



# Oregon

Tina Kotek, Governor

## Public Employees Retirement System

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February 2, 2024

TO: Members of the PERS Board

FROM: Melanie Chandler, Research Policy Coordinator, Policy Analysis and Compliance Section  
Anne Marie Vu, Research Policy Coordinator, Policy Analysis and Compliance Section  
Stephanie Vaughn, Manager, Policy Analysis and Compliance Section

SUBJECT: Adoption of Rules Implementing 2023 Legislation:  
 OAR 459-045-0090 *PERS Administrative Fee*  
 OAR 459-014-0040 *Valid Request for Distribution of Pre-Retirement Death Benefits*  
 OAR 459-017-0060 *Reemployment of Retired Members*

### OVERVIEW

- Action: Adoption of Rules to Implement 2023 Legislation.
- Reason: Implement PERS-related bills enacted by the 2023 Oregon Legislature.
- Policy Issue: None identified.

### BACKGROUND

Staff have compiled amendments to administrative rules necessary to implement several PERS-related bills enacted during the 2023 Oregon Legislative session.

#### *House Bill (HB) 2284 PERS Administrative Fee*

This is a PERS-sponsored bill that raises the statutory cap on the amount the agency can charge to process a divorce decree that requires PERS to administer an alternate payee award. The existing statutory limit of no more than \$300 for total administrative expenses and related costs incurred in obtaining data or making calculations related to divorce decrees was originally set in 1993. In 1996, the PERS Board adopted OAR 459-045-0090, which acknowledged that "The Board has determined that actual and reasonable administrative expenses incurred by PERS for obtaining data and making calculations to administer an alternate payee award will always exceed \$300." As of 2019, the approximate cost to process a divorce decree was ~\$1,300 and PERS processes approximately 1,000 decrees per year.

HB 2284 (2023) increases the maximum allowable administrative fee to administer a divorce decree from \$300 to \$1,300 and directs the Board to increase the fee threshold by the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics. Staff analyzed the potential ways that a divorce decree can be administered and evaluated the amount of work necessary to administer each decree variation. Using this research, fee tiers were developed to account for the different levels of work and administrative efficiency. The proposed revision of OAR 459-045-0090 amends the rule to incorporate the changes as effected by HB 2284 and

establishes the structure to allow for different pay tiers depending on the complexity of the decree administered. HB 2284 became effective January 1, 2024.

At the December 1, 2023 PERS board meeting, Vice Chair Buckley requested that staff consider whether the rule should include language setting a default in how the fees are allocated between the parties, and allow for an alternate allocation. Unfortunately, ORS 238.465(9) specifies that the board must allocate the fee between the member and alternate payee based on the fraction of the benefit received by the member or alternate payee. Setting a default and allowing for an alternate allocation of the fee between the parties would require a statutory change.

#### *House Bill (HB) 2283 Valid Request for Distribution of Pre-Retirement Death Benefits*

House Bill (HB) 2417 (2019) established a new Optional Spouse Death Benefit (OSDB) for surviving spouses of Tier One and Tier Two PERS members who died before retirement. The bill included a requirement that surviving spouses must elect the OSDB within 60 days of the member's date of death. During implementation of HB 2417 (2019), PERS staff observed that the restrictive timing language of HB 2417 (2019) meant that at least one-third of spouses who would have been eligible to elect the benefit were missing the required window to notify PERS of their election. In January 2020, the PERS Board amended OAR 459-014-0040 to accommodate surviving spouses to the extent allowable by statute by establishing a preliminary election which allowed a surviving spouse to request an estimate within 60 days from the date of death and providing an additional 60 days to notify the Board in a final written election if they wished to elect the OSDB.

To address this issue more directly, HB 2283 (2023) includes a provision amending ORS 238.395(2)(b) and (d) to require the surviving spouse to make an election for the OSDB within 60 days of the date of the benefit estimate instead of the member's date of death.

The proposed revision of OAR 459-014-0040 amends the rule to remove the provisions that were previously put in place to clarify when the OSDB was deemed effective. HB 2283 became effective January 1, 2024.

#### *House Bill (HB) 2296 Reemployment of Retired Members*

The work after retirement provisions of Senate Bill 1049 (2019) allow retired PERS members to be reemployed by a participating public employer for an unlimited number of hours in a calendar year without reduction in pension benefits.<sup>1</sup> HB 2296 (2023) extends these provisions until the end of calendar year 2034. This means these retired members can retain their retired member status and continue to receive their PERS retirement benefits while working for a PERS participating employer as a retiree.

The bill also removed certain sunset provisions for special work after retirement exceptions for Tier One and Tier Two members which would have otherwise been repealed, making these exceptions permanent. The work after retirement exceptions impacted by HB 2296 include the following:

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<sup>1</sup> If they had retired at normal retirement age or were early retirees with a bona fide retirement (absent from employment with all participating public employers for at least six months before the date the person is rehired as a retiree).

- Retired member employed as a nursing instructor and who is a registered nurse. (Was set to expire January 2, 2026.)
- Retired member employed by DPSST for training purposes. (Was set to expire January 2, 2026.)
- Retired member employed by a school district or educational service district (ESD) to provide services in the following positions:
  - As a speech-language pathologist, or as a speech-language pathology assistant. (Was set to expire January 2, 2026.)
  - As a teacher of career and technical education (CTE). (Was set to expire June 30, 2023.)

The proposed revisions to OAR 459-017-0060 amend the rule to incorporate the changes made under HB 2296.

#### CHANGES MADE SINCE NOTICE

None.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely on December 19, 2023, at 2:00 p.m. The public comment period ended December 29, 2023, at 5:00 p.m. No public comment was received.

#### LEGAL REVIEW

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

#### IMPACT

Mandatory: No.

Benefit: Updates the rules to reflect recent legislative changes and provides clarification on the agency's administration of the plan.

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

#### RULEMAKING TIMELINE

December 1, 2023	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
December 1, 2023	PERS Board notified that staff began the rulemaking process.
December 1, 2023	Secretary of State published the Notice in the Oregon Administrative Rules Database. Notice was sent to employers, legislators, and interested parties. Public comment period began.
December 19, 2023	Rulemaking hearing was held remotely at 2:00 p.m.
December 29, 2023	Public comment period ended at 5:00 p.m.
February 2, 2024	Board may adopt the rule modifications.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to “adopt changes to Rules to Implement 2023 Legislation, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.4. Attachment 1 – OAR 459-045-0090	<i>PERS Administrative Fee</i>
B.4. Attachment 2 – OAR 459-014-0040	<i>Valid Request for Distribution of Pre-Retirement Death Benefits</i>
B.4. Attachment 3 – OAR 459-017-0060	<i>Reemployment of Retired Members</i>