the ability to deliberate in this manner, it has been this Board's practice to receive argument and deliberate over contested cases during regular board meetings. The APA and its rules do not compel the agency to follow this practice. If the Board reduces its regular meetings to 8 or 9 each year, some action may be required on a proposed order before the next scheduled meeting to prevent it from becoming final automatically. The rule modifications provide the Board with the flexibility to deliberate and decide, on a case-by-case basis, in some forum other than a regular meeting.

Staff Recommendation: Amend the rules to allow the Board to deliberate and decide cases in other than a regular meeting.

OAR 459-001-0040 will also be modified to conform to the model administrative rules by extending deadlines related to filing a petition for reconsideration. Individuals will have 60 days to file a petition for reconsideration and the Board will have up to 60 days to either grant or deny the petition. The deadlines may be extended by 45 days upon a written request.

LEGAL REVIEW

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

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on March 28, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No one attended the hearing. To date, we have received no public comment. The public comment period ends on May 26, 2006 at 5:00 p.m.

IMPACT

Mandatory: The 60-day deadlines comply with statutory requirements. Other changes are discretionary.

Impact: Because of the varied nature of contested cases, it is not possible to predict how many contested cases these rule modifications may affect in the future.

Cost: Depending on the nature of the cases filed in the future, these rule modifications are expected to result in cost savings to members and PERS by resolving certain issues more swiftly and efficiently.

RULEMAKING TIMELINE

February 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 1, 2006	<i>Oregon Bulletin</i> published the Notice.
March 28, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
March 31, 2006	PERS Board notified that staff began the rulemaking process.
April 27, 2006	First Reading of the rule.
May 26, 2006	Public comment period ends at 5:00 p.m.
June 16, 2006	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

Adoption is currently scheduled for the Board's June 16, 2006 meeting.

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

MEETING	4/27/06
DATE	
AGENDA	C.2.
ITEM	Contested Case Rules

1 **459-001-0035**

2 **Contested Case Hearing**

3 (1) Request for a contested case hearing. To obtain review of any determination by
4 the Director, for which a contested case hearing has not been held, the party shall file
5 with the Board a petition for a contested case hearing. The petition shall be filed within
6 45 days following the date of the Director's determination. Late petitions may be
7 considered only if facts constituting a good cause are alleged in the petition.

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

12 (3) Criteria for request. The petition for a contested case hearing shall be in writing
13 and set forth:

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

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

17 (c) A statement of facts that are the basis of the petition;

18 (d) Reference to applicable statutes, rules or court decisions upon which the
19 petitioner relies;

20 (e) A statement of the action the petition seeks; and

21 (f) A request for a hearing.

1 (4) Contested case hearing. The Board shall respond to a petition for a contested case
2 hearing within 15 days of filing and [shall] **may** order the staff to schedule a formal
3 contested case hearing.

4 **(5) The Board may deny a request for a hearing when it is decided, in**
5 **consultation with legal counsel, that the Board has no authority to grant the relief**
6 **requested.**

7 ~~[(5)]~~ **(6)** The hearing shall be conducted in accordance with the Attorney General's
8 Model Rules of Procedure.

9 ~~[(6)]~~ **(7)** Proposed order. The administrative law judge's proposed order becomes
10 final 90 days following service upon the petitioner, the Director and the Board through
11 the Director. Exceptions to the proposed order by the Director or the petitioner must be
12 filed with the Hearing Officer administrative law judge within 45 days of service. If the
13 Board determines additional time is necessary to review a proposed order and issue an
14 amended order, the Board may extend the time after which the proposed order will
15 become final in accordance with ORS 183.464(3).

16 ~~[(7)]~~ **(8)** In accordance with the Attorney General's Model Rules of Procedure, the
17 Board may reject the order and direct the Hearings Officer to conduct further proceedings
18 and prepare an amended order within the time specified by the Board.

19 ~~[(8)]~~ **(9)** Extension of deadline. Any 45-day deadline within this rule may be
20 extended upon request in writing for an additional 45 days. Additional time may be
21 requested, but shall only be granted upon approval by both parties.

22 **(10) The Board will generally deliberate and decide on final orders during**
23 **regularly scheduled board meetings. The Board may instead deliberate and decide**

1 at any other time and place allowed by law, as determined on a case-by-case basis,
2 such as electronically or via a telephone conference.

3 Stat. Auth.: ORS ~~237.263~~ 238.650, 183.464 & 183.600 - 183.690

4 Stats. Implemented: ORS 183.341, 183.464, 183.600 - 690, 192.690470

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

MEETING	4/27/06
DATE	
AGENDA	C.2.
ITEM	Contested Case Rules

1 **459-001-0040**

2 **Petitions for Reconsideration**

3 (1) Request for a petition for reconsideration. Prior to initiating any judicial review
 4 of a final order in a contested case, a party may file with the Board a petition for
 5 reconsideration. If the party chooses to file a petition, it shall be filed within ~~45~~ 60 days
 6 following the date the order becomes final. Late petitions may be considered only if facts
 7 constituting good cause are alleged in the petition.

8 (2) Criteria for request. The petition for reconsideration shall be in writing and set
 9 forth:

10 (a) A short statement of the manner in which the final order is alleged to be in error;

11 (b) Reference to applicable statutes, rules or court decisions on which the party
 12 relies;

13 (c) A suggested alternative form of order; and

14 (d) A request for reconsideration.

15 (3) Board action. The Board shall either grant or deny a petition for reconsideration
 16 within ~~45~~ 60 days of filing. A petition may be denied if it does not contain the
 17 information required under section (2) of this rule. If the petition for reconsideration is
 18 granted, the Board may:

19 (a) Affirm the original order; or

20 (b) Reconsider and issue an amended order.

21 (4) Staff action. If the petition is granted and the Board reconsiders, the Director
 22 shall submit written argument on the merits of the petition for Board consideration.

1 (5) Petitioner action. Written argument from petitioner shall be submitted together
2 with the petition. The Board may schedule oral argument in its discretion.

3 (6) Extension of deadline. Any ~~[45-day]~~ 60-day deadline within this rule may be
4 extended upon request in writing for an additional 45 days. Additional time may be
5 requested, but shall only be granted upon approval by both parties.

6 Stat. Auth.: ORS ~~[237.263]~~ 238.650
7 Stats. Implemented: ORS 183.482



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April 27, 2006

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING DATE	04/27/06
AGENDA ITEM	D.1. Remediation

SUBJECT: Policy Issues and Notice of Rulemaking for IAP Rules, OAR 459-009-0200, *Employer Remitting of Employee Contributions* and OAR 459-080-0200, *IAP Account Adjustments for Earnings or Losses*

OVERVIEW

- Action: Provide policy direction on issues discussed. No action needed on the accompanying rules; these are beginning the rulemaking process and will be amended to reflect the policy choices as directed (if different from the staff recommendation).
- Reason: Conform the administrative rules to the policy choices related to the Individual Account Program (IAP) remediation.
- Subject: IAP remediation.
- Policy Issues:
 1. Should prior IAP distributions to members (withdrawals and retirements, whether paid directly, in installments, or rolled over) be adjusted as if they had occurred under the new plan structure?
 2. If contributions are not posted to an account in time for that year's annual earnings crediting, should they receive earnings and, if so, what should be the source of those earnings?
 3. In 2005, the Oregon Legislature (HB 2189) made retroactive changes to the definition of "salary" that will require employers to make additional member contributions (i.e., those that received lump sum vacation, comp time, and overtime payouts). Should members be credited with earnings on those adjusted contributions and, if so, from what source?
 4. Should USERRA contributions be credited with calendar year end earnings and losses rather than prorated earnings or losses from the date of deposit?

BACKGROUND

Previously, the PERS Board directed staff to remedy the consequences of the Individual Account Program's original administration by adopting an operational model that more closely approximates the PERS Chapter 238 Program's regular account. The justification was that such an account structure would more closely match member and stakeholder expectations, be more efficient to administer, and better conform to the statutory direction established when the IAP program was created.

Staff has been working with the program's third party administrator, CitiStreet, to reconstitute the program under those parameters. A comprehensive project plan is being developed and integrated with the agency's other projects, with the expectation that remediation will go forward some time in the third quarter 2006. The IAP remediation project will result in revised contribution postings and earnings crediting for calendar years 2004 and 2005 and a consistent method for administering accounts in 2006 and onward, unless and until the legislature or PERS Board direct any changes to that model.

To complete development of the project plan, staff needs further guidance on the following policy issues. To ensure those policies are included in the program, staff also has started rulemaking so the decisions will be reflected in the IAP plan documents.

BOARD POLICY ISSUE OPTIONS & RECOMMENDATIONS

1. Should prior IAP distributions to members (withdrawals and retirements, whether paid directly, in installments, or rolled over) be adjusted as if they had occurred under the new plan structure?

Once the IAP transitions to its new plan operations and methods, that transition begs the question as to whether distributions that occurred under the old plan structure should be remedied as well. Those distributions include withdrawals and retirements, whether paid directly to the member or rolled over in a lump sum, or payable in future installments.

Alternatives include:

- (A) Do not adjust prior distributions. Those distributions were made under the rules that existed at the time the distributions were made. Members that retired or withdrew are no longer members of the program, by operation of law. All distributions made prior to the change-over date would remain as processed and not adjusted further.
- (B) Apply the new method to adjust prior distributions. In the majority of cases, these adjustments would be upward (people would receive more money at the end). The order of magnitude of these changes, however, is very small because most IAP accounts had minimal balances when distributed, as the program is so new, and the adjustment would only occur on earnings as all contributions of record were collected prior to final processing of the distribution.
- (C) Adjust distributions only if the new program would have resulted in a higher payment to the member. As noted above, these will be the majority of cases, but the amount of the difference will be marginal.
- (D) Only adjust distributions (up or down) if the amount of the adjustment exceeds a threshold amount (like \$50, for example).

Staff Recommendation: (A) Do not adjust prior distributions. All distributions processed prior to the transition date established for remediation (e.g., August 1, 2006) would be deemed final. Distributions after that date will be processed under the new plan structure.

Legal Analysis: The IAP, as previously constituted, was lawfully operating within the confines of applicable statutes and rules; changing to a different administrative structure does not necessarily make those prior distributions erroneous. In future years, there's no telling whether this new operational model would result in better or worse results, nor

what changes may come along because of program amendments. The principle advocated by staff is that members who are in the program are treated consistently with the plan administration as it was in place at the time of their participation. Administrative changes to the program, such as what is contemplated under IAP remediation, would only apply to those members still in the program when the change occurs.

Fiscal Analysis: Adopting this recommendation requires no further fiscal adjustments. The distributions were made in accordance with the program's administrative structure as it applied to the account at the point that the member chose to retire or withdraw from the program. If PERS staff were to adjust the previous distributions, additional funds would need to be allocated from an outside source.

Fiduciary Obligation: Mercer was also asked for their thoughts on these options. While Mercer does not engage in legal advice, their perspective was from that of a Defined Contribution plan making changes. Typically, such changes are not made retroactively unless they are to correct an error; in that case, persons who received distributions are usually included in the adjustments. These changes to the IAP, however, are in a different context in that the IAP is not a Defined Contribution plan and the changes are not to correct prior errors. The plan changes are to improve future operations and member satisfaction. Those members who chose to leave the program via retirement or withdrawal left under the administrative structure in place at the time of their separation from the program. The PERS Board is not compelled to provide those who left the program with the opportunity to gain (or lose) from future administrative changes after they've left.

2. If contributions are not posted to an account in time for that year's annual earnings crediting, should they receive earnings and, if so, what should be the source of those earnings?

IAP accounts will be credited with annual earnings after we "close the books" for a given calendar year. Inevitably, some contributions will be posted to member accounts after that calendar year has closed, due to an employer's late reporting, subsequent revisions to the member's service record, or discovering oversights in previous reports.

When these late contributions are finally posted to a member's IAP account, the question of earnings that should be credited generates the following alternatives:

- (A) Post contributions without earnings;
- (B) Calculate imputed earnings and charge the employer; or
- (C) Calculate imputed earnings and charge to a generic account (established to hold gains, losses, adjustments, prior forfeitures, etc.).

Staff Recommendation: (B) Calculate imputed earnings and charge the employer. The model for IAP Remediation has been the operation of the PERS Chapter 238 Program regular account. In that account, historically, employers have had to make contributions in subsequent years for a variety of reasons. These "prior year adjustments" to the regular account have always triggered an invoice from PERS to the employer for the earnings that those contributions would have earned had they been in the regular account from the time that they should have been posted. Similarly, this recommendation is based upon the premise that this practice should be equally applied to IAP contributions that an employer

fails to report on time. The member shouldn't be harmed by the employer's reporting failure, so Option (A) doesn't seem appropriate. As the individual employer has the responsibility for timely and accurate reporting, Option (C), which spreads the consequence of failing to meet that responsibility over the entire system, doesn't seem fiscally prudent or appropriate from a fiduciary standpoint.

Legal Analysis: This recommended approach comports with established practice. Employers are accustomed to being billed for earnings after the close of the prior year. Also, the current administrative rules (OAR 459-070-0110(7)) allow PERS to invoice an employer for an amount equal to the earnings that would have been credited to affected members if the employer is late in filing a report or remitting contributions.

Fiscal Analysis: Employer reporting for 2005 and in 2006 to date has improved, so the number of missing reports is minimal. Penalty and invoicing structures are in place to encourage employers to report in a timely manner and provide the support necessary for them to complete their obligation before the close of the calendar year's records. Should they fail to meet these obligations, imputing earnings would be an additional step but one that would be administered consistently with the PERS Chapter 238 Program regular account's operational model.

Fiduciary Obligation: There appears to be no fiduciary issues with this approach.

3. In 2005, the Oregon Legislature (HB 2189) made retroactive changes to the definition of "salary" that will adjust certain member's contributions (those that received lump sum payouts). Should members be credited with earnings on those adjusted contributions and, if so, for what period and from what source?

HB 2189 changed the definition of "salary," for purposes of IAP contributions by PERS Chapter 238 Program members. Previously, some lump sum salary payments (such as for vacation, overtime, or compensatory time cash-outs) were not subject salary for the purposes of contributions into the IAP although they remained subject salary for employer contributions and, for the most part, for calculating Tier One and Tier Two final average salary. The legislative changes are retroactive to January 1, 2004. Employers will now have to re-enter these payments into a "subject salary" category so IAP contributions can be calculated. PERS has been working on adopting a new file format that would allow employers to make this change, but the new format won't be available until the end of April 2006 at the earliest. At present, PERS staff estimates that 53,000 adjustments would be involved, with an additional 2,500 adjustments accruing each month.

When these contributions are finally posted to a member's IAP account after their employer makes the adjusting entries, the question of earnings that should be credited is once again raised:

- (A) Post these contributions with a retroactive effective date but a current transaction date; contributions would be credited with earnings in and for the calendar year received, but not retroactively;
- (B) Calculate imputed earnings and charge to the employer, retroactive to the effective date of the adjustment;

(C) Calculate imputed earnings and charge to a generic account (established to hold gains, losses, adjustments, prior forfeitures, etc.).

In evaluating these options, consider that PERS is not obligated (under its current rules) to pay earnings on these amounts from its dedicated trust funds. OAR 459-080-0200(1) states (currently) that contributions will not be subject to earnings or losses until actually posted to the member's account.

Staff Recommendation: (A) Post contributions with a retroactive effective date but a current transaction date; contributions are credited with earnings in the calendar year received, but not retroactively. This policy would apply to adjustments made in 2006, as that is the first period that PERS could provide functionality for these adjustments. If an employer delays making these adjustments until after 2006 has closed, PERS would propose to charge that employer for 2006 earnings attributable to those contributions (see Policy Issue No. 2).

Legal Analysis: The recommended approach would be consistent with our existing OAR cited above. The legislation set up a conundrum: make a retroactive change but have no provision for a consequence of that change (earnings or losses). Without a statutory direction that establishes a right to earnings or losses on these retroactive contributions, following our existing regulatory structure is prudent.

Fiscal Analysis: Adopting any option other than the recommended one raises operational and financial concerns. Tracking these adjustments and calculating the resulting earnings would be a significant project. If that calculation results in an invoice to the employer for the imputed earnings, an additional workload is created. Even if employers were not invoiced, calculating and posting the imputed earnings would create another staff project. Lastly, paying those earnings from a dedicated account raises several questions about how that account is funded, managed, and accounted for in our financial reporting.

Fiduciary Obligation: PERS does not have an obligation to pay earnings on funds it did not have custody over to invest. The moneys represented by these retroactive contributions were never delivered to PERS to be invested along with the other fund assets. While it may be said that the employer agencies benefited from the positive cash flow and the associated investment earnings, they were not aware of the need to make adjustments until late 2005, nor capable of making the necessary adjustments until 2006. If the legislature wanted to create a duty to adjust these contributions for prior earnings and losses, it could have specified that but did not.

4. Should USERRA contributions be credited with calendar year end earnings and losses rather than prorated earnings or losses from the date of deposit?

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is a federal law that establishes certain rights and duties for persons in military service who return to employment after active duty. One of those rights, related to their retirement plan, can result in retroactive contributions to those person's IAP accounts after they return to employment. Federal law contemplates that those contributions will be subject to earnings and losses from the point that they are (or should have been) made to those persons' IAP accounts.

The IAP, as remediated, will not have pro-rated earnings and losses from the time of deposit to the close of the calendar year. Rather, contributions made during the course of a calendar year will receive annual earnings and losses at the close of that year.

Staff Recommendation: Treat USERRA contributions in the same manner as regular contributions, providing them with annual earnings or losses rather than a pro-rate for the period of deposit.

Legal Analysis: This treatment would be consistent with how other contributions are treated as they are received throughout the year. Federal law does not compel a different result for these contributions, only that they be treated consistently with other plan contributions as of the date they are (or should have been) received. [Note that if an employer is late in remitting these USERRA contributions such that the contributions fail to receive their annual earnings allocation, imputed earnings will be charged to the employer to make the member whole as if the contribution were made on time, just as with any prior year adjustment.]

Fiscal Analysis: Consistent treatment of USERRA contributions prevents creating another crediting paradigm and infrastructure. USERRA contributions will come into the plan and be allocated earnings and losses consistent with regular contributions, which creates no fiscal issues with costs or source of funds.

Fiduciary Obligation: There should be no issues with this approach.

LEGAL REVIEW

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

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on May 23, 2006 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on June 2, 2006 at 5:00 p.m.

IMPACT

Mandatory: Yes; the rule modifications incorporate the policy decisions that underlie the remediation of the IAP and the plan documents should reflect those choices.

Impact: These rule modifications and the associated remediation of the IAP should improve members' and stakeholders' expectations, comprehension and satisfaction with the program, improve the agency's administration, and better conform to the statutory direction established when the program was created.

Cost: There are minimal administrative costs associated with these rule modifications per se; the impact of IAP remediation overall has been discussed in previous Board materials and more details will be available after the project plan is completed and presented for Board review (anticipated for the June 16, 2006 Board meeting).

RULEMAKING TIMELINE

April 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
April 27, 2006	PERS Board notified that staff began the rulemaking process.
May 1, 2006	<i>Oregon Bulletin</i> to publish the Notice.
May 23, 2006	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
June 2, 2006	Public comment period ends at 5:00 p.m.
June 16, 2006	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing is scheduled for May 23, 2006. These rules are scheduled to be presented to the PERS Board for adoption at the June 16, 2006 Board meeting.

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OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459

DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM

1 459-080-0200

MEETING DATE	04/27/06
AGENDA ITEM	D.1. Remediation

2 IAP Account Adjustments for Earnings or Losses

3 (1) Earnings and losses on employee, employer, and rollover contributions under the
4 OPSRP Individual Account Program ("IAP") will be posted at least annually, in
5 accordance with ORS 238A.350(1). In no event will earnings or losses be posted to
6 individual accounts until funds are actually received by PERS and have been successfully
7 *[matched to]* **reconciled with** the corresponding wage and contribution record. *[Once*
8 *contributions have been received and matched, the effective date for posting these*
9 *contributions shall be the first of the following calendar month.]* Accounts will be
10 adjusted at least annually thereafter to reflect any net earnings or losses and to pay
11 reasonable administrative expenses. *[This effective date applies to all contributions,*
12 *whether for a current period or those sent as adjustments for prior periods.]*

13 (2) When a member requests a withdrawal of the member's employee, rollover and
14 employer accounts under ORS 238A.375, those accounts will be adjusted to reflect any
15 net earnings or losses and to pay reasonable administrative expenses only through the end
16 of the month in which the request for withdrawal is received, regardless of when the
17 payment is issued.

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

19 Stat. Auth.: ORS 238A.450
20 Stats. Implemented: ORS 238A.350
21 Hist.: PERS 19-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-25-04; PERS 12-
22 2004, f.&cert. ef. 5-19-04, PERS 24-2004, f. cert. ef. 10-18-04

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

MEETING	04/27/06
DATE	
AGENDA	D.1.
ITEM	Remediation

1 **459-009-0200**

2 **Employer Remitting of Employee Contributions**

3 (1) Except as provided in ORS 238.200(1)(b), a participating employer shall remit to
4 PERS in accordance with OAR 459-009-0100 six percent (6%) of gross salary and wages
5 for each active member employed as required in ORS 238.200(1)(a). Unless otherwise
6 agreed to as provided for in sections (2) or (3) of this rule, the employer shall withhold
7 and remit the required contributions on an after-tax basis as defined in OAR 459-005-
8 0001(36), and shall be known as "member paid after-tax contributions (MPAT)".

9 (2) In accordance with Internal Revenue Code (IRC) Section 414(h), and under
10 provision of ORS 238.205(2), participating employers may voluntarily agree to assume
11 *[or]* **and** pay the six percent employee contribution on behalf of its employees, and shall
12 be known as "employer paid pre-tax contributions (EPPT)". The employer assumption
13 *[or]* **and** payment of the uniform six percent employee contributions shall be subject to
14 the following terms and conditions:

15 (a) The employer's employment agreement(s) to assume *[or]* **and** pay the
16 contributions must be evidenced by a certified copy of the employer's policy established
17 by statute, charter, ordinance, administrative rule, executive order, collective bargaining
18 agreement, or other written employment policy or agreement. The employer's
19 employment policy(s) or agreement(s) shall specify:

20 (A) That the required PERS employee contribution of six percent of salary is
21 deemed to be "picked up" for purposes of IRC Section 414(h)(2) and is assumed *[or]* **and**
22 paid for purposes of ORS 238.205(5)(b);

1 (B) That the employees do not have the option of receiving the assumed amount
2 directly;

3 (C) That employee compensation shall not be reduced and that the employer shall
4 provide the additional amounts necessary to make the employee contributions; and

5 (D) That the employer's employment policy(s) or agreement(s) is not retroactive in
6 its application.

7 (b) The employer's employment policy(s) or agreement(s) to assume *[or]* **and** pay
8 employee contributions shall not be construed to require an employer to open or
9 renegotiate a pre-existing collective bargaining agreement or change an employment
10 policy before its normal expiration date.

11 (c) The employer's employment policy(s) or agreement(s) must be to assume *[or]*
12 **and** pay the full amount, and not a portion thereof, of the affected employees' six percent
13 contributions required by ORS 238.200.

14 (d) The employer's policy(s) or agreement(s) may apply to all its employees or some
15 of its employees. If it applies only to some employees, it shall apply uniformly to all
16 employees of the public employer who are employed in similarly situated positions, such
17 as, but not limited to:

18 (A) The chief executive officer or administrative head of a public employer.

19 (B) Management personnel, as defined by the public employer, not otherwise
20 covered by a collective bargaining agreement.

21 (C) Confidential personnel, as defined by the public employer, not otherwise
22 covered by a collective bargaining agreement.

1 (D) Administrative personnel, as defined by the public employer, not otherwise
2 covered by a collective bargaining agreement.

3 (E) Personnel covered by a collective bargaining agreement.

4 (F) Other personnel, whether full time, part time, temporary, or as a substitute, who
5 are not covered by a collective bargaining agreement.

6 (3) In accordance with IRC Section 414(h) and under provision of ORS 238.205(3),
7 participating employers may voluntarily agree to "pick-up" the employee contributions
8 withheld, and such picked-up contributions shall be known as "member paid pre-tax
9 contributions (MPPT)". The employer "pick-up" of the uniform six percent employee
10 contribution shall be subject to the following terms and conditions:

11 (a) The employer's agreement(s) to "pick-up" the contributions must be evidenced by
12 a certified copy of the employer's policy established by statute, charter, ordinance,
13 administrative rule, executive order, collective bargaining agreement, or other written
14 employment policy or agreement, The employer's policy(s) or agreement(s) shall specify:

15 (A) That the required PERS employee contribution of six percent of salary is
16 deemed to be "picked up" for purposes of IRC, Section 414(h)(2) and ORS
17 238.205(5)(a);

18 (B) That the employees do not have the option of receiving the picked-up amount
19 directly;

20 (C) That employee compensation shall be reduced by the amount necessary to make
21 the employee contributions; and

22 (D) That the employer's policy(s) or agreement(s) is not retroactive in its application.

1 (b) The employer's employment policy(s) or agreement(s) to "pick-up" employee
2 contributions withheld shall not be construed to require an employer to open or re-
3 negotiate a pre-existing collective bargaining agreement or change an employment policy
4 before its normal expiration date.

5 (c) The employer's policy(s) or agreement(s) must be to "pick-up" the full amount,
6 and not a portion thereof, of the affected employees' six percent contributions required by
7 ORS 238.200.

8 (d) The employer's employment policy(s) or agreement(s) may apply to all its
9 employees, or some of its employees. If it applies to only some of its employees, it shall
10 apply uniformly to all employees of the public employer who are employed in similarly
11 situated positions, such as, but not limited to:

12 (A) The chief executive officer or administrative head of a public employer.

13 (B) Management personnel, as defined by the public employer, not otherwise
14 covered by a collective bargaining agreement.

15 (C) Confidential personnel, as defined by the public employer, not otherwise
16 covered by a collective bargaining agreement.

17 (D) Administrative personnel, as defined by the public employer, not otherwise
18 covered by a collective bargaining agreement.

19 (E) Personnel covered by a collective bargaining agreement.

20 (F) Other personnel, whether full time, part time, temporary, or as a substitute, who
21 are not covered by a collective bargaining agreement.

1 (4) The notification of the employer's written employment policy(s) or agreement(s)
2 to enter into or to revoke (1) the "pick-up", or (2) to assume [*or*] **and** pay contributions
3 on behalf of employees, shall be submitted to PERS for review and approval, and shall
4 become effective on the date the notification is received by PERS Additional information
5 related to the employer's policy or agreement shall be provided at the request of staff and
6 in the manner required by staff. If approved by PERS, such policy [*or*] **and** agreement
7 shall not be revoked by the employer except with prior written notice to PERS. All costs
8 to correct any errors caused by failure to give required notice shall be borne by the
9 employer.

10 Stat. Auth.: ORS 238.650

11 Stats. Implemented: ORS 238.205

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Oregon

Theodore R. Kulongoski, Governor

April 27, 2006

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TO: Members of the PERS Board
FROM: Paul R. Cleary, Executive Director
SUBJECT: Adoption of Actuarial Methods

MEETING DATE	4/27/06
AGENDA ITEM	D.2. Actuarial Methods

On April 27, Bill Hallmark and Annette Strand of Mercer Human Resource Consulting will present the final report on new actuarial cost methods currently under consideration by the Board. These methodologies include the re-costing of the plan using Projected Unit Credit (PUC) rather than Entry Age Normal (EAN) cost method. Also being considered is valuing plan assets based on fair market value and using contribution rate collaring rather than asset smoothing to smooth employer contribution rates.

Mercer will report on the follow-up to their March 31, 2006 Board presentation and present their final recommendations on various actuarial cost methods and assumption changes for Board approval to apply to the 2004 Valuation and to use in the 2005 Valuation.