

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Friday March 31, 2006 1:00 P.M.		PERS 11410 SW 68 th Parkway Tigard, OR	
ITEM		PRESENTER	
A. Administration			
1.	February 24, 2006 Board Meeting Minutes	DELANEY	
2.	Director's Report		
a.	Forward-Looking Calendar		
b.	Budget Report		
c.	HB2020 Update		
d.	Miscellaneous		
B. Consent Action and Information Items			
1.	Contested Case for Susan Boracci	RODEMAN RODEMAN RODEMAN RODEMAN	
2.	Notice of Contested Case Rules		
3.	Notice of OAR 459-001-0005, Model Rules of Procedure		
4.	Adoption of 2005 Legislation Rulemaking		
a.	OAR 459-011-0115, Military Full Cost Purchase		
b.	OAR 459-070-0001, OPSRP Definitions		
c.	OAR 459-075-0010, Membership and Eligibility		
d.	OAR 459-050-0060, OSGP Designation of Beneficiary		
5.	Adoption of Final Average Salary Rules	RODEMAN RODEMAN ORR / RODEMAN	
6.	Adoption of OAR 459-014-0030, PERS Designation of Beneficiary		
7.	2005 Final Earnings Crediting and Reserving		
C. Action and Discussion Items			
1.	2004 Valuation Results – Revised Actuarial Cost Methods	MERCER DELANEY	
2.	2007 Legislative Concepts Drafting Approval		
D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225			
1.	Litigation Update	LEGAL COUNSEL	

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<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>
Michael Pittman, Chair * James Dalton * Thomas Grimsley * Eva Kripalani * Brenda Rocklin * Paul R. Cleary, Executive Director
SL1

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
1:00 P.M.
February 24, 2006
Tigard, Oregon

MEETING	3-31-06
DATE	
AGENDA	A.1.
ITEM	02-24-06 Minutes

MINUTES

Board Members:

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

Staff:

Paul R. Cleary, Director
Donna Allen
Jane Beisell
Bob Davis
Helen Bamford
Jeff Marecic

Steve Delaney
Brendalee Wilson
Joe Delillo
David Crosley
Steve Rodeman
Dale Orr
Dale Lucht
Dave Tyler
Rick Howitt
Gloria English
Craig Stroud
Jeanette Zang

Others:

Steve Manton
Greg Hartman
Martha Sartain
Bob Andrews
Maria Keltner
Keith Kutler
DeeAnn Hardt
Deborah Tremblay

Bill Hallmark
Annette Strand
Cathy Bloom
Jesse Villarreal, Jr.
Dallas Weyand
Francis Charbonnier
Michelle Deister
Ken Armstrong

Ardis Belknap
Jim Green
David Wimmer
Karla Alderman
Karen Artico
Carol Samuels
Victor Nolan
Stakeholder Peg

E.M. Laird
Bill Linden
Linda Ely
Danelle Romain
Dean L. Hulbert
Denise Yunker
BethAnne Darby

Board Chair Mike Pittman called the meeting to order at 11:00 A.M. for the purpose of hearing contested cases. Brenda Rocklin and Tom Grimsley joined Chair Pittman in this portion of the meeting.

CONTESTED CASE HEARINGS

A.1. CONTESTED CASE FINAL ORDER FOR DEBBIE L. MCINTOSH

Steve Rodeman, Policy, Planning and Legislative Analysis Division (PPLAD) administrator, presented the contested case hearing of Debbie McIntosh. Attorney Jorge Lara spoke on behalf of Debbie McIntosh. The Board members present asked that this case be further discussed at the afternoon regular Board meeting session.

A.2. CONTESTED CASE FINAL ORDER FOR STEPHEN ROSS

Rodeman presented the contested case hearing of Stephen Ross.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to approve the final order as presented. The motion passed unanimously.

A.3. CONTESTED CASE FINAL ORDER FOR ANNABETH WRIGHT

Rodeman presented the contested case hearing of Annabeth Wright.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to approve the final order as presented. The motion passed unanimously.

Chair Pittman adjourned the meeting for lunch.

Chair Pittman reconvened the meeting at 1:00 P.M. for the regular Board meeting agenda with all Board members present.

ADMINISTRATION

B.1. JANUARY 27, 2006 BOARD MEETING MINUTES

It was moved by Brenda Rocklin and seconded by Tom Grimsley to approve the January 27, 2006 meeting minutes. The motion passed unanimously.

B.2. DIRECTOR'S REPORT

Paul Cleary, Executive Director, presented the Forward-Looking Calendar and discussed possible meeting dates and key agenda items for the remainder of 2006. Cleary said there would be an IAP Remediation Policy Adoption agenda item at the April meeting. Cleary provided the Oregon Investment Council (OIC) investment report for the first month of the year and said the net asset value for the fund now exceeds \$55 billion. Cleary presented the Budget Report and the HB2020 employer reporting update and answered questions from the Board.

CONSENT ACTION AND INFORMATION ITEMS

C.1. ADOPTION OF CONTESTED CASE FINAL ORDERS

Rodeman presented the contested case hearing of Debbie McIntosh.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to approve the final order as presented. The motion passed. Chair Pittman and Tom Grimsley voted no.

C.2. NOTICE OF OAR 459-014-0030, PERS DESIGNATION OF BENEFICIARY

Rodeman presented the notice of rulemaking for modifying the beneficiary rule that was adopted in 1955 and contains an outdated doctrine of "insurable interest" that is no longer relevant or recognized in common law.

ACTION AND DISCUSSION ITEMS

D.1. ADOPTION OF OAR 459-017-0060, REEMPLOYMENT OF RETIRED MEMBERS

Rodeman presented the adoption of permanent rule modifications to correct statutory citations, reflect the most recent Social Security annual compensation limitations and provide comprehensive guidance to reemployed retirees on reestablishing employment or membership with PERS. Rodeman said additional modifications were made to this rule since the first reading to clarify language and reduce complexity by moving some procedures to internal agency business rules. Rodeman noted that the proposed rule had been submitted to the Department of Justice and their recommendations had been incorporated in the rule as presented.

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

D.2. 2004 VALUATION RESULTS

PERS actuaries Bill Hallmark and Annette Strand presented the 2004 actuarial valuation results and key findings for the Tier One/Tier Two Chapter 238 program. Hallmark said the advisory valuation included estimated effects of the *Strunk* and *Eugene* court decisions and projected the effects of reserve deployment. Hallmark said those effects and any Board approved changes to actuarial methods would be reflected in the December 31, 2005 valuation report, which will also include the Oregon Public Service Retirement Plan (OPSRP) pension program. Hallmark also detailed the schedule for further actuarial valuation presentations and decision-making.

D.3. 2005 PRELIMINARY EARNINGS CREDITING AND RESERVING

Dale Orr, Actuarial Analysis Coordinator, provided background for the Board's preliminary 2005 earnings crediting and reserving decisions that are guided by Oregon statutes and rules. Orr noted the varying reserve balances remaining after deployment and 2005 earnings crediting under five different scenarios using a targeted proportional allocation method based on year-end 2005 balances.

Steve Manton, City of Portland, recommended the Board be cautious in making its preliminary reserving and earnings crediting decision for 2005, considering all the ongoing PERS-related litigation.

Jim Green, Oregon School Boards Association, recommended that the Board seek advice from its actuary before final decisions were made, noting the effect that reserving and crediting decisions can have on the actuarial soundness of the system.

Attorney Greg Hartman spoke on behalf of the PERS Coalition saying that the system is very different now than it was 2- 4 years ago and maintaining unnecessarily large reserves artificially raises employer rates. Hartman said there is no real advantage to maintain the reserves as a backstop against uncertain future events because the end result, from an employer rate standpoint, will be the same regardless.

Hallmark said that reserve deployment in response to investment losses or liability increases could act as a manual smoothing method to supplement actuarial methods and that the PERS statutes provide for the use of either or both methods.

The Board directed various questions to the stakeholders, actuary and staff. The Board discussed the effects of PERS reform on system dynamics and liabilities, and the related court rulings and ongoing litigation. Board members James Dalton and Tom Grimsley indicated that they were comfortable with deploying the Capital Preservation Reserve and maintaining a \$100 million dollar balance in the Contingency Reserve. Board members Brenda Rocklin and Eva Kripalani agreed with deployment of the Capital Preservation Reserve but expressed concern about the extent of ongoing litigation that could increase liabilities, and suggested retaining all or a sizeable portion of the Contingency Reserve. Chair Pittman noted the varying perspectives and that the Board had sought extensive input and advice from its actuary, stakeholders and staff.

The Board then discussed the reserve deployment scenarios and how much should be retained in the Contingency Reserve. Chair Pittman moved Scenario 3 (deploying the Capital Preservation Reserve and retaining \$500 million in the Contingency Reserve), seconded by Tom Grimsley. The motion failed. James Dalton moved to deploy the Capital Preservation Reserve and retain a balance of \$250 million in the Contingency Reserve, seconded by Chair Pittman. The motion passed. Brenda Rocklin and Eva Kripalani voted no.

It was then moved by James Dalton and seconded by Chair Pittman that 2005 earnings be preliminarily credited and the Contingency and Capital Preservation reserves be deployed as stated in the February 24, 2006 memorandum without further earnings being credited to those Reserves. In the context of the wording and order of these motions, it was moved that the Board retain \$250 million in the Contingency Reserve and fully deploy all funds of the Capital Preservation Reserve. The consolidated preliminary earnings crediting and reserving motion passed unanimously.

D.4. STRUNK/EUGENE IMPLEMENTATION PLAN UPDATE

Benefit Payments Division Administrator Craig Stroud presented an update on project activities and planning, with a focus on agency-wide workload and impacts. Stroud said that on-going staff planning and stakeholder input are fundamental to successfully implement issues surrounding the recalculation of revised account balances and collection of over-paid benefits. Stroud provided a draft of the letter to accompany the Board's order adopting repayment methods that will be mailed to approximately 38,000 affected benefit recipients in early March. Stroud also provided a draft of the *Strunk* and *Eugene* Project – Benefit Adjustment Letter for stakeholder review and comment. Stroud said the benefit adjustment letter would be mailed to affected benefit recipients at the time PERS recalculates the recipient's benefit over the projected three-year implementation process.

D.5. 2007 LEGISLATIVE PROCESS UPDATE

Deputy Director Steve Delaney reviewed stakeholder input from the February 3, 2006 Legislative Advisory Committee (LAC) meeting. Delaney said the committee discussed staff development of multiple legislative concepts and issues that could potentially be addressed in the administrative

PERS Board meeting

2/24/06

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rule process. Delaney noted that the Board would be the final decision maker on which concepts would be advanced through the drafting process for introduction as PERS-sponsored bills.

EXECUTIVE SESSION

There was no executive session.

Chair Pittman adjourned the meeting at 3:35 P.M.

Respectfully submitted,

Paul R. Cleary
Executive Director

Prepared by Donna R. Allen, Executive Assistant

PERS Board Meeting Forward-Looking Calendar

MEETING DATE	3-31-06
AGENDA ITEM	A.2.a Calendar

April 2006

Meeting: 1:00 P.M. April 27, 2006

Contested Case Final Order for Brian Metke
Contested Case Final Order for Richard McQueen
First Reading of Contested Case Rules
Actuarial Cost Method Selection – PUC v. EAN
2007 Budget Process Overview
Strunk / Eugene Implementation Update

May 2006

No Meeting Scheduled

June 2006

Meeting: 1:00 P.M. June 16, 2006

Contested Case Final Order for Susan Boracci (tentative)
Adoption of Contested Case Rules
Adoption of Model Rules of Procedure Rules

July 2006

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



Oregon

Theodore R. Kulongoski, Governor

March 31, 2006

(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

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

MEETING DATE	3/31/06
AGENDA ITEM	A.2.b. Budget Report

2005-07 ACTUAL EXPENDITURES AND PROJECTIONS

Operating expenditures for the month of February totaled \$3,298,338, an increase of \$428,014 from January actuals. The variance from projected expenditures for February was (\$723,107), or 21.92% above projections. This is the first instance of the 8-month-old biennium that the Agency has exceeded projected expenditures. Contributing factors were large contract payments and software purchases for three projects – RIMS Conversion, R*STARS, and the HB2020 projects, which were not projected to be made specifically in February. One-third of the biennium has expired and the Agency has expended just 27.59% of the Legislatively Approved Budget for Operations.

BUDGET VARIANCES

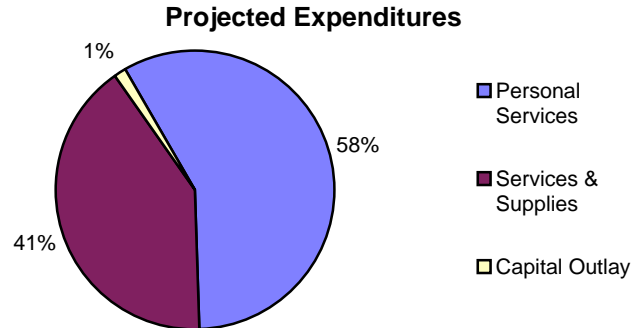
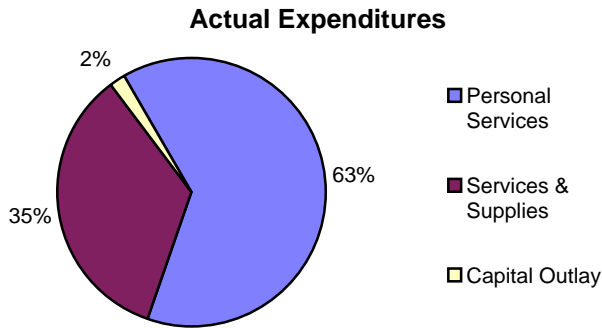
Direct vacancy savings contributed an additional \$120,000 of the positive variance for the month. The Budget Unit anticipates the rate of accumulated vacancy savings to slow in the near future for two reasons. First, the total number of vacancies in the Agency has decreased by 20 positions in the last month and there is a noticeable trend toward fewer vacancies. The vacancy rate now stands at approximately 10%, which is an acceptable rate for a State agency. Second, the Budget Unit has recast remaining personal services projections based on the recent hirings in an effort to better measure the amount of available resources that can be applied to full implementation of *Strunk/Eugene*.

Budget variances continue to remain within expected parameters at an aggregate level. Program managers have been reviewing individual account variances in preparation for self-funding *Strunk/Eugene* solutions and in preparation for development of the 2007-09 biennial budget. As noted in the previous Board report, budget resources will shift from accounts carrying positive variances to accounts carrying negative variances, if such a shift is appropriate. Budget staff anticipates this process to “rebalance” the Agency’s base budget in preparation for the 2007-09 biennial budget development process. If additional budget resources become available during this analysis they will be earmarked for use on the Agency’s highest priorities such as the *Strunk/Eugene* Project. Variances will also be analyzed for potential long-term savings during the next budget development cycle.

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

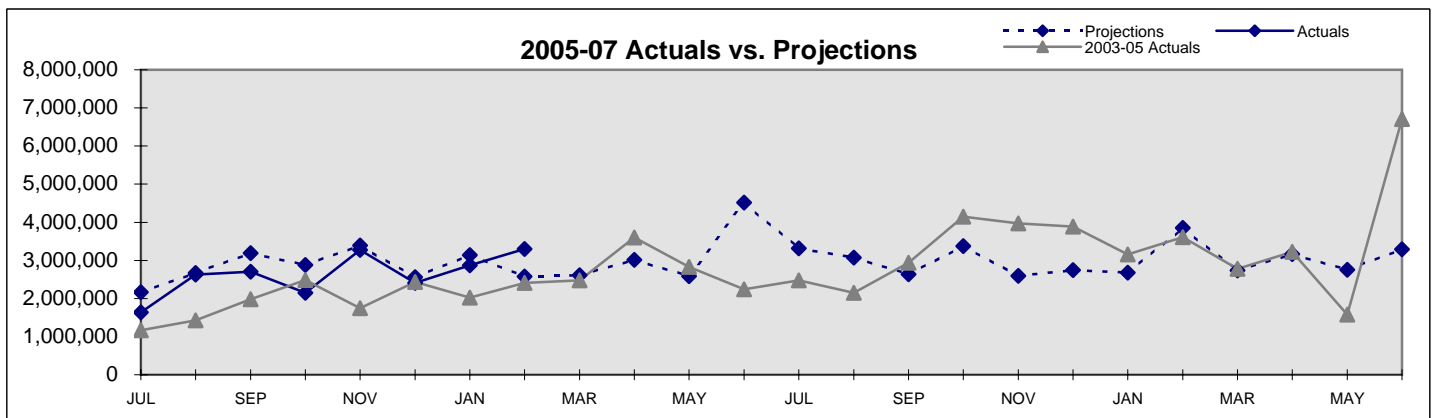
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	13,346,274	31,148,890	44,495,164	44,564,938	69,774
Services & Supplies	7,235,139	21,939,844	29,174,983	30,384,327	1,209,344
Capital Outlay	379,660	751,103	1,130,763	1,033,494	(97,269)
Special Payments					
Total	20,961,073	53,839,838	74,800,910	75,982,759	1,181,849



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,725,517	1,850,616	125,099	1,668,284	1,946,806
Services & Supplies	1,375,038	724,614	(650,424)	904,392	1,371,240
Capital Outlay	197,783		(197,783)	47,457	46,944
Special Payments					
Total	3,298,338	2,575,230	(723,107)	2,620,134	3,364,990





Oregon

Theodore R. Kulongoski, Governor

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March 31, 2006

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: HB2020 Update

MEETING DATE	03-31-06
AGENDA ITEM	A.2.c. 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 and 2005 employer reports, as well as current 2006 reports. The table below shows the status of employer reports and member records, by year since 2004.

	Calendar Year 2004 (As of 03-09-06)	Calendar Year 2005 (As of 03-09-06)	Calendar Year 2006 (As of 03-09-06)
Reports due (estimated):			
▪ Number	12,540	12,796	2,213
▪ Percent	99.9%	98.8%	93.6%
Outstanding reports	4	154	142
Reports fully posted at 100%:			
▪ Number	12,408	12,107	1,689
▪ Percent	98.9%	94.6%	76.3%
Records due (estimated)	3,081,372	3,058,176	507,511
Records not posted	890	6,950	9,929
Contributions posted	\$ 388,066,883	\$ 405,552,186	\$ 66,286,875
Contributions not posted	\$ 33,477	\$ 415,914	\$ 301,421

Currently, employers are concentrating their efforts on completing their 2005 reports and records so PERS can complete the 2005 Annual Reconciliation. The decline in the 2006 timeliness and accuracy statistics is a direct result of the focused effort by employers to close their 2005 reporting year. We anticipate that by the second quarter of 2006 the reporting statistics will improve and mimic the levels 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 date approaches. Currently, PERS is working with employers to complete the mandatory ACH enrollment process. As of March 8, 2006, 84% 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, 63% have chosen to remit contributions via a debit payment and 37% have chosen to remit contributions via a credit payment.

HB2020 Update

3/31/06

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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 March 6, 2006, we have an aggregate overdue balance of \$1.5 million, representing 3% of total dollars invoiced. We are following up with these employers by phone and letters each month.



Oregon

Theodore R. Kulongoski, Governor

March 31, 2006

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TO: Members of the PERS Board

FROM: Steve Delaney, Deputy Director

SUBJECT: Contested Case Hearing of Susan L. Boracci
[PERS Appeal No. 04-0793]

MEETING DATE	3/31/06
AGENDA ITEM	B.1. Susan Boracci

OVERVIEW

- Action: Postpone deliberation in the contested case hearing of Susan L. Boracci and continue this matter to the June Board meeting.
- Reasons: To avoid having the proposed order become final by operation of law before the member's counsel has an opportunity to present to the Board.
- Policy Issue: Whether the PERS Board should take action within the 90-day period from issuance of the proposed order.

BACKGROUND

Ms. Boracci requested a contested case when PERS denied her request to have her disability designated as duty-caused. The hearing has been conducted and a proposed order was issued on February 2, 2006.

Ms. Boracci's attorney, Allan Coons, has filed exceptions and requested an opportunity to present argument to the PERS Board. The next available opportunity for him to do so is the Board's June 2006 meeting. If the Board does not take action within 90 days after the proposed order is issued, however, the order becomes final by operation of law. Therefore, staff is requesting the Board formally delay consideration of the order in this case until its June 2006 meeting, stopping the 90 day period from tolling and allowing oral argument to be heard at that meeting.

BOARD OPTIONS

The Board may:

1. Adopt a motion to "delay consideration of the proposed order in the contested case hearing of Susan Boracci until the regularly scheduled meeting of this Board in June 2006."
2. Take no action. The proposed order would become final 90 days after issuance, May 4, 2006, without further action or deliberation by the Board.

STAFF RECOMMENDATION

Staff recommends that the Board choose Option #1.

SL1



Oregon

Theodore R. Kulongoski, Governor

March 31, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING DATE	3/31/06
AGENDA ITEM	B.2. Contested Cases

SUBJECT: Notice of Rulemaking for OAR 459-001-0035, *Contested Case Hearing* and 459-001-0040, *Petitions for Reconsideration*

OVERVIEW

- Action: None. This is notice that staff began rulemaking.
- Reason: 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

In 2005, 19 non-disability contested cases were requested with 10 hearings being held. For disability cases, 29 hearings were requested with 6 hearings held. Currently, the average time between a request in a disability appeal and the hearing is 7 months, unless the party requests a postponement. For non-disability appeals, the average time between the request and the hearing is 5 months, unless the party requests a postponement.

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. Staff is opening rulemaking on these rules to update and improve the processes defined therein 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 refusal. 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?

This Board's practice has been 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. 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

The rule is scheduled to be presented to the PERS Board for first reading at the April 27, 2006 Board meeting.

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

MEETING	3/31/06
DATE	
AGENDA	B.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 order the staff to schedule a formal contested
3 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:

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

MEETING	3/31/06
DATE	
AGENDA	B.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:



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March 31, 2006

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING DATE	3/31/06
AGENDA ITEM	B.3. Model Rules

SUBJECT: Notice of Rulemaking for OAR 459-001-0005, *Model Rules of Procedure*

OVERVIEW

- Action: None. This is notice that staff began rulemaking.
- Reason: Update the Model Rules of Procedure to reflect current state law.
- Subject: PERS Board's rules of procedure.
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

The Oregon Administrative Procedures Act (APA) requires state agencies to adopt rules of procedure for rulemaking and conducting contested case proceedings. The APA also requires the Attorney General to adopt model rules that state agencies must use, although agencies may adopt additional rules governing administrative procedures.

OAR 459-001-0005 adopted the Attorney General's Model Rules of Procedure that became effective on December 1, 2004. In response to statutory changes and appellate court decisions, the Attorney General updated the Model Rules, effective January 1, 2006.

Changes to the Model Rules include language that further encourages agencies to use rulemaking advisory committees early in the rulemaking process and expands their duties, adds requirements to the fiscal impact statement, requires agencies to review a new rule within five years of adoption, allows the opportunity for parties to a rulemaking to ask an agency to clarify its objectives, and provides for a new "rule caption" and a requirement for clearer rule summary language. Changes were also made to the contested case process. This rule modification will incorporate these practices into PERS' administration by reference.

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. The public comment period ends on April 28, 2006 at 5:00 p.m.

IMPACT

Mandatory: Yes, to comply with statute.

Impact: The modifications conform to state law and do not have a material fiscal or economic impact.

Cost: There is not expected to be any cost incurred by members, employers, PERS administration or the PERS fund.

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 28, 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

The rule is scheduled to be presented to the PERS Board for adoption at the June 16, 2006 Board meeting.

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DRAFT

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

MEETING	3/31/06
DATE	
AGENDA	B.3.
ITEM	Model Rules of Procedure

1 **459-001-0005**

2 **Model Rules of Procedure**

3 The Attorney General's Model Rules of Procedure under the Administrative
4 Procedures Act, as adopted and effective January 1, ~~[2004]~~ 2006, are adopted as rules of
5 procedure of the Public Employees Retirement Board, except as modified by other rules
6 of the Board, to be effective on ~~[December 1, 2004.]~~ July 1, 2006.

7 [ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is
8 available from the office of the Attorney General or the agency.]

9 Stat. Auth.: ORS 183.341 & 238.650

10 Stats. Implemented: ORS 238.005 - 238.715 & 237.410 - 237.620

11



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March 31, 2006

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MEETING	3/31/06
DATE	
AGENDA	B.4.a.
ITEM	Military Purchase

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: Adoption of Rulemaking for OAR 459-011-0115, *Military Full Cost Purchase*

OVERVIEW

- Action: Adopt new administrative rule OAR 459-011-0115, *Military Full Cost Purchase*.
- Reason: House Bill 3262, enacted in the 2005 legislative session, modified the military full cost purchase statutes. This rule addresses those new provisions.
- Subject: Standards for administering the military full cost purchase provisions.
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

ORS 238.157 provides eligible PERS Chapter 238 Program members who served in the armed forces prior to beginning their PERS membership the opportunity to purchase up to 4 years of additional retirement credit for their military service. The amount of this purchase is the full cost to the system for the additional retirement credit, plus administrative fees. Depending on individual circumstances, this full cost purchase can be tens of thousands of dollars, making this purchase prohibitively expensive for some.

Part of the costs for these purchases are the provisions of ORS 238.300 that require a retired member to receive the highest benefit available under the three calculation methods: money match, full formula, and formula plus annuity. The 2005 Oregon Legislature amended the relevant statutes so a member could choose which benefit calculation method they want to have used, and thereby have some control over the cost of their purchase. Selecting a method that yields a lower retirement benefit lowers the cost of purchasing credit under that benefit.

The proposed rule just implements these new purchase provisions; no policy issues have been identified at this time.

LEGAL REVIEW

This proposed rule was submitted to the Department of Justice for legal review. Their recommended changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on January 24, 2006 at 2:00 p.m. at PERS headquarters in Tigard. There were no attendees. The public comment period ended on March 1, 2006 at 5:00 p.m. PERS received no public comment on this rule.

IMPACT

Mandatory: Yes. The OAR clarifies the new purchase provisions adopted by the legislature.

Impact: Members will be able to choose the benefit calculation methodology, and resulting benefit allowance, that best fits their individual circumstances.

Cost:

- ♦ *Members:* There will be no additional cost to members, in fact, these new provisions provide for a lower cost to members who choose it.
- ♦ *Employers:* None. The members pay the entire full cost to the system of the retirement credit.
- ♦ *Administration:* Although some minor changes to the program will be required, the member pays the administrative costs to review, process, and administer these purchases.
- ♦ *Fund:* There will be no effect on the Fund.

RULEMAKING TIMELINE

December 15, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2006	<i>Oregon Bulletin</i> published the Notice.
January 24, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 27, 2006	PERS Board notified that staff began the rulemaking process.
March 1, 2006	Public comment period ended at 5:00 p.m.
March 31, 2006	Staff proposes adopting the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-011-0115, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- **Reason:** Adopting these modifications will conform the agency’s rules to the state of the law after the 2005 legislative changes and better reflect agency practices.

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.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 013 – RETIREMENT BENEFITS**

MEETING	3/31/06
DATE	
AGENDA	B.4.a.
ITEM	Full Cost Purchase

1 **459-011-0115**

2 **Military Full Cost Purchase**

3 (1) For the purposes of this rule:

4 (a) “Active Duty for Training” means periods of active service where the member
5 engages in training only.

6 (b) “Armed Forces” means the Army, Navy, Air Force, Marine Corps and the Coast
7 Guard and the reserve components thereof.

8 (c) “Effective Retirement Date” means the date the member is eligible to retire and
9 has indicated on their retirement application.

10 (d) “Full Cost” means the actual cost to the system of the retirement credit for
11 military service being purchased, including any applicable administrative fee.

12 (e) “Military Service” means qualifying service as described under section (2) of this
13 rule.

14 (2) An eligible member who served in the Armed Forces prior to becoming a
15 member of PERS may purchase up to four years of retirement credit for military service
16 if they:

17 (a) Were other than dishonorably discharged from the Armed Forces;

18 (b) Entered or reentered active service after Jan 1, 1950, or were in active service on
19 Jan 1, 1950;

20 (c) Were on active duty for other than active duty for training; and

1 (d) Except as provided in section (3) of this rule, the member must be neither
2 receiving, nor eligible to receive, a pension or retirement for service in the Armed Forces
3 at the time of their Effective Retirement Date.

4 (3) If member is or was a member of a reserve component of the Armed Forces and
5 would be entitled to a pension or retirement for service in the military, the purchase or
6 retirement credit must be made prior to member reaching age 60.

7 (4) If the member has reached earliest retirement age, the purchase may be made
8 within 90 days before and after the member's effective retirement date.

9 (a) If the member has not reached earliest retirement date, the purchase may be made
10 only in the 90 day period immediately before the member's effective retirement date.

11 (5) A member electing to make a full cost purchase may elect to have the service
12 retirement allowance determined under any calculation for which the member is eligible
13 for under ORS 238.300 even if the calculation does not produce the highest retirement
14 allowance.

15 (6) If the full cost of the purchase is not known at the time the payment is required,
16 the member must pay the remainder of the full cost purchase. If the member does not pay
17 the entire full cost, the member's full cost purchase request will be rejected.

18 (7) To verify military service, a copy of the member's form DD-214 or other
19 acceptable military discharge or service records must be submitted to PERS with the full
20 cost purchase request.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.157



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March 31, 2006

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING	3/31/06
DATE	
AGENDA	B.4.b.
ITEM	OPSRP

SUBJECT: Adoption of OAR 459-070-0001, *OPSRP Definitions*

OVERVIEW

- Action: Adopt permanent rule modifications to OAR 459-070-0001, *OPSRP Definitions*.
- Reason: To incorporate statutory changes to the OPSRP Definitions rule.
- Subject: PERS proposes to amend the OPSRP Definitions rule (OAR 459-070-0001) to incorporate new definitions, modify existing definitions, and correct citations in response to the 2005 passage of SB 108, HB 2189 and HB 3262.
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

This rulemaking incorporates changes into the OPSRP Definitions rule (OAR 459-070-0001) prompted by 2005 legislation.

Section 20 of 2005 House Bill 2189 establishes that an academic employee of a community college must be employed .375 full-time equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis to be considered to have performed 600 hours or more in a calendar year. To accommodate this legislation, the definition of "Academic employee of a community college" is added to OAR 459-070-0001 and conforming language is added to the "qualifying position" definition.

A "Final Average Salary" (FAS) definition is added to this rule to comply with relevant sections of House Bills 2189 and 3262. Details about FAS-related changes can be found in the Board memo on this subject found in this board packet (Agenda Item B.5.).

Statutory citations are corrected in Sections (17) and (18).

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

Section (2)(b)(C) is added to establish the circumstance where a member would have a "Break in Service" if the member ceases performance of service due to the seasonal nature of the employee's employment and does not return to the same employer for 12 or more consecutive months. This provision was included in section (6)(3)(g) of 2005 HB 2189 (Oregon Laws 2005, chapter 332).

LEGAL REVIEW

This proposed rule was submitted to the Department of Justice for legal review. Their recommended changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on January 24, 2006 at 2:00 p.m. at PERS headquarters in Tigard. There were no attendees. The public comment period ended on March 1, 2006 at 5:00 p.m. PERS received no public comment on this rule.

IMPACT

Mandatory: Yes. The rules need to be amended to correct citations and to accommodate statutory changes adopted by the 2005 legislature.

Impact: No discrete costs are attributable to this rulemaking. Indirect costs attributable to statutory compliance due to the FAS-related changes are detailed in the memo on that rulemaking in this board packet, but adopting this definition does not affect those costs.

Cost:

- *Members:* There is no new cost to members.
- *Employers:* There is no new cost to employers.
- *Administration:* There is no added administrative cost.
- *Fund:* There is no cost to the fund.

RULEMAKING TIMELINE

December 15, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2006	<i>Oregon Bulletin</i> published the Notice.
January 24, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 27, 2006	PERS Board notified that staff began the rulemaking process.
March 1, 2006	Public comment period ended at 5:00 p.m.
March 31, 2006	Staff proposes adopting the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-070-0001, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- **Reason:** Adopting these modifications will conform the agency's rules to the state of the law after the 2005 legislative changes and better reflect agency practices.

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.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 070 – OREGON PUBLIC SERVICE
RETIREMENT PLAN, GENERALLY**

MEETING DATE	3/31/06
AGENDA ITEM	B.4.b. OPSRP

1 **459-070-0001**

2 **Definitions**

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

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

9 (a) Librarians, counselors, and aides in non-teaching positions, tutors, or other
 10 non-teaching faculty, and classified, professional or nonprofessional support staff
 11 are not academic employees for the purposes of section 20 of OL 2005, Ch. 332; but
 12 are subject to the membership requirements under ORS 238A.100 and OAR 459-
 13 075-0010.

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

18 ~~[(1)]~~ (2) "Break in [s]Service" means a period concluding on or after August 29,
 19 2003, during which a member of PERS performs no service[, as defined below,] with a
 20 participating public employer in a qualifying position for a duration of:

21 (a) Six or more consecutive calendar months; or

1 (b) 12 or more consecutive calendar months under one of the following
2 circumstances:

3 (A) The member of PERS ceases performance of service for purposes that have
4 qualified the member for family leave, as described in ORS 238A.025(3)(c), as
5 determined by the employer; or

6 (B) The member of PERS ceases performance of service for career development
7 purposes, as described in ORS 238A.025(3)(d) ~~/.~~; or

8 (C) The member ceases performance of service on or after August 29, 2003 due
9 to the seasonal nature of the employee’s employment and does not return to the
10 same employer.

11 ~~[(2)]~~ (3) "Calendar month" means a full month beginning on the first calendar day of
12 a month and ending on the last calendar day of the same month.

13 ~~[(3)]~~ (4) "Calendar year" means 12 calendar months beginning on January 1 and
14 ending on December 31 following.

15 ~~[(4)]~~ (5) "Employee" has the same meaning as "eligible employee" in ORS
16 238A.005(4).

17 ~~[(5)]~~ (6) "Employee class" means a group of similarly situated employees whose
18 positions have been designated by their employer in a policy or collective bargaining
19 agreement as having common characteristics.

20 ~~[(6)]~~ (7) "Employee contributions" means contributions made to the individual
21 account program by an eligible employee under ORS 238A.330, or on behalf of the
22 employee under ORS 238A.335.

23 (8) “Final Average Salary” (FAS) has the same meaning given the term in:

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

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

5 (9)~~[(7)]~~ "Member" has the same meaning given the term in ORS 238A.005(10).

6 (10)~~[(8)]~~ "Member account" means the account of a member of the individual
7 account program.

8 (11)~~[(9)]~~ "Member of PERS" has the same meaning as "member" in ORS
9 238.005(12)(a), but does not include retired members.

10 (12)~~[(10)]~~ "OPSRP" means the Oregon Public Service Retirement Plan.

11 (13)~~[(11)]~~ "Overtime" means the salary or hours, as applicable, that an employer
12 has designated as overtime.

13 (14)~~[(12)]~~ "PERS" means the retirement system established under ORS chapter 238.

14 (15)~~[(13)]~~ (a) "Qualifying position" means a position or positions in which an
15 employee is expected to perform 600 or more combined hours of service in a calendar
16 year.

17 (b) An academic employee of a community college who is employed .375 full-
18 time equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis is deemed
19 to have performed 600 hours or more in the calendar year.

20 ~~[(b)]~~ (c) If an employee is employed in a position or positions not designated as
21 qualifying and performs 600 or more total hours of service in a calendar year, the position
22 or positions will be considered qualifying and the employee shall be considered to have
23 performed service in a qualifying position from the date of employment or January 1 of

1 the calendar year in which the employee performed more than 600 hours of service,
2 whichever is later.

3 ~~[(c)]~~ (d) Except as provided in subsection ~~[(d)]~~ (e) of this section, if an employee is
4 employed in a position or positions designated as qualifying and performs less than 600
5 hours of service in a calendar year, the position will be considered non-qualifying from
6 the date of employment or January 1 of the calendar year in which the employee
7 performed less than 600 hours of service, whichever is later.

8 ~~[(d)]~~ (e) For purposes of determining qualification upon separation from
9 employment in a position or positions, but not for any other purpose, if an employee was
10 employed in a position or positions for less than a full calendar year and performed less
11 than 600 hours of service in that calendar year, but would have performed 600 hours of
12 service or more if the employee had performed service in the same position or positions
13 for the full calendar year, and if the employee performed 600 or more hours of service in
14 the previous calendar year, the position or positions will be considered qualifying as of
15 the date of separation.

16 (16) ~~[(14)(a)]~~ "Salary" has the same meaning given the term in ORS 238A.005(16).

17 ~~[(b) Salary is considered earned when paid except as provided in subsection (c) of~~
18 ~~this section and as otherwise provided in ORS 238A.005(16)(b)(E).~~

19 ~~(c) Salary is considered earned when earned for purposes of calculating final~~
20 ~~average salary.]~~

21 (17) ~~[(15)]~~ "School employee" has the meaning given the term in ORS
22 ~~[238A.140(6)]~~ 238A.140(7).

1 (18) ~~[(16)]~~ "Service." Except as provided in subsection (c) of this section, a person is
2 still providing "service," for purposes of determining whether a "break in service" has
3 occurred under Section 2a, Chapter 733, Oregon laws 2003 ~~[(Enrolled HB 2020)]~~, during
4 any calendar month that a member:

5 (a) Is in an employer/employee relationship; and

6 (b) Receives a payment of "salary," as that term is defined in ORS ~~[238.005(20)]~~
7 238.005(21) or similar payment from workers compensation or disability.

8 (c) A member who is a school employee will be considered to provide "service"
9 during any calendar month the institution is not normally in session so long as the
10 member is in an employer/employee relationship both before and after the period the
11 institution is not normally in session.

12 (19) ~~[(17)]~~ The provisions of this rule are effective on January 1, 2004.

13 Stat. Auth.: 238A.450

14 Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330, 238A.335, Oregon

15 Laws 2005 chapters 332 & 808



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March 31, 2006

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING	3/31/06
DATE	
AGENDA	B.4.c.
ITEM	Eligibility

SUBJECT: Adoption of Rulemaking for OAR 459-075-0010, *Eligibility and Membership (Break in Service)*

OVERVIEW

- Action: Adopt permanent rule modifications to OAR 459-075-0010, *Eligibility and Membership*.
- Reason: House Bill 2189, enacted in the 2005 legislative session, modified the “Break in Service” (BIS) provisions. These modifications require changes to our administrative rules to clarify and implement its provisions.
- Subject: Standards for administering the BIS provisions.
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

ORS 238A.025 and Section 2a, chapter 733, Oregon Laws 2003, were amended in 2005 to provide for additional exceptions to the BIS provisions. Typically, a BIS occurs when a PERS Chapter 238 Program member is absent from qualifying service for a period of 6 or more full calendar months. While several exceptions to the BIS provisions already existed, HB 2189 added 3 more exceptions. The proposed changes to the OAR simply add these additional exceptions; no policy issues have been identified at this time.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

In section (2)(b), the word “vested” was inserted between “inactive” and “member” to be consistent with statutory language.

In section (2)(f), the administrative rule citation was replaced with the statutory citation for clarity.

In section (2)(g), the administrative rule citation was replaced with the statutory citation for clarity.

LEGAL REVIEW

This proposed rule was submitted to the Department of Justice for legal review. Their recommended changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on January 24, 2006 at 2:00 p.m. at PERS headquarters in Tigard. There were no attendees. The public comment period ended on March 1, 2006 at 5:00 p.m. PERS received no public comment on this rule.

IMPACT

Mandatory: Yes. The rule needs to be amended to include the new exceptions.

Impact: The rule has no discrete impact as it's just being amended to reflect changes in the law. By operation of those law changes, members who fall under one of the new BIS exceptions will now remain members of the PERS Chapter 238 Program.

Cost:

- ♦ *Members:* There will be no cost to members.
- ♦ *Employers:* There are intrinsic costs to employers since retirement allowances are borne by the employer. Exceptions to the BIS provisions will mean that members who would have incurred a BIS and moved into the OPSRP Pension Program will now remain PERS Chapter 238 Program members. In some cases, that can be cheaper for the employer, and in others more costly but, in any case, those costs are imposed by operation of the statute.
- ♦ *Administration:* Although some minor changes to the program are statutorily required, the proposed rules will require little administrative adjustment and will not substantially affect costs to review, process, or administer membership determinations.
- ♦ *Fund:* There will be no effect on the Fund.

RULEMAKING TIMELINE

December 15, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2006	<i>Oregon Bulletin</i> published the Notice.
January 24, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 27, 2006	PERS Board notified that staff began the rulemaking process.
March 1, 2006	Public comment period ended at 5:00 p.m.
March 31, 2006	Staff proposes adopting the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-075-0010, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- **Reason:** Adopting these modifications will conform the agency's rules to the state of the law after the 2005 legislative changes and better reflect agency practices.

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.

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

MEETING	3/31/06
DATE	
AGENDA	B.4.c.
ITEM	Eligibility

1 **459-075-0010**

2 **Eligibility and Membership**

3 (1) Eligibility. An employee is eligible to become a member and receive benefits
4 under the OPSRP pension program, and ineligible to become (or remain) a member of
5 PERS or accrue benefits under PERS, if the employee:

6 (a) Begins employment in a qualifying position with a participating public employer
7 on or after August 29, 2003;

8 (b) Was not a member of PERS before August 29, 2003; and

9 (c) Did not perform any period of service before August 29, 2003, that is credited to
10 the six-month period required under ORS 238.015 for membership in PERS; or

11 (d) Was an active or inactive member of PERS on August 28, 2003, and incurs a

12 *[b]“Break in [s]Service.”*

13 (2) *“Break in [s]Service.”*:

14 (a) For purposes of this section, ORS 238A.025 and section *[s 2 and]* 2a of chapter
15 733, Oregon Laws 2003 *[(Enrolled HB 2020)]*:

16 (A) "Active member of PERS" means an employee who is a member of PERS and
17 not separated from service in a qualifying position with a participating public employer.

18 (B) "Inactive member of PERS" means an employee who is a member of PERS but
19 was separated from service in a qualifying position with a participating public employer,
20 including a member who was on a leave of absence without pay as described in OAR

21 459-010-0010.

1 (b) An employee will not incur a “Break in Service” if the employee was an
2 inactive vested member of PERS on August 28, 2003, and returns to a qualifying
3 position before January 1, 2006 with the same participating public employer the
4 employee was employed with before the employee became inactive.

5 ([b]c) If an employee who was an active member of PERS on August 28, 2003,
6 incurs a [b]“Break in [s]Service”, the employee shall be entitled to benefits under PERS
7 for all service performed prior to the [b]“Break in [s]Service”, and benefits under the
8 OPSRP pension program for all service performed after the [b]“Break in [s]Service.”

9 ([c]d) If an employee who was an inactive member of PERS on August 28, 2003,
10 incurs a [b]“Break in [s]Service” concluding prior to January 1, 2004, the employee
11 shall be entitled to benefits under PERS for all service performed prior to the [b]“Break
12 in [s]Service” [and prior to January 1, 2004,] and benefits under the OPSRP pension
13 program for all service performed on or after January 1, 2004.

14 ([d]e) If an employee who was an inactive member of PERS on August 28, 2003,
15 incurs a [b]“Break in [s]Service” concluding on or after January 1, 2004, the employee
16 shall be entitled to benefits under PERS for all service performed prior to the [b]“Break
17 in [s]Service” and benefits under the OPSRP pension program for all service performed
18 after the [b]“Break in [s]Service.”

19 ([e]f) If a member of PERS ceases performance of service for one of the reasons
20 described in ORS 238A.025(3)(c) or (d) [OAR 459-070-0001(1)(b)], the member returns
21 to a qualifying position if the member resumes performance of hours of service and:

22 (A) Performs 600 hours of service in the calendar year(s) of absence; or

1 (B) Performs a total of 600 hours of service in the calendar year prior to leaving
2 service, with no less than 50 hours per month performed in the last six months of that
3 year, and performs 600 hours of service in the calendar year following the return to
4 service, with no less than 50 hours per month performed in the first six months of that
5 year.

6 ~~[(f)]~~ (g) If a member of PERS ceases performance of service for reasons other than
7 those described in ORS 238A.025(3)(c) or (d) ~~[OAR 459-070-0001(1)(b)]~~, the member
8 returns to a qualifying position if the member resumes performance of service and
9 performs 600 hours in the calendar year of the return to service.

10 ~~[(g)]~~ (h) If a member of PERS ceases performance of service to serve as a legislator,
11 the absence from regular employment for that purpose shall not be considered a
12 ~~[b]~~“Break in ~~[s]~~Service.”

13 ~~[(h)]~~ (i) If a member of PERS ceases performance of service to serve in the
14 uniformed services, as defined in the 1994 federal Uniformed Services Employment and
15 Reemployment Rights Act (USERRA), and meets the eligibility requirements for
16 reemployment under USERRA, the absence from service for that purpose shall not be
17 considered a ~~[b]~~“Break in ~~[s]~~Service.”

18 (j) If a member of PERS ceases performance of service and receives a disability
19 retirement allowance under ORS 238.320, the absence from regular employment
20 during that period, regardless of when the disability period begins or ends, shall not
21 be considered a “Break in Service.”

22 (k) If a member of PERS ceases performance of service on or after August 29,
23 2003, due to the seasonal nature of the employee’s employment, the absence from

1 regular employment during that period shall not be considered a “Break in Service”
2 as long as the employee returns to the same public employer before 12 full calendar
3 months have elapsed.

4 (3) Membership:

5 (a) Except as provided in subsection (c) of this section, an employee who meets the
6 requirements in section (1) of this rule shall become a member of the OPSRP pension
7 program on the first day of the calendar month after the employee completes six full
8 calendar months of employment in a qualified position with the same participating public
9 employer.

10 (b) If the six months required by subsection (a) of this section are interrupted by 30
11 or more consecutive working days in which the employee performs no paid service for
12 the same participating public employer, the period of employment prior to the
13 interruption shall not count toward the six-month requirement.

14 (c) An employee who was an active or inactive member of PERS on August 28,
15 2003, and incurred a [b]“Break in [s]Service.” shall become a member of the OPSRP
16 pension program on the first day of the calendar month after the return to employment.

17 Stat. Auth.: [OL 2003 Ch. 733] ORS 238A.450

18 Stats. Implemented: ORS 238A.025, Section 2a, c[C]hapter 733, Oregon Laws
19 2003[, 38 U.S.C. Sec. 4318(a)(2)(A)].



Oregon

Theodore R. Kulongoski, Governor

March 31, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING	3/31/06
DATE	
AGENDA	B.4.d.
ITEM	OSGP

SUBJECT: Adoption of OAR 459-050-0060, *OSGP Designation of Beneficiary*

OVERVIEW

- Action: Adopt permanent rule modifications to OAR 459-050-0060, *OSGP Designation of Beneficiary*.
- Reason: To incorporate statutory changes.
- Subject: Allowing an OSGP participant to revoke their beneficiary through their divorce.
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

House Bill 2978, adopted by the 2005 legislature, allows a participant to revoke their beneficiary designation upon divorce or dissolution of marriage, effective upon the entry of the judgment. The new statutory provision applies to a "Governing Instrument" which includes "...a deferred compensation plan under section 457 of the Internal Revenue Code," which describes the Oregon Savings Growth Plan (OSGP).

OAR 459-050-0060 currently provides that an OSGP participant's designation of beneficiary shall not be revoked or nullified by a decree of divorce, annulment, or similar circumstance. The rule must be modified to conform to this new statutory authority for participants to revoke their designations through their divorce decrees or judgments.

LEGAL REVIEW

This proposed rule was submitted to the Department of Justice for legal review. Their recommended changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on January 24 at 2:00 p.m. at PERS headquarters in Tigard. There were no attendees. The public comment period ended on March 1, 2006 at 5:00 p.m. PERS received no public comment on this rule.

IMPACT

Mandatory: Yes; the rule should be changed to conform to the new statutory authority.

Impact: This change should result in benefits to be distributed to the appropriate party following a divorce.

Cost:

- *Members:* There is no new cost to members.
- *Employers:* There is no new cost to employers.
- *Administration:* There is no added administrative cost.
- *Fund:* There is no cost to the fund.

RULEMAKING TIMELINE

December 15, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 1, 2006	<i>Oregon Bulletin</i> published the Notice.
January 24, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 27, 2006	PERS Board notified that staff began the rulemaking process.
March 1, 2006	Public comment period ended at 5:00 p.m.
March 31, 2006	Staff proposes adopting the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-050-0060, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- **Reason:** Adopting these modifications will conform the agency’s rules to the state of the law after the 2005 legislative changes.

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.

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

MEETING	3/31/06
DATE	
AGENDA	B.4.d.
ITEM	OSGP

1 **459-050-0060**

2 **OSGP Designation of Beneficiary**

3 The purpose of this rule is to establish the criteria and process that must be used to
4 designate a beneficiary. The provisions in this rule apply to participants, a participant's
5 surviving beneficiaries, alternate payees and an alternate payee's surviving beneficiaries.

6 (1) Definitions. The following definitions apply for the purpose of this rule:

7 (a) "Administrator" means the person appointed by a probate court to handle the
8 distribution of property of someone who has died without a will, or with a will that fails
9 to name someone to carry out this task.

10 (b) "Conservator" means the person who has been appointed by a court to manage
11 the property and financial affairs of an incapacitated person.

12 (c) "Executor" means the person named in a will to handle the property of someone
13 who has died. The executor must collect and manage the property, pay debts and taxes,
14 and distribute the remaining assets as specified in the will. In addition, the executor
15 handles any probate court. Executors are also called personal representatives.

16 (d) "Personal Representative" means the person named in a will to handle the
17 property of someone who has died. Personal representatives are also called executors.

18 (2) Designation of Beneficiary. When a participant in the Deferred Compensation
19 Program dies, the benefit of the participant's account shall be paid to the beneficiaries
20 designated by the participant. For purposes of this rule, a participant may designate any
21 of the following as a primary or contingent beneficiary:

22 (a) Any natural person(s);

1 (b) The personal representative or executor of the estate of the participant;

2 (c) A charity or other non-profit organization; or

3 (d) A trust that is valid under Oregon state law.

4 (A) If a living trust is designated, the trust must be legally in existence before the
5 participant makes the designation.

6 (B) If a designated trust fails to satisfy the requirements in OAR 459-050-
7 0300(1)(c)(B), payment to the trust shall be made as provided in OAR 459-050-0300(11).

8 (3) Surviving beneficiary or alternate payee. Any surviving beneficiary designated
9 under section (2) of this rule or an alternate payee may designate a beneficiary in the
10 same manner as a participant.

11 (4) Power of attorney. The agent shall submit a copy of the Power of Attorney
12 document with the filing of the designation of beneficiary form. The Deferred
13 Compensation Plan may, but is not required to, accept a beneficiary designation made by
14 an agent or attorney-in-fact appointed under a Power of Attorney document. If the
15 Deferred Compensation Program is satisfied that a Power of Attorney document is valid,
16 has not been revoked, and empowers the agent or attorney-in-fact to designate a
17 beneficiary, the program shall accept a beneficiary designation made by the agent or
18 attorney-in-fact appointed under the Power of Attorney document.

19 (5) Conservator. The Deferred Compensation Program shall accept a beneficiary
20 designation made by a conservator for the participant provided that the conservator
21 submit a certified copy of the letters of conservatorship or other court order appointing a
22 conservator with the designation of beneficiary form.

1 (6) Effective date of designation of beneficiary. A designation of beneficiary is not
2 effective until a properly completed designation on a form supplied by the Deferred
3 Compensation Program is filed with the Deferred Compensation Program. In the event a
4 designation of beneficiary is incomplete staff will provide notification within 30 days
5 explaining why the form is incomplete.

6 (7) Revocation of designation of beneficiary. A participant, alternate payee or
7 surviving beneficiary may revoke any and all previous beneficiary designations by filing
8 a new designation on a properly completed form supplied by the Deferred Compensation
9 Program. This designation must be in accordance with section (2) of this rule.

10 (8) Dissolution of marriage. A participant's designation of beneficiary may [*shall*
11 *not*] be revoked or nullified by a decree of divorce, decree of annulment, or other similar
12 circumstance effective upon the entry of a judgment that revokes the designation of
13 the beneficiary.

14 (9) No Designated Beneficiary. If the designated primary and contingent
15 beneficiaries on file with the Deferred Compensation Program have predeceased the
16 deceased participant, surviving beneficiary, or alternate payee who made the designation,
17 or if the program is otherwise unable to administer the designation, the Deferred
18 Compensation Plan shall distribute the benefit of the deceased's account to the executor,
19 personal representative, or administrator of the deceased's estate.

20 (a) If the program is unable to locate the designated beneficiaries or the executor,
21 personal representative, or administrator of the estate by December 31 of the calendar
22 year following the participant's death, the amount in the deceased's account on that date

1 shall be credited to the Deferred Compensation Fund. The amount credited may be used
2 for the payment of administrative expenses of the Deferred Compensation Program.

3 (b) If the designated beneficiaries or the executor, personal representative, or
4 administrator of the estate is later located or other future successful claim is filed,
5 payment will be made in an amount not to exceed the balance in the deceased's account
6 credited to the Deferred Compensation Fund in subsection (9)(a).

7 Stat. Auth: ORS 243.470

8 Stats. Implemented: ORS 243.401 - ORS 243.507, [Ch. 285 OL 2005](#)



Oregon

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March 31, 2006

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MEETING	3/31/06
DATE	
AGENDA	B.5.
ITEM	Average Salary

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: Adoption of Rules Affected by Final Average Salary and Individual Account Program "Salary" Definition Legislation

OAR 459-005-0001, *Definitions, Generally*

OAR 459-010-0040, *Payments Valued for Salary and Contributions (Repeal)*

OAR 459-070-0001, *OPSRP Definitions*

OAR 459-075-0030, *Calculation of Overtime for Purposes of Final Average Salary*

OAR 459-080-0150, *Employee Contributions into the IAP Account*

OVERVIEW

- Action: Adopt permanent rule modifications to OAR 459-005-0001, *Definitions, Generally*, 459-070-0001, *OPSRP Definitions*, 459-075-0030, *Calculation of Overtime for Purposes of Final Average Salary*, and 459-080-0150, *Employee Contributions into the IAP Account*. Repeal OAR 459-010-0040, *Payments Valued for Salary and Contributions*.
- Reason: HB 2189 and HB 3262, enacted in the 2005 legislative session, 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).
- Subject: Definition and calculation of FAS and definition of "salary" for the purpose of contributions to the IAP.
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

OAR 459-005-0001 and 459-070-0001: Calculation rules for FAS were not consistent among the PERS programs. Basically, Chapter 238 Program Tier One members had FAS calculated based on when salary was paid, but Tier Two and OPSRP Pension members had FAS calculated based on when salary was earned.

PERS supported legislation in the 2005 session to harmonize these rules, but not all stakeholders agreed to the modifications. HB 3262 changed the definition of FAS for Tier Two and OPSRP Pension members to salary paid, except for local government employers who, at their request, will continue to base FAS on when salary is earned for

those members. The proposed amendments to OAR 459-005-0001 and OAR 459-070-0001 bring these rules into compliance with the statute.

OAR 459-075-0030: When calculating FAS for an OPSRP Pension Program member, overtime salary that can be included in that calculation is limited to the average number of overtime hours for the same class of employees. OAR 459-075-0030 provides that the employer will determine the average number of hours for an employee class. The 2005 legislature adopted HB 2189, which directs the Oregon Department of Administrative Services to vary the overtime hours average based on the class' geographic placement (i.e., a different average for Eastern Oregon correctional officers than for Western Oregon correctional officers). This rule modification specifically incorporates the statutory directive to DAS.

OAR 459-080-0150: While all PERS Chapter 238 Program members became members of the IAP on January 1, 2004, the definition of "salary" that was to be used to calculate contributions was inconsistent between the programs. The 2005 legislature amended ORS 238A.305 to have these PERS Chapter 238 Program members' IAP contributions determined based on the original definition of "salary." The proposed rule amendment adds this new definition to comply with the statute.

OAR 459-010-0040: This rule is obsolete and redundant because the definition of "salary" has evolved and been incorporated into other rules, so it's being repealed.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

The following modifications have been made:

OAR 459-005-0001- In subsection (15)(b) the text, "and (3)" was deleted from the statutory citation.

OAR 459-070-0001- In subsection (8)(a) the text, "and (2)" was deleted from the statutory citation. In subsection (18)(b) the letters "ORS" were restored to the statutory citation.

The statutory citations in OAR 459-005-0001(15)(b) and OAR 459-070-0001(8)(a) were narrowed to more accurately reflect the basic statutory definition of FAS.

LEGAL REVIEW

These proposed rules were submitted to the Department of Justice for legal review. Their recommended changes have been incorporated in the rules as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on February 28, 2006 at 2:00 p.m. at PERS headquarters in Tigard. One member of the public attended but no public comment on the rules was received. The public comment period ended on March 10, 2006, at 5:00 p.m. PERS has received no public comment on these rules.

IMPACT

Mandatory: Yes, to comply with statute.

Impact: These rule modifications incorporate statutory changes that will require some modification to the employer payroll reporting system (EDX). These changes will be made available to employers in upcoming EDX releases as modifications can be scheduled with other related projects.

Cost: The underlying statutory changes that these rules reflect will have a cost impact on members and employers, as well as administrative costs to PERS. For example, members and employers will need to make retroactive IAP contributions because of the “salary” definition change. Employers will also need to modify their EDX submissions for both FAS and “salary” changes. The retroactive nature of the “salary” change will also create a backlog of IAP contribution adjustments that will need to be cleared (that issue is being addressed in the context of IAP Remediation). These costs are incurred to comply with the statutory changes, however, and the rule modifications themselves are not causing any distinct or intrinsic costs.

RULEMAKING TIMELINE

January 13, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 27, 2006	PERS Board notified that staff had started the rulemaking process.
February 1, 2006	<i>Oregon Bulletin</i> published the Notice.
February 28, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
March 10, 2006	Public comment period ended at 5:00 p.m.
March 31, 2006	Staff proposes adoption of the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt 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.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- **Reason:** Adopting these modifications will conform the agency’s rules to the state of the law after the 2005 legislative changes.

Adoption – *Final Average Salary Rules*

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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.

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

MEETING	3/31/06
DATE	
AGENDA	B.5.
ITEM	Average Salary

1 **459-005-0001**

2 **Definitions, Generally**

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

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

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

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

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

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

22 (a) Computing final average salary; and

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

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

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

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

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

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

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

16 (8) "Effective retirement date" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (26) "Salary" has, "*remuneration*" and "*compensation*" have] the same
15 meaning[*s*] as provided in ORS 238.005(21).

16 (a) For a Tier One member, *[the]* a lump sum payment for accrued vacation pay is
17 considered salary:

18 (A) In determining employee and employer contributions.

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

20 (b) For a Tier Two member, *[the]* a lump sum payment for accrued vacation
21 pay~~[ment]~~:

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

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

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

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

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

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

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

15 (a) Sick leave programs;

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

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

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

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

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

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

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

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

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

15 Stat. Auth.: ORS 238.650

16 Stats. Implemented: ORS Ch. 238 and 238A

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 10 – MEMBERSHIP

MEETING	3/31/06
DATE	
AGENDA	B.5.
ITEM	Average Salary

1 **[459-010-0040**

2 ***Payments Valued for Salary and Contributions***

3 *The items following are payments valued for salary and contributions:*

4 *(1)(a) The term "salary" means the remuneration paid an employee in cash out of*
5 *the funds of a public employer in return for services rendered to the employer;*

6 *(b) Living quarters, board, lodging, fuel, laundry, and other advantages furnished an*
7 *employee in return for services shall be taken into account and valued for salary and*
8 *contribution purposes only as determined by the Board and as certified by the employer.*

9 *(2)(a) Payments of employee and employer money into a deferred compensation*
10 *plan are deemed salary paid in each month of deferral;*

11 *(b) The amount of participation in a tax-sheltered or deferred annuity is deemed*
12 *salary paid in each month of participation.*

13 *(3)(a) Except as provided in subsection (3)(b) of this rule, the payment of retroactive*
14 *wages pursuant to a labor or other employment agreement is salary at the time paid;*

15 *(b) Retroactive payments made to an employee pursuant to an award by a court or*
16 *order of or a conciliation agreement with an administration agency charged with*
17 *enforcing federal or state statute/regulation protecting the employees rights to*
18 *employment or wages shall be allocated to and deemed paid in the periods in which the*
19 *work was done or in which it would have been done.*

20 *(4) In no case shall salary or other advantages include:*

21 *(a) Travel or any other expenses incidental to employer's business which is*
22 *reimbursed by the employer;*

1 *(b) Payments by an employer on behalf of employee (or employee and dependents)*

2 *for any insurance, for which the employee has no cash option;*

3 *(c) Payments made on account of an employees death;*

4 *(d) Any lump sum payment for accumulated unused sick leave;*

5 *(e) Any accelerated payment of an employment contract for a future period or an*
6 *advance against future wages;*

7 *(f) Any retirement incentive, retirement severance pay, retirement bonus or*
8 *retirement gratuitous payment.*

9 *Stat. Auth.: ORS 237*

10 *Stats. Implemented:*

11 *Hist.: PER 8, f. 12-15-55; PER 12-1981, f. & ef. 11-23-81]*

12

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 070 – OREGON PUBLIC SERVICE
RETIREMENT PLAN, GENERALLY**

MEETING DATE	3/31/06
AGENDA ITEM	B.5. Average Salary

1 **459-070-0001**

2 **Definitions**

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

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

9 **(a) Librarians, counselors, and aides in non-teaching positions, tutors, or other**
 10 **non-teaching faculty, and classified, professional or nonprofessional support staff**
 11 **are not academic employees for the purposes of section 20 of OL 2005, Ch. 332; but**
 12 **are subject to the membership requirements under ORS 238A.100 and OAR 459-**
 13 **075-0010.**

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

18 ~~[(1)]~~ **(2)** "Break in ~~[s]~~Service" means a period concluding on or after August 29,
 19 2003, during which a member of PERS performs no service~~[, as defined below,]~~ with a
 20 participating public employer in a qualifying position for a duration of:

21 (a) Six or more consecutive calendar months; or

1 (b) 12 or more consecutive calendar months under one of the following
2 circumstances:

3 (A) The member of PERS ceases performance of service for purposes that have
4 qualified the member for family leave, as described in ORS 238A.025(3)(c), as
5 determined by the employer; or

6 (B) The member of PERS ceases performance of service for career development
7 purposes, as described in ORS 238A.025(3)(d) ~~/.~~; or

8 (C) The member ceases performance of service on or after August 29, 2003 due
9 to the seasonal nature of the employee’s employment and does not return to the
10 same employer.

11 ~~[(2)]~~ (3) "Calendar month" means a full month beginning on the first calendar day of
12 a month and ending on the last calendar day of the same month.

13 ~~[(3)]~~ (4) "Calendar year" means 12 calendar months beginning on January 1 and
14 ending on December 31 following.

15 ~~[(4)]~~ (5) "Employee" has the same meaning as "eligible employee" in ORS
16 238A.005(4).

17 ~~[(5)]~~ (6) "Employee class" means a group of similarly situated employees whose
18 positions have been designated by their employer in a policy or collective bargaining
19 agreement as having common characteristics.

20 ~~[(6)]~~ (7) "Employee contributions" means contributions made to the individual
21 account program by an eligible employee under ORS 238A.330, or on behalf of the
22 employee under ORS 238A.335.

23 (8) “Final Average Salary” (FAS) has the same meaning given the term in:

- 1 **(a) ORS 238A.130(1) for OPSRP Pension Program members who are not**
- 2 **employed by a local government as defined in ORS 174.116; or**
- 3 **(b) ORS 238A.130(3) for OPSRP Pension Program members who are employed**
- 4 **by a local government as defined in ORS 174.116.**

5 **(9)** ~~[(7)]~~ "Member" has the same meaning given the term in ORS 238A.005(10).

6 **(10)** ~~[(8)]~~ "Member account" means the account of a member of the individual
7 account program.

8 **(11)** ~~[(9)]~~ "Member of PERS" has the same meaning as "member" in ORS
9 238.005(12)(a), but does not include retired members.

10 **(12)** ~~[(10)]~~ "OPSRP" means the Oregon Public Service Retirement Plan.

11 **(13)** ~~[(11)]~~ "Overtime" means the salary or hours, as applicable, that an employer
12 has designated as overtime.

13 **(14)** ~~[(12)]~~ "PERS" means the retirement system established under ORS chapter 238.

14 **(15)** ~~[(13)]~~ (a) "Qualifying position" means a position or positions in which an
15 employee is expected to perform 600 or more combined hours of service in a calendar
16 year.

17 **(b) An academic employee of a community college who is employed .375 full-**
18 **time equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis is deemed**
19 **to have performed 600 hours or more in the calendar year.**

20 ~~[(b)]~~ **(c)** If an employee is employed in a position or positions not designated as
21 qualifying and performs 600 or more total hours of service in a calendar year, the position
22 or positions will be considered qualifying and the employee shall be considered to have
23 performed service in a qualifying position from the date of employment or January 1 of

1 the calendar year in which the employee performed more than 600 hours of service,
2 whichever is later.

3 ~~[(c)]~~ (d) Except as provided in subsection ~~[(d)]~~ (e) of this section, if an employee is
4 employed in a position or positions designated as qualifying and performs less than 600
5 hours of service in a calendar year, the position will be considered non-qualifying from
6 the date of employment or January 1 of the calendar year in which the employee
7 performed less than 600 hours of service, whichever is later.

8 ~~[(d)]~~ (e) For purposes of determining qualification upon separation from
9 employment in a position or positions, but not for any other purpose, if an employee was
10 employed in a position or positions for less than a full calendar year and performed less
11 than 600 hours of service in that calendar year, but would have performed 600 hours of
12 service or more if the employee had performed service in the same position or positions
13 for the full calendar year, and if the employee performed 600 or more hours of service in
14 the previous calendar year, the position or positions will be considered qualifying as of
15 the date of separation.

16 (16) ~~[(14)(a)]~~ "Salary" has the same meaning given the term in ORS 238A.005(16).

17 ~~[(b) Salary is considered earned when paid except as provided in subsection (c) of~~
18 ~~this section and as otherwise provided in ORS 238A.005(16)(b)(E).~~

19 ~~(c) Salary is considered earned when earned for purposes of calculating final~~
20 ~~average salary.]~~

21 (17) ~~[(15)]~~ "School employee" has the meaning given the term in ORS
22 ~~[238A.140(6)]~~ 238A.140(7).

1 **(18)**~~[(16)]~~ "Service." Except as provided in subsection (c) of this section, a person is
2 still providing "service," for purposes of determining whether a "break in service" has
3 occurred under Section 2a, Chapter 733, Oregon laws 2003 ~~[(Enrolled HB 2020)]~~, during
4 any calendar month that a member:

5 (a) Is in an employer/employee relationship; and

6 (b) Receives a payment of "salary," as that term is defined in ORS ~~[238.005(20)]~~
7 **238.005(21)** or similar payment from workers compensation or disability.

8 (c) A member who is a school employee will be considered to provide "service"
9 during any calendar month the institution is not normally in session so long as the
10 member is in an employer/employee relationship both before and after the period the
11 institution is not normally in session.

12 **(19)**~~[(17)]~~ The provisions of this rule are effective on January 1, 2004.

13 Stat. Auth.: 238A.450

14 Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330, 238A.335, **Oregon**

15 **Laws 2005 chapters 332 & 808**

16

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 75 – OPSRP PENSION PROGRAM**

MEETING	3/31/06
DATE	
AGENDA	B.5.
ITEM	Average Salary

1 **459-075-0030**

2 **Calculation of Overtime for Purposes of Final Average Salary**

3 (1) For purposes of calculating final average salary, a member's salary shall not
4 include any amounts attributable to hours of overtime that exceed the average number of
5 hours of overtime for the same employee class.

6 (2) The average number of hours of overtime for an employee class shall be
7 determined by the employer based on a reasonable expectation of the average number of
8 hours of overtime employees in that class would perform over the course of a calendar
9 year. The employer shall maintain records of the average number of hours of overtime for
10 each employee class for each calendar year and provide those records to PERS upon
11 request.

12 **(3) Under the provisions of ORS 238A.130(5) the Oregon Department of**
13 **Administrative Services shall establish by rule more than one overtime average for a**
14 **class of state employees based on the geographic placement of the employees.**

15 Stat. Auth.: *[OL 2003 Ch. 733]* **ORS 238A.130(3); 238A.450**

16 Stats. Implemented: *[OL 2003 Ch. 733]* **ORS 238A.130(3)**

DRAFT *DRAFT* *DRAFT* *DRAFT* *DRAFT* *DRAFT*
OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM

1 **459-080-0150**

MEETING DATE	3/31/06
AGENDA ITEM	B.5. Average Salary

2 **Employee Contributions into the IAP Account**

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

4 (a) "Forfeiture account" means the account set up by PERS to administer
5 overpayments of employee contributions.

6 (b) "Salary" has the same meaning provided in:

7 (A) ORS 238A.005 for members who established membership in the Individual
8 Account Program under the provisions of OAR 459-080-0010(1); or

9 (B) ORS 238.005 for members who established membership in the Individual
10 Account Program under the provisions of OAR 459-080-0010(2) or (3).

11 (2) Employee contributions under the OPSRP Individual Account Program ("IAP")
12 are required from all eligible employees who qualify as members, as established under
13 OAR 459-080-0010, who:

14 (a) Are working in a position designated as a "qualifying position" as defined in
15 OAR 459-070 0001~~[(13)]~~; or

16 (b) Perform a total of 600 or more hours in a calendar year with one or more
17 participating employers in one or more classes the participating employer has designated
18 as a participating class.

19 (3) Contributions for current members.

20 (a) For a member who meets the standard set forth in section (2)(a) of this rule,
21 contributions of six percent of the member's salary are required to be transmitted for all

1 pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the
2 current year, whichever is later.

3 (b) Once a member meets the standard set forth in section (2)(b) of this rule,
4 retroactive contributions of six percent of the member's salary are required to be
5 transmitted following the member's performance of 600 hours in the calendar year.

6 Contributions are due for all pay periods assigned under OAR 459-070-0100 from the
7 date of hire, or January 1 of the current year, whichever is later.

8 (4) Contributions for new employees.

9 (a) For an eligible employee who meets the standard set forth in section (2)(a) of this
10 rule, contributions of six percent of the member's salary are required to be transmitted
11 after the employee has established membership in the IAP as set forth under OAR 459-
12 080-0010.

13 (b) Once an eligible employee meets the standard set forth in section (2)(b) of this
14 rule, retroactive contributions of six percent of the member's salary are required to be
15 transmitted from the date of membership in the IAP, as established under OAR 459-080-
16 0010.

17 (5)(a) If contributions are submitted on behalf of an eligible employee who does not
18 meet the standards set forth under section (2)(a) or (b) of this rule, the actual amount of
19 those contributions will be returned after the end of the calendar year during which the
20 pay period triggering those contributions ended.

21 (b) Any net earnings, losses, or administrative fees attributable to the returned
22 contributions will be applied to the forfeiture account.

23 Stat. Auth.: ORS 238A.450

24 Stats. Implemented: ORS 238A.330



Oregon

Theodore R. Kulongoski, Governor

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March 31, 2006

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING	3/31/06
DATE	
AGENDA	B.6.
ITEM	Beneficiary

SUBJECT: Adoption of OAR 459-014-0030, *PERS Designation of Beneficiary*

OVERVIEW

- Action: Adopt modifications to OAR 459-014-0030, *PERS Designation of Beneficiary*.
- Reason: Update the PERS Designation of Beneficiary rule to comply with statutory changes and to reflect current PERS practices.
- Subject: Remove the requirement that a beneficiary must have an insurable interest in the life of the member.
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

Sections (1) and (2) of OAR 459-014-0030, which require that a beneficiary have an insurable interest in the life of the member, have been in this rule since it was adopted in 1955. The doctrine of insurable interest is no longer recognized in common law. This rule's requirements have, however, caused confusion because the insurable interest requirement hasn't been deleted and some members' counsel have tried to use that requirement in beneficiary disputes, even though it's no longer relevant.

PERS staff proposes to delete sections (1) and (2) from OAR 459-014-0030 to be consistent with state law and PERS practices at this time. This rule will be reviewed again and more comprehensively when staff returns with rules related to deceased members, slated for later this year.

LEGAL REVIEW

This proposed rule was submitted to the Department of Justice for legal review. Their recommended changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on February 28, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No one attended. The public comment period ended on March 1, 2006 at 5:00 p.m. PERS received no public comment on this rule.

IMPACT

Mandatory: Yes, to comply with statute and PERS practices.

Impact: The modifications conform to state law and do not have a material fiscal or economic impact.

Cost: There is not expected to be any cost incurred by members, employers, PERS administration or the PERS fund.

RULEMAKING TIMELINE

January 13, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
February 1, 2006	<i>Oregon Bulletin</i> published the Notice.
February 24, 2006	PERS Board notified that staff began the rulemaking process.
February 28, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
March 10, 2006	Public comment period ended at 5:00 p.m.
March 31, 2006	Staff proposes adopting the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-014-0030, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- **Reason:** Adopting these modifications will conform the agency’s rules to the state of the law and better reflect agency practices.

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.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 014 – DEATH BENEFITS

MEETING	3/31/06
DATE	
AGENDA	B.6.
ITEM	Beneficiary

1 459-014-0030

2 **PERS** Designation of Beneficiary

3 *[(1) No person may be designated as a beneficiary to receive the balance in a*
4 *member's account in the Retirement Fund in the event of the member's death before*
5 *retirement, unless facts show that such person has an insurable interest in the life of the*
6 *member.*

7 *[(2) An insurable interest in the life of a member is an interest whether pecuniary, or*
8 *one of affection or dependency based on reasonable grounds for expectation of benefit or*
9 *advantage from continuation of the life of the member and arising out of the relationship*
10 *between the member and the possessor of such interest, whether the relationship be one*
11 *of affinity, consanguinity, or debtor and creditor. It is not necessary that the insurable*
12 *interest continue until the death of the member in order to qualify the beneficiary to*
13 *receive such payments as may otherwise be due to him.]*

14 **(1)** *[(3)]* A member may designate a new beneficiary or revoke a previous
15 designation by giving written notice to the Retirement Board, but no revocation or new
16 designation shall be effective until received by the Public Employees Retirement Board.
17 (Forms will be furnished by the Board upon request.)

18 **(2)** *[(4)]* When a member designates a new beneficiary or beneficiaries, such action
19 shall annul and revoke all prior designations.

20 **(3)** *[(5)]* The right of a beneficiary to receive the balance in a member's account in
21 the Retirement Fund shall not be deemed nullified or waived by any agreement or
22 property settlement between the member and the beneficiary, or on behalf of either of

1 them, which does not specifically mention such right and waive it on the part of the
2 beneficiary or vacate and set aside the designation of said beneficiary by such member.

3 Stat. Auth.: ORS 238.650

4 Stats. Implemented: ORS 238.390



Oregon

Theodore R. Kulongoski, Governor

March 31, 2006

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TO: Members of the PERS Board
FROM: Dale S. Orr, Coordinator, Actuarial Analysis Section
SUBJECT: Final Crediting of 2005 Earnings /Reserve Deployment

MEETING DATE	3/31/06
AGENDA ITEM	B.7. 2005 Earnings

EXECUTIVE SUMMARY

At the February 24, 2006 meeting, the PERS Board adopted a motion to preliminarily allocate 2005 earnings and deploy reserves. Staff now returns to request that the Board ratify that allocation as its final crediting decision for 2005 earnings. Final 2005 earnings will be provided to the Board as a walk-in item at its March 31, 2006 meeting. Final earnings will differ slightly from the February 2006 materials due to recognition of previously unreported 2005 earnings and final adjustment and posting of the various accounts and reserves.

BACKGROUND

The Board's February 24, 2006 decision directed that 2005 earnings be preliminarily credited as follows:

Tier One Member Regular Accounts:	8.00%
Tier Two Member Regular Accounts:	13.86%
Employer Account Reserves:	13.86%
Benefits In Force Reserves:	13.86%

The Board also decided preliminarily to deploy the full balance of the Capital Preservation Reserve and all but \$250 million in the Contingency Reserve. The Board directed that these dollars be allocated on a proportional basis back to the accounts and reserves whose earnings previously were set aside to fund those two reserves.

The Board's preliminary 2005 earnings crediting decision was reported to the appropriate legislative committee as required in ORS 238.670(5). The attached legislative report was submitted on February 28, 2006. The report includes a chart (Attachment A) that reflects the results of the Board's preliminary decision and a copy of the pertinent administrative rule (Attachment B).

The preliminary decisions and the resulting report to the Legislature do not prohibit the PERS Board from changing its final crediting and reserving decisions. If the Board makes a significant change from its preliminary decision, staff will promptly report the Board's actions to the Legislature.

FINAL EARNINGS CREDITING/RESERVE DEPLOYMENT DECISION

Staff recommends that the PERS Board ratify its February 24, 2006 preliminary decision crediting 2005 earnings. To review, adopting that as the Board's final decision would (based on the following assumptions and preliminary steps, as outlined in OAR 459-007-0005):

- Credit the health insurance accounts in the PERS Fund with their actual earnings, less administrative expenses incurred.
- Credit employer lump sum payment accounts with their actual earnings based on time on deposit, less administrative expenses as authorized by ORS 238.225(10).
- Credit Variable Annuity Accounts with their actual earnings, less a proportional charge for administrative expenses.
- Credit Individual Account Program accounts with their actual earnings, less an allocated charge for administrative expenses.
- Net the agency's administrative expenses from available earnings, in accordance with ORS 238.610.

Further, the allocation would credit 2005 earnings to Tier One/Tier Two Member Accounts, Employer Reserves and the Benefits-In-Force Reserve as explained below and deploy dollars from the Contingency and Capital Preservation Reserves as directed at the February 2006 meeting:

Tier One Member Regular Accounts

Credit Tier One member regular accounts with the assumed earnings rate (8%) and credit the remainder of Tier One member regular account earnings to the Tier One Rate Guarantee Reserve.

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

Provide an even crediting of 2005 earnings to Tier Two member regular accounts, the Benefits-in-Force Reserve, and Employer Reserves.

Contingency Reserve Deployment

Deploy funds from the Contingency Reserve to other specified reserves and accounts on a targeted, proportional basis, leaving a remaining balance of \$250 million in the Reserve, which has been determined to be adequate funding for that reserve's purposes at this time.

Capital Preservation Reserve Deployment

Distribute the entire balance from the Capital Preservation Reserve (CPR) to other specified accounts and reserves on a targeted, proportional basis.

BOARD OPTIONS

The Board may

1. Pass a motion "to ratify the Board's preliminary crediting of 2005 earnings as final."
2. Adopt a different allocation of 2005 earnings and deploy the reserves in different amounts or proportions than preliminarily agreed upon.

STAFF RECOMMENDATION

Crediting 2005 Earnings

3/31/2006

Page 3 of 3

The Board should choose Option #1.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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February 28, 2006

The Honorable Peter Courtney, Senate President
The Honorable Karen Minnis, Speaker of the House
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

To report the PERS Board's preliminary crediting of 2005 earnings received through investment of the Oregon Public Employees Retirement Fund (OPERF) Regular Account. This report is being provided in accordance with ORS 238.670(5), which requires PERS to submit a preliminary annual earnings crediting report to a legislative committee 30 days prior to final crediting to member and employer accounts and other reserves.

Agency Action

On February 24, 2006, the PERS Board preliminarily approved the crediting of approximately \$5.9 billion in OPERF Regular Account 2005 earnings to member and employer accounts and other reserves. Tier One member accounts would receive the statutorily guaranteed assumed earnings rate of 8%. The Board also preliminarily approved a 13.86% earnings rate to be credited to the Benefits-In-Force Reserve, Employer Reserves, and Tier Two member regular accounts. A summary of the Board's action is reflected in Attachment A.

The Board also directed that funds totaling approximately \$1.6 billion, currently held in the Contingency and Capital Preservation Reserves, be allocated to the Benefits-In-Force Reserve, Employer Reserves, the Tier One Rate Guarantee Reserve, and Tier Two member regular accounts, in proportion to their 2005 year-end balances before crediting, with \$250 million being retained in the Contingency Reserve. The deployment of these reserves was authorized in recognition of the substantial effects of PERS reform on system liabilities and dynamics, the development of additional tools to better manage employer rate volatility, and the resolution of significant PERS-related litigation during 2005. The effect of this action on the various reserve and account balances is also reflected in Attachment A.

E-Board Request

2/28/2006

Page 2 of 2

The PERS Board is scheduled to make its final 2005 crediting decision on March 31, 2006. A copy of the Board's administrative rules regarding the earnings crediting process is enclosed for your convenience in Attachment B.

Action Requested

PERS is requesting that the Emergency Board acknowledge acceptance of this report.

Legislation Effected

No legislative revisions will be required.

Sincerely,

A handwritten signature in cursive script that reads "Paul R. Cleary".

Paul R. Cleary, Executive Director

Attachment A: Reserve Allocation and Preliminary 2005 Earnings Crediting

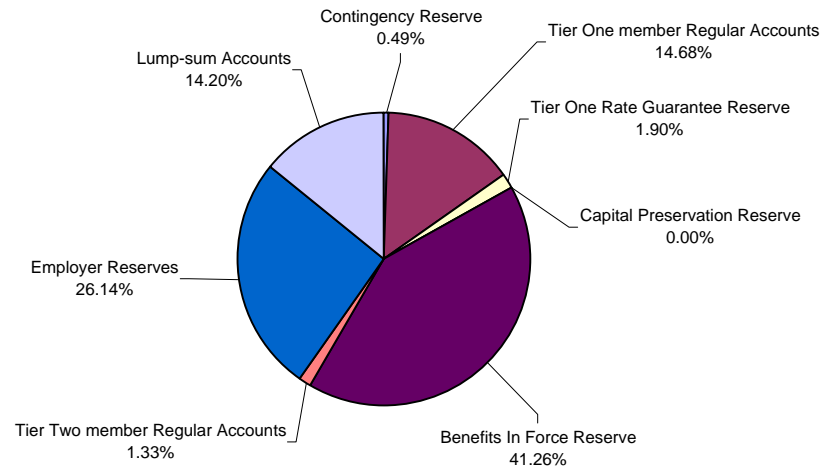
Attachment B: Annual Earnings Crediting Administrative Rules

Attachment A
2005 Reserve Allocation and Preliminary Earnings Crediting
Targeted Proportional Allocation of Contingency and Cap. Pres. Reserves
Contingency Reserve: Retain \$250 million; Capital Preservation Reserve Retain: \$0.0
(All dollar amounts in millions)

Reserve	2005 Crediting	Balance Before Reserve Allocation and 2005 Crediting	Allocated Contingency Reserve	Allocated Capital Pres. Reserve	Balances After Reserve Allocation	2005 Earnings (Based on Pre-Allocation Res. Balances)	Balance After 2005 Crediting and Res. Allocation
Contingency Reserve	0.00%	\$1,398.5	-\$1,148.5	\$0.0	\$250.0	\$0.0	\$250.0
Tier One member Regular Accounts	8.00%	6,941.9	0.0	0.0	6,941.9	555.4	7,497.3
Tier One Rate Guarantee Reserve	N/A	311.4	223.1	0.0	534.5	434.0	968.5
Capital Preservation Reserve	0.00%	460.5	0.0	-460.5	0.0	0.0	0.0
Benefits In Force Reserve	13.86%	17,779.3	555.1	276.2	18,610.6	2,464.2	21,074.8
Tier Two member Regular Accounts	13.86%	572.4	17.6	8.8	598.8	79.3	678.1
Employer Reserves	13.86%	11,262.5	352.7	175.5	11,790.7	1,561.0	13,351.7
Lump-sum Accounts	12.82%	6,428.9	0.0	0.0	6,428.9	824.2	7,253.1
Total		\$45,155.4	\$0.0	\$0.0	\$45,155.4	\$5,918.1	\$51,073.5

Proportional View of Reserves and Accounts

After Preliminary 2005 Crediting and Targeted Allocation of Contingency and Capital Preservation Reserves



**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 007 – EARNINGS AND INTEREST
DISTRIBUTION**

459-007-0005**Annual Earnings Crediting**

- 1) For purposes of this rule, “remaining earnings” means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.
- (2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.
- (3) **Health insurance accounts.** All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.
- (4) **Employer lump sum payments.** All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.225(9) shall be credited to the accounts from which they were derived.
- (5) **Administrative expenses.**
 - (a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the Variable Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses.
 - (b) Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system’s remaining administrative expenses under ORS 238.610.
- (6) **Member variable accounts.** All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under ORS 238.260(6) and (7)(b).
- (7) **Contingency Reserve.**
 - (a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two regular accounts, Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the level at which the Board determines it is adequately funded for the purposes specified in ORS 238.670(1).
 - (b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for use in preventing a deficit in the fund due to employer insolvency may only be credited using earnings attributable to employer contribution accounts.

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

(9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two member regular accounts, employer contribution accounts, the Benefits-in-Force Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

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

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

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

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

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

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

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

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238



Oregon

Theodore R. Kulongoski, Governor

March 31, 2006

Mailing Address:
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(503) 598-7377
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TO: Members of the PERS Board

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

SUBJECT: 2004 Valuation Results – Revised Actuarial Cost Methods

MEETING	3/31/06
DATE	
AGENDA	C.1.
ITEM	2004 Valuation

On March 31, Bill Hallmark and Annette Strand of Mercer Human Resource Consulting will present the revised 2004 Tier One/Two Plan Valuation based on new methodologies currently under consideration by the Board. These methodologies include the re-costing of the plan using Projected Unit Credit and valuing plan assets based on fair market value with the option of collaring employer rates.

STAFF RECOMMENDATION

Staff recommends that the Board defer any action on the new methodologies until the April meeting to allow time for stakeholder consideration and comment.



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March 31, 2006

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director

MEETING DATE	3/31/06
AGENDA ITEM	C.2. Legislative

SUBJECT: 2007 Legislative Concepts Drafting Approval

All state agencies must submit their 2007 legislative concepts to the Department of Administrative Services (DAS) for review by April 3, 2006. Those concepts will be reviewed for conformance with the Governor's statewide initiatives.

The PERS staff has developed nine legislative concepts for the PERS Board to consider submitting to DAS. Those concepts ultimately submitted that are in turn approved by DAS will then be forwarded to the Office of Legislative Counsel for drafting. [Please note that since 2001, Legislative Counsel charges all state agencies for its drafting services, presently at a rate of \$80 per hour.]

The timeline for legislative concepts is as follows:

April 3, 2006 – 5:00 PM	Last day to submit concepts to DAS
June 1, 2006 – 5:00 PM	Last day for DAS to submit concepts to Legislative Counsel
July 14, 2006 – 5:00 PM	Last day for agencies to submit additional information necessary for drafting
November 1, 2006 - 5:00 PM OR fourteen calendar days after the date on the draft – whichever is sooner	Deadline for requesting a revised draft.
November 17, 2006	PERS Board meeting. Board to review final version of concepts and determine which concepts are to be submitted to Governor's Office for introduction in 2007 session.
December 15, 2006- 5:00 PM	Deadline for Governor to presession file agency bills
January 8, 2007	Session begins

LEGISLATIVE CONCEPTS

In December 2005, the PERS Board met and discussed possible PERS legislative concepts for the 2007 session. The PERS Board directed staff to pursue concepts that would bring simplicity to the often-complicated PERS plan as well as transparency to PERS members.

Subsequently, the PERS Board's Legislative Advisory Committee met on January 5, 2006. As part of that meeting, PERS staff reviewed with the committee the PERS Board's direction regarding simplicity and asked for the committee's input as to principles to be applied when looking at possible concepts. The committee members were concerned that any introduced concepts:

1. Not lower current member benefits,
2. Be cost neutral to the employer,
3. Have minor administrative cost to PERS, and
4. Be pursued alternatively through rulemaking wherever possible.

The following nine concepts achieve simplicity or transparency. Many of the concepts did not fully meet all of the other principles. However, PERS staff recommends advancing them to the drafting stage to allow for further discussion and development. In the coming months, after further development and deliberation, the PERS Board will have opportunities to determine if the anticipated simplicity or transparency gained makes the concept worthwhile nonetheless.

LC 459/01 - Equal-To-Or-Better Plan Review [Frequency]

Summary: Employers that want to provide a retirement plan for police officers and firefighters outside the PERS plan must have their plan tested every two years to determine if that plan provides benefits equal to or better than if those employees were brought into the Oregon Public Service Retirement Plan (OPSRP).

Legislative Concept: Eliminate the two-year mandated Board review. Retain the requirement that such plans must be equal to or better. Address frequency of review in administrative rule.

Fiscal Impact \$0

LC 459/02 - Earned When Earned/Earned When Paid

Summary: The jClarety electronic employer reporting system (EDX) is programmed to accept payroll information on a "when paid" basis. With the passage of 2005 legislation, the definition of Final Average Salary (FAS) is "when paid" for all PERS Chapter 238 and OPSRP Pension members except those PERS Chapter 238 Tier Two and OPSRP Pension members who are employed by local government employers. The definition of FAS for those members remains "when earned." A workaround is used to allow reporting of this payroll information. Future changes to EDX are planned to allow reporting of salary "when earned."

Legislative Concept: Use the "when paid" definition of FAS for all PERS Chapter 238 and OPSRP Pension Program members.

Fiscal Impact: TBD

LC 459/03 - Eliminate “Break in Service”

Summary: When HB 2020 was adopted, it established the concept of a “Break in Service” which applied to a PERS Chapter 238 member who re-entered PERS-covered employment after OPSRP was created. Legislation in 2005 altered the criteria for determining whether a “Break in Service” was incurred. The multiple criteria and the retroactive application of some criteria make the determination administratively burdensome.

Legislative Concept: Eliminate the concept of a “Break in Service.” Instead, use the pre-existing criteria for PERS Chapter 238 Program loss of membership and vesting standards. A PERS Chapter 238 Program member whose membership is terminated by withdrawal or loss of membership would enter OPSRP upon returning to PERS-covered employment. If a PERS Chapter 238 Program member is not vested, but not in loss of membership, and returns to PERS-covered employment, they would continue in the PERS Chapter 238 Program.

Fiscal Impact: TBD

LC 459/04 - Withdrawals

Summary: A member of the PERS Chapter 238 or OPSRP Pension Program and IAP does not have to withdraw from both programs at the same time. If they return to work while still a member of one program but not the other, complications arise as to whether their membership is restored and under what conditions (e.g., do they need to serve another waiting time in the program from which they withdrew but not the one they’re still a member?)

Legislative Concept: Require that a member who wishes to withdraw from any program must withdraw from all programs at the same time.

Fiscal Impact: TBD

LC 459/05 - OPSRP Pension Program Death Benefits

Summary: Currently, the OPSRP Pension Program only pays a death benefit to a member’s surviving spouse. There is no death benefit payable upon the death of an unmarried member. Consequently, a single parent who dies does not have a death benefit that could be paid to their surviving children or any other member of the single parent’s family.

Legislative Concept: To make the OPSRP Pension Program death benefit payable to any beneficiary named by the member and establish that all OPSRP Pension Program members may make the beneficiary designation of their choice (with spousal consent if required by federal law).

Fiscal Impact: TBD

LC 459/06 - Modification of the Definition of Covered Salary

Summary: Currently, the PERS Chapter 238 Program has a different definition of what is considered to be “salary” from that of the OPSRP Pension Program and IAP. The definitions have many additions and exclusions, making reporting by employers extremely complicated and confusing.

Legislative Concept: PERS staff is currently researching options, the goal being to develop a consistent definition for all programs, possibly using a standard already required to be determined by employers for other purposes, i.e., FICA wages, Oregon taxable income, etc.

Fiscal Impact: TBD

LC 459/07 - Police and Fire

Summary: In the OPSRP Pension Program, a Police and Fire (P&F) member is eligible for retirement if they are holding a position as a police officer or firefighter continuously for a period of five years “immediately before/preceding (both terms are used in different sections) the effective date of retirement.”

Legislative Concept: The statutory standard would probably require the member to be employed as a police officer or firefighter in each of the five consecutive years immediately preceding the effective date of retirement or that it be their last position before becoming inactive. PERS could clarify that by rule, but that construct does not (nor do we believe the statute to be broad enough to allow) us to address issues of combined service, or serving as a P&F member until vested and then moving to a general service position. These circumstances do arise and statutory guidance on them would clarify administration and member expectations.

Fiscal Impact: \$0

LC 459/08 - Notice of Contest

Summary: Retirees who dispute the accuracy of the information used to calculate their retirement benefit may file a Notice of Contest, frequently confused with an appeal of a staff determination or a contested case.

Legislative Concept: Change the term “Notice of Contest” to another term less likely to cause confusion; PERS staff recommends “Dispute Notice of Entitlement.”

Fiscal Impact: \$0

LC 459/09 - Work After Retirement Restrictions for Retirees Who Elected Total Lump Sum

Summary: Retired members who elected a Total Lump Sum retirement option do not qualify for the 1039 exception in returning to work for a public employer, but must instead be limited in the first six months following their effective retirement date to a casual, seasonal, or emergency worker position where they may work only up to 599 hours in that period. If the member is not so designated or exceeds the restriction on hours, the retired member must repay the Total Lump Sum amount in full immediately.

Legislative Concept: Remove the work after retirement restrictions on TLS retirees during the six-month period following their retirement date. TLS retirees would have no work after retirement restrictions.

Fiscal Impact: \$0

ADDITIONAL INFORMATION

LEGAL. The completed concept packages have been forwarded to the Department of Justice for review. Any comments received from DOJ will be shared with the Board during the staff presentation on March 31, 2006.

FISCALS. PERS staff are presently creating fiscal impact estimates relating to administrative costs (or savings). Outcomes will be shared with the Board during the staff presentation on March 31, 2006. MERCER is creating fiscal impact estimates relating to employer costs (or savings) for three of the concepts. We do not expect MERCER's fiscals to be ready for review until some time in late spring.

STAKEHOLDERS. The nine concepts have been initially reviewed and discussed in a series of meetings with the PERS Board's Legislative Advisory Committee. That committee will meet again on the morning of March 31, 2006, prior to the PERS Board's meeting of that same date, to provide further comment. With the understanding that there would be opportunities later to express opposition, and although the concepts may not pass all of the committee's principles, the members were generally supportive of moving the concepts forward for drafting.

FINAL APPROVAL

On November 17, 2006, PERS staff will return to the PERS Board for final approval of legislative concepts. Any approved concepts will then be submitted to the Governor's Office for consideration in the 2007 session of the Oregon Legislature.

STAFF RECOMMENDATION:

PERS staff recommends the PERS Board approve submission of the above nine legislative concepts to the Department of Administrative Services for review and transfer to Legislative Counsel for drafting.