

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Friday January 27, 2006 1:00 P.M.		PERS 11410 SW 68 th Parkway Tigard, OR	
ITEM		PRESENTER	
A. Administration			
1.	December 16, 2005 Board Meeting Minutes	CLEARY	
2.	Director's Report		
a.	Forward-Looking Calendar		
b.	OIC Investment Report		
c.	Budget Report		
d.	HB2020 Update		
e.	2004 Purchasing Power Study		
f.	Mercer Principal Actuary Transition		
B. Consent Action and Information Items			
1.	First Reading of OAR 459-017-0060, Reemployment of Retired Members	RODEMAN RODEMAN	
2.	Notice of 2005 Legislation Rulemaking		
a.	Final Average Salary Rules		
b.	OAR 459-011-0115, Full Cost Purchase		
c.	OAR 459-050-0060, OSGP Designation of Beneficiary		
d.	OAR 459-070-0001, OPSRP Definitions		
e.	OAR 459-075-0010, Break in Service		
C. Action and Discussion Items			
1.	Adoption of OAR 459-005-0610, Recovery of Overpayments	RODEMAN RODEMAN	
2.	Earnings Crediting		
a.	Adoption of Rule Revisions	RODEMAN	
b.	Policy Discussion on Reserves and Deployment		
3.	<i>Strunk/Eugene</i> Implementation	RODEMAN	
a.	Policy Recommendations		
b.	Adoption of Final Order on Repayment Methods	RODEMAN DELANEY	
4.	Contested Case Procedural Changes		
5.	2007 Legislative Process		
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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<p style="text-align: center;"><small>Michael Pittman, Chair * James Dalton * Thomas Grimsley * Eva Kripalani * Brenda Rocklin * Paul R. Cleary, Executive Director</small></p>

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
1:00 P.M.
December 16, 2005
Tigard, Oregon

MEETING	1-27-06
DATE	
AGENDA	A.1.
ITEM	12-16-05 Minutes

MINUTES

Board Members:

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

Staff:

Paul R. Cleary, Director
Donna Allen
Steve Delaney
Craig Stroud
Brendalee Wilson

Jane Beisell
Joe Delillo
David Crosley
Maureen Williams
Jeannette Zang

Brian DeForest
Jeff Marcic
Dale Lucht
Dave Tyler
Riki Vang

Others:

Linda Ely
Peter Pittock
Bob Andrews
Bruce Adams
Pat West
Greg Hartman
Marie Laird

Jim Scherzinger
David Wimmer
BethAnne Darby
Myrnie Daut
Bill Hallmark
Steve Manton
Ann Mercer

Gordon Allen
Cathy Bloom
Maria Keltner
Michelle Deister
Denise Yunker
Keith Kutler
Steve Law

Victor Nolan
Stakeholder Peg
Jerry LeLack
Hasina Squires
Deborah Tremblay
Greg Smith

Board Chair Mike Pittman called the meeting to order at 1:00 P.M.

CONTESTED CASE HEARINGS

A.1. APPEAL OF CAROLYN BIGELOW

Chair Pittman noted that the Board had reviewed the staff report and related materials, and that there were no scheduled appearances in this matter.

Brenda Rocklin moved and Tom Grimsley seconded to adopt the draft Final Order as presented. The motion passed unanimously.

A.2. RECONSIDERATION OF PEGGY BARLOW APPEAL

Chair Pittman noted that the Board had reviewed the staff report and related materials, and had previously adopted a final order in this matter.

Attorney Ann Mercer spoke on behalf of Peggy Barlow.

Brenda Rocklin moved and Tom Grimsley seconded to deny the Petition for Reconsideration. The motion passed unanimously.

ADMINISTRATION

B.1. BOARD MEETING MINUTES OF NOVEMBER 18, 2005

James Dalton moved and Tom Grimsley seconded to approve the minutes of the November 18, 2005 meeting. The motion passed unanimously.

B.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Forward-Looking Calendar and noted that the January 2006 meeting will focus on *Strunk/Eugene* implementation and also that the 2005 Earnings Crediting cycle is on the agenda for the first quarter of 2006. Cleary provided an update on the HB2020 employer reporting program that included an updated comparison of 2004 and 2005 postings of employer reports and member records. Cleary summarized the budget report and said that final 2003-05 biennium expenditures should be available at the January Board meeting. Cleary announced that the Governor has reappointed Board member Tom Grimsley for an additional 3-year term through August 2008, subject to Senate confirmation. Cleary presented a letter requesting an appearance before the Joint Legislative Committee on Information Management and Technology (JLCIMT) to provide an update on the status of the Retirement Information Management System (RIMS) conversion project on January 17, 2006.

CONSENT ACTION AND INFORMATION ITEMS

C.1. NOTICE OF RULEMAKING OF OAR 459-017-0060, REEMPLOYMENT OF RETIRED MEMBERS

Brendalee Wilson, Policy, Planning and Legislative Analysis Division (PPLAD) manager, presented this notice of rulemaking to address members who are reemployed under the 1039 hour limitation rule, and members who canceled their retirement and returned to work, becoming an active member again, and then later re-retired.

C.2. FIRST READING OF OAR 459-005-0610, RECOVERY OF OVERPAYMENTS

Wilson reported that while there were no attendees at the November 29, 2005 public hearing, several written public comments had been submitted during the comment period. Wilson said that amending this rule would comply with statutory changes and provide a more understandable administrative process for recovery of overpayments.

Vice-chair Rocklin asked that staff work closely with the Department of Justice in reviewing all legal issues that surround this rule and related notice requirements

ACTION AND DISCUSSION ITEMS

D.1. ADOPTION OF OAR 459-070-0001, OPSRP DEFINITIONS

D.2. ADOPTION OF OAR 459-010-0003, PERS MEMBERSHIP ELIGIBILITY

D.3. ADOPTION OF OAR 459-010-0014, CREDITABLE SERVICE

Wilson presented these final rulemaking items to better define the standards and simplify the processes for determining membership eligibility, creditable service, and related employer

PERS Board meeting

12/16/05

Page 3 of 3

reporting. Wilson said these rules were presented to the Legislative Advisory Committee (LAC) for discussion and recommendations, and that a number of revisions were made in response to that input.

It was moved by Tom Grimsley and seconded by James Dalton to adopt permanent rule modifications to OARS 459-070-001, 459-010-0003 and 459-010-0014, as presented, to be effective upon filing. The motion passed unanimously.

D.4. STRUNK / EUGENE IMPLEMENTATION PLAN UPDATE

Craig Stroud, Benefit Payments Division (BPD) administrator, presented an update on transaction timing and prioritization of benefit adjustments and overpayment recovery under the *Strunk / Eugene* Project Business Plan. Stroud identified general conditions that influence the project timeline and process, including recalculation issues, administrative issues, and the effects of timing benefit adjustments to coincide with Cost of Living Allowance (COLA) adjustments.

Stroud reported on the success of the earnings crediting adjustment project that was performed on active and dormant Tier One member regular accounts. Stroud provided tables that illustrated corrected earnings adjustments for calendar years 1999 through 2004 as required by the *Strunk / Eugene* court decisions and related settlement agreement.

D.5. MERCER FINANCIAL MODELING RESULTS

Bill Hallmark, actuary from Mercer Human Resource Consulting, provided a presentation on the financial modeling results. Hallmark reviewed the policy variations and compared them to the baseline to provide a clearer understanding of the long-term implications of potential Board decisions, such as varying actuarial methods and reserving policies. The financial modeling also provided system-wide projections for employer contribution rates under varying policies and investment return scenarios.

EXECUTIVE SESSION

Pursuant to ORS 192.660 (2) (f), (h) and ORS 40.255, the Board went into executive session at 3:20 P.M.

The Board reconvened to open session.

Chair Pittman adjourned the meeting at 3:30 P.M.

Respectfully submitted,

Paul R. Cleary
Executive Director

Prepared by Donna R. Allen, Executive Assistant

PERS Board Meeting Forward-Looking Calendar

MEETING DATE	1-27-05
AGENDA ITEM	A.2.a

February 2006

Meeting: 1:00 P.M. *February 24, 2006*

Contested Case Final Order for Debbie L McIntosh
Contested Case Final Order for Stephen Ross
Contested Case Final Order for Annabeth Wright
First Reading of 2005 Legislation Rulemaking
Notice of OAR 459-014-0030, PERS Designation of Beneficiary
Adoption of OAR 459-017-0060, Reemployment of Retired Members
2004 Valuation Results
2005 Preliminary Earnings Crediting
Strunk/Eugene Implementation Plan Update
2007 Legislative Concepts

March 2006

Meeting: 1:00 P.M. *March 31, 2006*

Adoption of 2005 Legislation Rulemaking
2005 Final Earnings Crediting
2007 Legislative Concepts

April 2006

Meeting: 1:00 P.M. *April 21, 2006 (tentative date)*

Returns for periods ending 12/31/05

Oregon Public Employees Retirement Fund

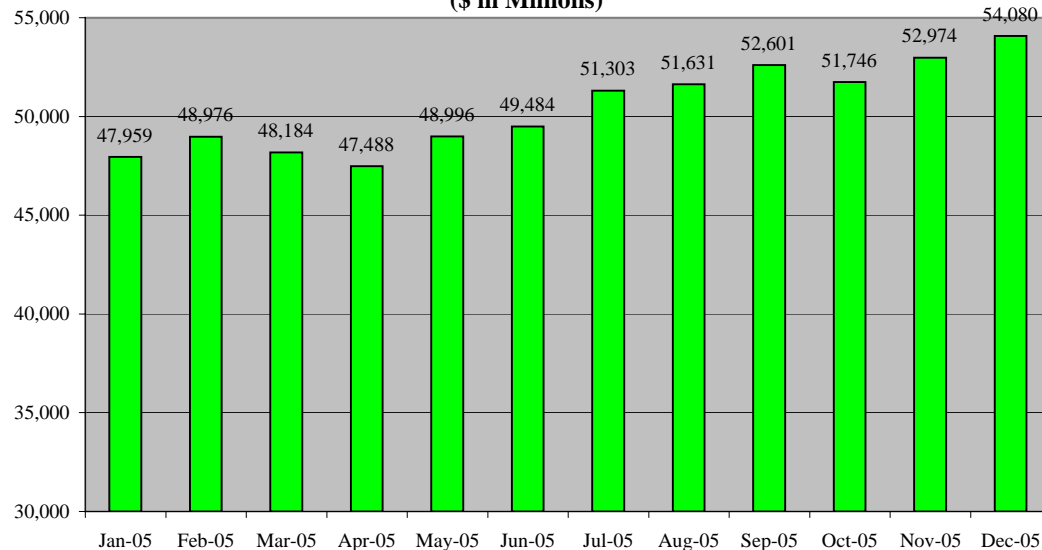
MEETING DATE 1/27/06
AGENDA ITEM A.2.b.

OPERF	Regular Account				Historical Performance					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	30-40%	35%	\$ 18,034,902	34.4%	7.83	7.83	10.34	17.34	6.09	2.42
International Equity	15-25%	20%	11,350,391	21.7%	18.75	18.75	20.08	26.79	15.15	7.23
Alternative Equity	7-13%	10%	5,003,768	9.5%	44.11	44.11	35.07	22.05	14.26	7.02
Total Equity	60-70%	65%	34,389,061	65.6%						
Total Fixed	22-32%	27%	14,816,007	28.3%	3.67	3.67	4.92	6.43	7.05	7.26
Real Estate	5-11%	8%	3,211,228	6.1%	32.65	32.65	26.74	23.39	19.31	16.96
Cash	0-3%	0%	-	0.0%	3.15	3.15	2.29	1.97	2.00	2.50
TOTAL OPERF Regular Account	100%		\$ 52,416,296	100.0%	13.19	13.19	13.83	16.70	9.99	6.48
OPERF Policy Benchmark					9.79	9.79	11.26	15.37	8.69	5.32
Value Added					3.40	3.40	2.57	1.33	1.30	1.16

Asset Class Benchmarks:

Russell 3000 Index	6.12	6.12	9.00	15.90	5.13	1.58
MSCI ACWI Free Ex US	17.11	17.11	19.22	26.20	14.44	6.66
Russell 3000 Index + 300 bps--Quarter Lagged	18.35	18.35	18.92	22.98	12.84	4.83
LB Universal--Custom FI Benchmark	3.02	3.02	3.99	4.47	5.71	6.15
NCREIF Property Index--Quarter Lagged	19.19	19.19	15.75	13.04	11.16	10.95
91 Day T-Bill	3.07	3.07	2.20	1.84	1.83	2.34

TOTAL OPERF NAV
(includes variable fund assets)
One year ending December 2005
(\$ in Millions)



¹OIC Policy 4.01.18

²Includes impact of cash overlay management.



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

Mailing Address:
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Tigard, OR 97281-3700
(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: January 2006 Budget Report

MEETING DATE	1/27/06
AGENDA ITEM	A.2.c. Budget

2005-07 ACTUAL EXPENDITURES AND PROJECTIONS

Total operating expenditures for the month of December 2005 were \$2,405,440. While the amount of expenditures reflects a decrease of \$872,355 from November, a decline was anticipated. Total expenditures for December are \$151,312, or 5.9%, below projections due to vacancy savings. The Services and Supplies category did exceed projections by \$21,215 due to catch up payments for centralized Data Processing costs at the Department of Administrative Services.

FINAL EXPENDITURES FOR NOVEMBER 2005

Preliminary operating expenditures for November 2005 of \$3,040,363 were reported at the last Board meeting with a note that if final expenditures changed it would be reported at the next meeting. The reason for this note was that the accounting records did not close until after the scheduled Board meeting. Final expenditures for November now total \$3,277,794, an increase of \$237,431. The increase is due to processing contractor invoices. This reduces the November positive variance from the reported \$352,516 down to \$115,085, or 3.4% below expenditure projections.

As noted in previous reports, budget variances continue to remain within expected parameters at the aggregate level. As additional variances become available during the budget execution process they are earmarked for use on the Agency's highest priorities such as the *Strunk/Eugene* Project.

FINAL REPORT ON 2003-05 BIENNIUM EXPENDITURES

State agencies had until the close of business on December 31, 2005 to process payments for the 2003-05 biennium. This allows for delays in receiving and processing invoices from vendors and a period to make necessary accounting corrections. Agency accounting staff completed that work for each of the Agency's 2003-05 appropriations. Total biennium expenditures, by limited appropriation are:

Summary of 2003-05 Leg. Approved Budget

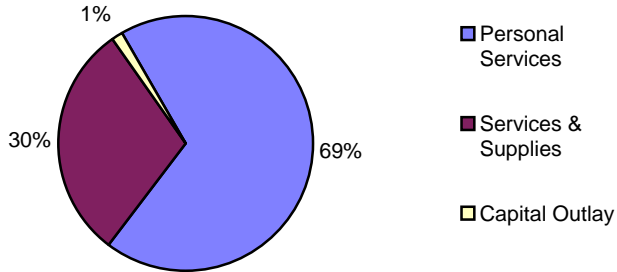
	Admin	Deferred Comp	Debt Svc	AEF	HB 2020 / OPSRP	Non-Limited
Limitation Available	55,993,731	1,477,402	3,629,282	5,021,231	19,532,799	5,709,547,757
Actual Expenditures	(51,747,054)	(1,456,880)	(3,563,459)	(3,719,315)	(19,448,624)	(5,215,042,383)
Remainder	4,246,679	20,522	65,823	1,301,916	84,174	494,505,374

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

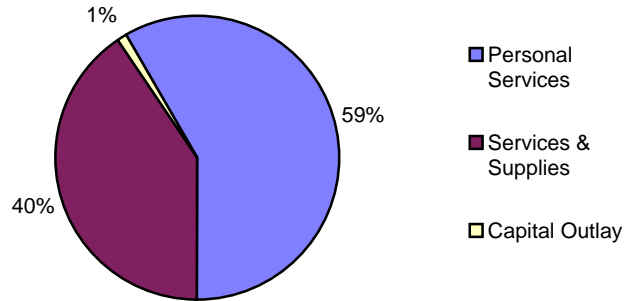
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	9,766,836	35,187,073	44,953,909	44,564,938	(388,971)
Services & Supplies	4,313,966	24,358,770	28,672,736	30,384,327	1,711,591
Capital Outlay	181,877	751,103	932,980	1,033,494	100,514
Special Payments					
Total	14,262,679	60,296,946	74,559,625	75,982,759	1,423,134

Actual Expenditures

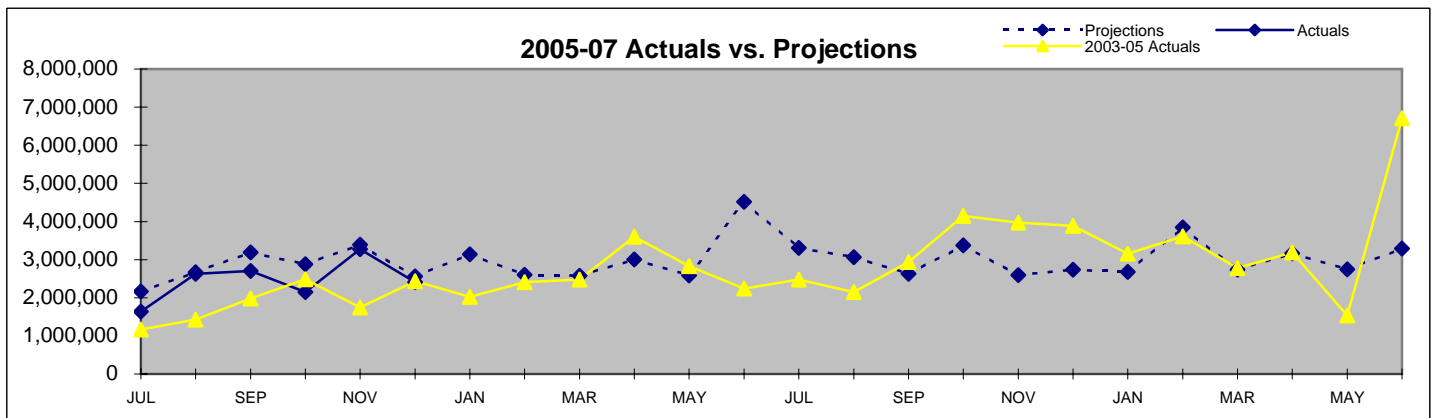


Projected Expenditures



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,679,433	1,851,960	172,527	1,627,806	1,954,837
Services & Supplies	726,006	704,791	(21,215)	718,994	1,353,265
Capital Outlay				30,313	41,728
Special Payments					
Total	2,405,440	2,556,752	151,312	2,377,113	3,349,830



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

	1st QTR	2nd QTR	3rd QTR	4th QTR	5th QTR	6th QTR	7th QTR	8th QTR	ACTUAL EXPEND. TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.	05-07 LAB BUDGET	VARIANCE	
Personal Services															
Salaries & Wages	3,102,084	3,128,099	3,626,770	3,655,149	3,664,778	3,746,107	3,858,703	3,912,888	6,140,057	22,554,521		28,694,578	28,490,581	(203,997)	
Temporary Appointments	40,406	43,071	6,700	5,600	1,600	6,200	21,600	25,137	83,477	66,837		150,314	156,924	6,610	
Overtime	33,466	71,029	47,630	44,530	18,100	14,230	52,130	36,330	101,459	215,985		317,445	540,501	223,056	
Shift Differential	1,326	1,615	375	375	375	375	375	375	2,769	2,422		5,191	1,978	(3,213)	
All Other Differential	34,599	54,556	18,744	18,385	17,462	17,554	17,704	17,757	85,373	111,388		196,761	209,351	12,590	
ERB Assessment	1,289	1,311	1,848	1,848	1,848	1,848	1,848	1,848	2,570	11,116		13,687	12,096	(1,591)	
Workers' Comp. Insurance (SA PERS	449,000	451,927	540,724	544,374	541,415	552,760	574,800	580,423	886,983	3,348,440		4,235,423	4,278,123	42,700	
Pension Bond Contribution	207,759	205,184	234,087	235,919	236,378	241,624	248,886	252,381	406,649	1,455,569		1,862,218	1,375,395	(486,823)	
Social Security Taxes	243,827	249,974	283,256	285,080	283,227	289,512	302,214	305,425	486,488	1,756,028		2,242,516	2,249,083	6,567	
Unemployment Comp.		16,576							16,576			16,576	37,390	20,814	
Workers' Comp. Assess.	2,484	2,335	3,354	3,354	3,354	3,354	3,354	3,354	4,773	20,172		24,945	26,835	1,890	
Mass Transit Tax	19,249	19,844	21,775	21,946	21,989	22,477	23,152	23,477	38,510	135,399		173,909	177,399	3,490	
Flexible Benefits	756,424	772,987	874,353	874,353	874,353	909,327	979,275	979,275	1,511,151	5,509,197		7,020,347	6,976,368	(43,979)	
Vacancy Savings													(155,537)	(155,537)	
Reconciliation Adj.													188,451	188,451	
Unscheduled P.S.															
Total Personal Services	4,891,915	5,018,508	5,659,617	5,690,912	5,664,879	5,805,367	6,084,041	6,138,671	9,766,836	35,187,073		44,953,909	44,564,938	(388,971)	
	<i>actual</i>		<i>estimated</i>												
Services & Supplies															
Instate Travel	12,995	24,326	20,785	25,285	23,185	29,085	21,485	26,130	37,321	145,955	142	183,418	116,894	(66,524)	
Out-of-state Travel					300	300	300	300		1,200		1,200	31,127	29,927	
Employee Training	30,385	44,332	37,815	37,815	37,815	37,815	37,815	38,915	71,336	231,371	2,710	305,417	488,069	182,652	
Office Expenses	91,727	121,888	203,484	212,393	211,572	221,481	211,140	254,349	209,295	1,318,736		1,528,031	2,063,722	535,691	
Telecommunications	25,713	69,518	68,249	68,249	68,249	68,249	68,249	68,249	66,385	438,341		504,726	537,685	32,959	
St. Gov. Svc. Chg.	595,854	135,567	24,000	69,317	589,000	89,000	24,000	24,000	731,421	819,317		1,550,738	1,504,171	(46,567)	
Data Processing	266,701	506,983	675,000	675,000	675,000	675,000	675,000	700,000	505,645	4,343,039	14,792	4,863,477	5,256,990	393,514	
Publicity/Publications	7,318	6,251	29,750	12,100	28,600	16,100	14,200	22,100	13,570	122,850		136,420	292,704	156,284	
Professional Services	545,896	1,213,796	518,750	342,950	326,050	330,900	485,550	407,600	1,701,893	2,469,599	372,199	4,543,692	2,862,534	(1,681,158)	
IT Professional Services		360,233	692,790	2,573,709	979,563	1,026,185	1,227,303	1,035,966	358,276	7,537,473	4,000,000	11,895,749	13,897,953	2,002,204	
Attorney General	48,913	72,187	124,500	124,500	124,500	124,500	124,500	135,500	121,100	758,000		879,100	947,681	68,581	
Dispute Res. Svc.	957	3,910	4,800	5,900	8,300	5,500	6,200	10,000	4,866	40,700		45,566	73,736	28,170	
Empl. Recruit./Devel.	8,863	24,770	15,000	15,000	15,000	15,000	15,000	15,000	33,633	90,000		123,633	58,036	(65,597)	
Dues & Subscriptions	4,943	10,106	2,425	3,005	1,675	1,775	2,175	2,275	14,428	13,951		28,379	50,702	22,323	
Facility Rental	104,691	95,696	94,068	94,068	94,068	97,368	99,018	132,024	200,387	610,614		811,001	703,597	(107,404)	
Fuels/Utilities	23,497	25,490	15,000	15,000	15,000	15,000	15,000	20,000	48,987	95,000		143,987	121,063	(22,924)	
Facility Maint.	47,868	43,335	76,251	76,251	76,251	76,251	76,251	101,668	91,203	482,923		574,126	724,698	150,572	
Agency/Program S & S															
Other COP Costs		371							371			371	6,500	6,129	
Other S & S	1,095	8,915							10,010			10,010	2,700	(7,310)	
Expendable Property	72,658	19,094	6,350	6,350	7,350	7,350	7,350	7,600	89,962	44,140	5,395	139,497	193,465	53,968	
IT Expendable Property		23,267	60,000	60,000	60,000	60,000	60,000	60,000	3,875	379,392	20,929	404,196	450,300	46,104	
Unscheduled S & S															
Total Services & Supplies	1,890,074	2,810,037	2,669,017	4,416,892	3,341,478	2,896,859	3,170,535	3,061,675	4,313,966	19,942,602	4,416,168	28,672,736	30,384,327	1,711,591	
Capital Outlay															
Office Furn./Fixture													30,868	30,868	
Telecomm. Equip.													5,589	5,589	
Technical Equipment													57,161	57,161	
Data Proc.-Software											362,246	362,246	447,019	84,773	
Data Proc.-Hardware	181,877								181,877		388,857	570,734	492,857	(77,877)	
Building & Structure															
Total Capital Outlay	181,877								181,877		751,103	932,980	1,033,494	100,514	
Special Payments															
Total Special Payments															
Total Expenditures	6,963,866	7,828,545	8,328,634	10,107,804	9,006,356	8,702,226	9,254,577	9,200,346	14,262,679	55,129,675	5,167,271	74,559,625	75,982,759	1,423,134	

Percent of 2005-07 LAB Expended: 18.77%
 Percent of Biennium Expired: 25.00%

2005-07 Agency-wide Operations - Budget Execution
Spending Plan - Actual and Estimated Expenditures
 Fiscal Year 2006

	2005						2006						ACTUAL EXPEND. TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN				
Personal Services																
Salaries & Wages	994,248	1,059,740	1,048,097	1,026,322	1,049,273	1,052,504	1,205,510	1,208,541	1,212,719	1,215,269	1,217,979	1,221,900	6,140,057	7,372,045		13,512,102
Temporary Appointments	6,728	18,954	14,724	16,643	10,900	15,528	3,400	1,000	2,300	1,700	2,100	1,800	83,477	12,300		95,777
Overtime	5,339	14,291	13,836	19,076	32,750	19,203	10,010	17,510	20,110	17,110	20,110	7,310	101,459	95,195		196,655
Shift Differential	374	502	450	512	517	587	125	125	125	125	125	125	2,769	922		3,691
All Other Differential	8,135	12,940	13,524	12,201	27,115	15,240	6,511	6,115	6,118	6,122	6,126	6,137	85,373	40,911		126,284
ERB Assessment	419	437	433	433	441	437	616	616	616	616	616	616	2,570	3,725		6,296
Workers' Comp. Insurance (SA)																
PERS	140,137	160,456	148,408	145,736	156,118	150,073	178,922	180,405	181,398	181,332	182,169	180,872	886,983	1,099,042		1,986,025
Pension Bond Contribution	64,968	74,155	68,636	67,531	70,653	67,000	77,808	78,004	78,274	78,438	78,614	78,867	406,649	476,299		882,948
Social Security Taxes	77,307	84,211	82,309	81,915	84,242	83,817	93,818	94,410	95,028	94,948	95,417	94,715	486,488	575,650		1,062,138
Unemployment Comp.						16,576							16,576			16,576
Workers' Comp. Assess.	770	897	818	832	800	703	1,118	1,118	1,118	1,118	1,118	1,118	4,773	6,755		11,528
Mass Transit Tax	6,074	6,645	6,531	6,502	6,742	6,599	7,238	7,256	7,281	7,297	7,313	7,336	38,510	44,304		82,814
Flexible Benefits	244,043	255,126	257,255	251,755	253,489	267,743	291,451	291,451	291,451	291,451	291,451	291,451	1,511,151	1,766,966		3,278,117
Vacancy Savings																
Reconciliation Adj.																
Unscheduled P.S.																
Total Personal Services	1,548,541	1,688,353	1,655,020	1,646,035	1,693,040	1,679,433	1,876,527	1,886,552	1,896,538	1,895,527	1,903,137	1,892,247	9,766,836	11,494,116		21,260,951
	<i>actual</i>						<i>estimated</i>									
Services & Supplies																
Instate Travel	288	7,102	5,605	9,174	10,494	4,659	4,595	8,095	8,095	6,945	9,095	9,245	37,321	46,070	142	83,533
Out-of-state Travel																
Employee Training	2,287	14,953	13,146	6,437	31,121	6,773	12,605	12,605	12,605	12,605	12,605	12,605	71,336	79,011	2,710	153,057
Office Expenses	2,375	28,415	60,938	37,873	34,892	49,122	66,244	70,395	66,846	66,697	70,298	75,399	209,295	420,196	8,251	637,743
Telecommunications	698	16,653	8,362	31,964	8,535	29,019	22,750	22,750	22,750	22,750	22,750	22,750	66,385	165,344		231,729
St. Gov. Svc. Chg.	8,147	510,466	77,241	47,722	62,766	25,079	8,000	8,000	8,000	8,000	8,000	53,317	731,421	93,317		824,738
Data Processing		22,684	244,018	153,325	84,091	269,567	225,000	225,000	225,000	225,000	225,000	225,000	505,645	1,618,039	14,792	2,138,477
Publicity/Publications	43	7,259	17		4,549	1,703	900	22,150	6,700	1,700	9,200	1,200	13,570	41,850		55,420
Professional Services	19,393	216,099	310,404	106,845	891,673	215,279	283,100	114,300	121,350	114,300	114,350	114,300	1,701,893	919,499	372,199	2,993,592
IT Professional Services					358,276	1,958	510,233	104,197	78,360	522,915	78,360	1,972,434	358,276	3,268,457	800,000	4,426,733
Attorney General		27,505	21,409	25,636	16,774	29,777	41,500	41,500	41,500	41,500	41,500	41,500	121,100	249,000		370,100
Dispute Res. Svc.			957	841	1,412	1,657	2,000	1,000	1,800	2,300	1,800	1,800	4,866	10,700		15,566
Empl. Recruit./Devel.	63	5,345	3,456	11,597	2,189	10,985	5,000	5,000	5,000	5,000	5,000	5,000	33,633	30,000		63,633
Dues & Subscriptions	3,208	1,455	280	1,329	225	8,552	450	200	1,775	225	205	2,575	14,428	6,051		20,479
Facility Rental	24,016	43,820	36,855	30,997	31,878	32,822	31,356	31,356	31,356	31,356	31,356	31,356	200,387	188,136		388,523
Fuels/Utilities	4,981	7,989	10,528	7,621	8,770	9,099	5,000	5,000	5,000	5,000	5,000	5,000	48,987	30,000		78,987
Facility Maint.	19,901	7,366	20,602	19,991	19,626	3,718	25,417	25,417	25,417	25,417	25,417	25,417	91,203	152,502		243,705
Other COP Costs					277	94							371			371
Other S & S	2,505	4,596	(6,006)	(2,622)	7,993	3,545							10,010			10,010
Expendable Property		14,000	58,658	10,548	6,756	1,790	1,750	1,750	2,850	1,750	1,750	2,850	89,962	14,490	5,395	109,847
IT Expendable Property					2,458	20,809	20,000	20,000	20,000	20,000	20,000	20,000	3,875	139,392	20,929	164,196
Unscheduled S & S																
Total Services & Supplies	87,905	935,703	866,466	499,276	1,584,755	726,006	1,265,899	718,714	684,403	1,113,460	681,685	2,621,747	4,313,966	7,472,054	1,224,419	13,010,439
Capital Outlay																
Office Furn./Fixture																
Telecomm. Equip.																
Technical Equipment																
Data Proc.-Software															62,227	62,227
Data Proc.-Hardware			181,877										181,877			181,877
Building & Structure																
Total Capital Outlay			181,877										181,877		62,227	244,104
Special Payments																
Total Special Payments																
Total Expenditures	1,636,446	2,624,057	2,703,364	2,145,311	3,277,794	2,405,440	3,142,426	2,605,266	2,580,942	3,008,987	2,584,823	4,513,995	14,262,679	18,966,170	1,286,646	34,515,495



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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

MEETING DATE	1/27/06
AGENDA ITEM	A.2.d. HB2020

SUBJECT: HB2020 Employer Reporting and Accounts Receivable Plan

The agency is beginning 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 and current 2006 reports. The table below shows the status of 2004 and 2005 employer reports and member records. Beginning in February, we will begin showing the status of the 2006 employer reports and member records.

	Calendar Year 2004 (As of 01-13-06)	Calendar Year 2005 (As of 01-13-06)
Reports due (estimated)	12,540	12,909
Outstanding reports	8	337
Reports fully posted at 100%	12,265	11,225
Records due (estimated)	3,076,245	3,025,455
Records not posted	1,563	26,073
Contributions posted	\$ 388,034,844	\$ 402,411,043

As of January 13, 2006, employers have submitted 99.9 % and 97.4 % of the reports due for 2004 and 2005, respectively. Of those reports submitted 97.8 % for 2004 and 87.0 % for 2005 are 100% accurate. These statistics indicate the major PERS educational effort and the progress employers have made to provide member demographic and wage information from 2004 to 2005. Last year at this time, 97.3 % of reports due were submitted, and of the reports submitted only 78.9 % were 100% accurate.

To help employers complete their reports, PERS created semi-monthly payroll reporting classes. Since April 2005, staff has conducted 17 classes for 211 employers. In addition, PERS organized teams to work with employers who have outstanding 2004 data. Since the inception of the teams in May 2005, PERS has helped employer's post approximately 10,537 members' records from 2004 out of approximately 12,100 un-posted records.

Currently two employers are responsible for eight outstanding 2004 reports (with 16 outstanding records). Staff who report information to PERS for one of these employers has legal problems that has resulted in reporting delays. PERS is working with this employer to identify other staff members who can report data to PERS. Finally, the remaining employer has committed to having its outstanding 2004 records submitted as soon as possible.

HB2020 Update

1/27/2006

Page 2 of 2

Besides assisting employers with overdue 2004 and 2005 data reports, PERS implemented an accounts receivable plan to proactively collect receivable balances that are more than 30 days overdue. As of January 17, 2006 we have 82 employers with an aggregate overdue balance of \$ 2,023,985. We are following up with these employers by phone and letters each month.

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MEETING DATE	1/27/06
AGENDA ITEM	A.2.e. MERCER POWER STUDY

111 SW Fifth Avenue, Suite 2800
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brenda.majdic@mercer.com
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December 28, 2005

Mr. Dale S. Orr
Actuarial Services Manager
Oregon PERS
P.O. Box 23700
Tigard, OR 97281-3700

Via E-Mail

Subject:

Request Number: 2005-083M
2004 Purchasing Power Study

Dear Dale:

As requested, we updated the annual purchasing power study for 2004 to compare how well monthly benefits paid to retirees and beneficiaries have kept up with inflation since retirement. The Consumer Price Index for Portland increased 1.36 percent in 2003. With most retirees receiving a 2.0 percent cost-of-living adjustment, retirees experienced an increase in purchasing power this year.

Purchasing power in this report is defined as PERS' cumulative post-retirement benefit increases compared to the cumulative CPI increases since the year of retirement. The chart below shows the change in purchasing power from 2003 to 2004 by year of retirement.

Year Retired	Purchasing Power	
	2003	2004
1980 & prior	78.2%	78.7%
1981	80.9%	81.5%
1982	83.0%	83.5%
1983	83.2%	83.7%
1984	80.9%	81.4%
1985	79.9%	80.4%
1986	80.8%	81.3%
1987	80.8%	81.3%
1988	81.2%	81.7%
1989	82.3%	82.9%
1990	84.7%	85.3%
1991	87.9%	88.5%
1992	90.6%	91.2%
1993	92.7%	93.3%
1994	94.1%	94.7%
1995	94.9%	95.5%
1996	95.7%	96.3%
1997	97.2%	97.8%
1998	98.5%	99.1%
1999	98.4%	99.0%
2000	99.7%	100.0%
2001	100.0%	100.0%
2002	100.0%	100.0%
2003	100.0%	100.0%
2004		100.0%

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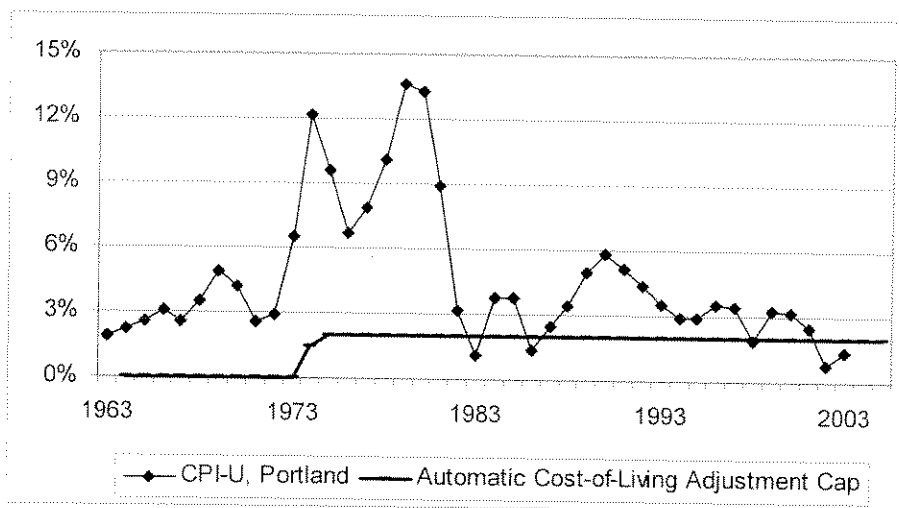
Human Resource Consulting

Page 2
December 28, 2005
Mr. Dale S. Orr
Oregon PERS

Inflation

Cost-of-living adjustments (COLAs) are automatically granted each year to retirees and beneficiaries up to a maximum of 2 percent based on the Consumer Price Index for Portland (defined by All Items, All Urban Consumers, Portland, Annual Average) as released by the Department of Labor. If the Consumer Price Index for Portland (CPI – Portland) exceeds 2 percent, then the retiree receives a 2 percent COLA and the remaining percentage is carried forward in a “bank” to be used in future years when the CPI-Portland is less than 2 percent. Retirees who have recently retired, and do not have a “bank” balance, receive a COLA equal to the CPI-Portland amount if less than 2 percent, otherwise they receive 2 percent.

The graph below shows the CPI-Portland compared to the automatic cost-of-living adjustment cap that is currently 2.0 percent.



The automatic COLA was established in 1972, and there have only been five years (1983, 1986, 1998, 2002 and 2003) when inflation has been below the COLA cap. Consequently, retiree benefits have tended to lose their purchasing power. However, the last two years have seen an increase in purchasing power. Attachment A shows the history of increases in CPI-Portland from 1963 through 2003.

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Page 3

December 28, 2005

Mr. Dale S. Orr

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The historical COLA amounts granted to retirees and beneficiaries are shown below:

Date	COLA	Exceptions
July 1972	1.5%	
July 1973 – present	2.0% (maximum COLA)	1.08% in 1984 if retired on or after August 1983 1.41% in 1987 if retired on or after August 1986 1.89% in 1999 if retired on or after August 1998 1.24% in 2003 if retired on or after August 2001 and prior to August 2002 0.77% in 2003 if retired on or after August 2002 1.36% in 2004 if retired on or after August 2001 and prior to August 2004 1.24% in 2004 if retired on or after August 2000 and prior to August 2001

Benefit Increases

From April 1964 through December 1971 there were some one-time additional payments granted to retirees. These payments are not included in this analysis as they did not affect the ongoing benefit paid to the retiree. A summary of the one-time payments follows:

Effective Date	One Time Payment Amount
April 1964	Monthly Benefit
April 1965	1.5 × Monthly Benefit
April 1966, April 1967	2 × Monthly Benefit
April 1968, April 1969, April 1970, April 1971	3 × Monthly Benefit
December 1971	3.5 × Monthly Benefit

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Page 4
December 28, 2005
Mr. Dale S. Orr
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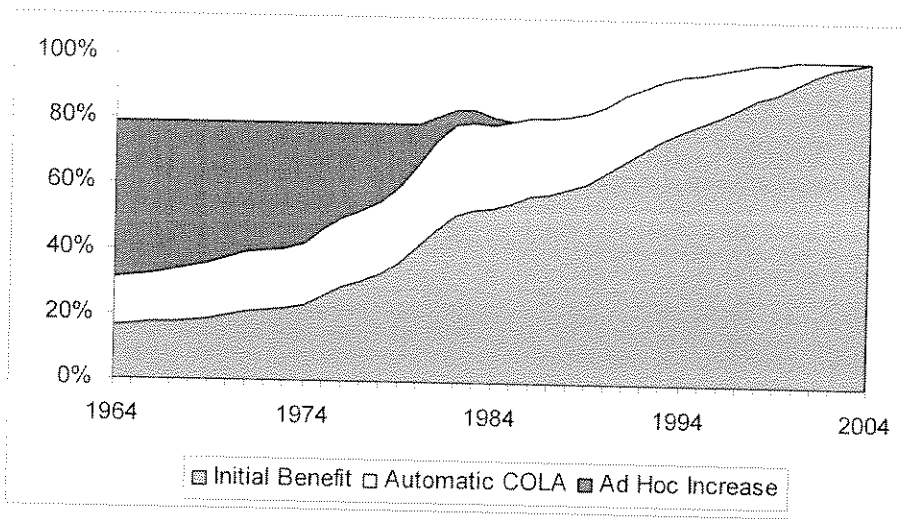
In addition, retirees and beneficiaries have been granted ad hoc benefit increases that resulted in increased monthly benefits going forward. A summary of the ad hoc increases granted by legislation is shown below, with the graded increases shown on Attachment B.

Effective Date	Ad Hoc Increase Granted by Legislation
January 1972	25% if retired prior to January 1968 12% if retired after December 1967 and prior to January 1972
January 1974	25% if retired prior to January 1968 20% if retired after December 1967 and prior to January 1972 12% if retired after December 1971 and prior to January 1974
October 1977	25% on first \$50 of monthly benefit 15% on next \$100 10% on next \$100 5% on next \$100 and 1% on monthly benefit over \$350
July 1979	2% for all retirees
July 1980	2% for all retirees
August 1981	Graded table by year of retirement to 11.40%
July 1982	Graded table by year of retirement to 11.40%
July 1985	Graded table by year of retirement to 7.28%
July 1986	Graded table by year of retirement to 7.28%
July 1989	Graded table by year of retirement to produce a 95% replacement of original purchasing power

Page 5
December 28, 2005
Mr. Dale S. Orr
Oregon PERS

Current Purchasing Power

The current purchasing power of retirees depends on both the automatic COLA increases and the ad hoc increases granted, compared to the growth in the CPI over the same time period. The graph below shows the cumulative effects of increases granted as a percentage of a benefit adjusted by CPI by year of retirement.



As shown in the graph above, for long-time retired members, the majority of the increases in their benefits since retirement have come from ad hoc increases. Retirees who retired within the past 15 years have not received any ad hoc increases. However, inflation has been significantly lower than in the late 1970's, and the automatic COLA increases have tracked changes in CPI more closely. Purchasing power for retirees since 1992 has remained within 90 percent of their original purchasing power.

Attachment C compares the cumulative PERS post-retirement benefit increases to the cumulative CPI increases for the last 40 years. The middle columns show the level an initial benefit of \$100 per month would have risen to based on CPI increases and increases granted by PERS. The columns on the right show the percentage of the original \$100 benefit and the PERS-adjusted benefit as a percentage of the CPI-adjusted benefit.

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Page 6

December 28, 2005

Mr. Dale S. Orr

Oregon PERS

For example, a 1964 retiree with a \$100 per month original benefit would need to be receiving \$604.72 per month now to have kept pace with inflation. Benefit increases granted by PERS increased the \$100 per month benefit to \$476.02 per month. The original benefit of \$100 per month is 16.5 percent of the CPI-adjusted benefit and the PERS-adjusted benefit of \$476.02 is 78.7 percent of the CPI-adjusted benefit.

Our analysis and conclusions are based on the data, methods and assumptions described above. Differences in the methods and assumptions may produce different results.

If you have any questions about the purchasing power report or need any additional information, please let us know.

Sincerely,

[BJM]

Brenda J. Majdic, ASA, EA, MAAA

ADS/BJM/bjm/wrh:gju

Enclosure

Copy:

Debra Hembree

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The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

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Attachment A

History of Consumer Price Index — Portland

Year	CPI 1967 Basis	Annual Percentage Increase	Year	CPI 1967 Basis	CPI 1982-84 Basis	Annual Percentage Increase
1962	88.5		1983	290.1		1.08%
1963	90.2	1.92%	1984	301.0		3.76%
1964	92.2	2.22%	1985	312.4		3.79%
1965	94.6	2.60%	1986	316.8	108.2	1.41%
1966	97.5	3.07%	1987		110.9	2.50%
1967	100.0	2.56%	1988		114.7	3.43%
1968	103.5	3.50%	1989		120.4	4.97%
1969	108.6	4.93%	1990		127.4	5.81%
1970	113.2	4.24%	1991		133.9	5.10%
1971	116.1	2.56%	1992		139.8	4.41%
1972	119.5	2.93%	1993		144.7	3.51%
1973	127.3	6.53%	1994		148.9	2.90%
1974	142.8	12.18%	1995		153.2	2.89%
1975	156.5	9.59%	1996		158.6	3.52%
1976	167.0	6.71%	1997		164.0	3.40%
1977	180.2	7.90%	1998		167.1	1.89%
1978	198.4	10.10%	1999		172.6	3.29%
1979	225.4	13.61%	2000		178.0	3.13%
1980	255.4	13.31%	2001		182.4	2.47%
1981	278.2	8.93%	2002		183.8	0.77%
1982	287.0	3.16%	2003		186.3	1.36%

Source: U.S. Department of Labor, Bureau of Labor Statistics
Consumer Price Index, All Items, All Urban Consumers, Portland, Annual Average

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Attachment B

Year Retired	Ad Hoc Adjustments by Effective Year				
	1981	1982	1985	1986	1989
1950	11.40	11.40	7.28	7.28	18.00
1951	10.64	10.64	7.28	7.28	19.00
1952	10.56	10.56	7.28	7.28	10.00
1953	10.16	10.16	7.28	7.28	8.00
1954	10.04	10.04	7.28	7.28	8.00
1955	10.00	10.00	7.25	7.25	7.00
1956	9.68	9.68	7.06	7.06	9.00
1957	9.28	9.28	6.82	6.82	9.00
1958	9.08	9.08	6.70	6.70	5.00
1959	8.96	8.96	6.62	6.62	3.00
1960	8.76	8.76	6.50	6.50	3.00
1961	8.64	8.64	6.42	6.42	2.00
1962	8.56	8.56	6.37	6.37	1.00
1963	8.32	8.32	6.22	6.22	1.00
1964	8.12	8.12	6.09	6.09	-
1965	7.88	7.88	5.94	5.94	-
1966	7.56	7.56	5.73	5.73	-
1967	7.36	7.36	5.60	5.60	-
1968	7.20	7.20	5.49	5.49	7.00
1969	6.88	6.88	5.28	5.28	4.00
1970	6.60	6.60	5.09	5.09	-
1971	6.36	6.36	4.93	4.93	-
1972	6.20	6.20	4.82	4.82	15.00
1973	5.92	5.92	4.63	4.63	14.00
1974	5.28	5.28	4.17	4.17	25.00
1975	4.92	4.92	3.92	3.92	15.00
1976	4.72	4.72	3.77	3.77	7.00
1977	4.44	4.44	3.57	3.57	3.00
1978	4.76	4.76	3.80	3.80	16.00
1979	4.32	4.32	3.48	3.48	11.00
1980	4.00	4.00	3.24	3.24	3.00
1981	-	4.00	3.09	3.09	-
1982		-	3.01	3.01	-
1983			3.00	3.00	-
1984			-	3.00	-
1985			-	-	-
1986				-	-
1987					-
1988					-
1989					-

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Attachment C

Comparison of PERS Benefits to CPI at August, 2004

Year Retired	Number of Years	Cumulative Increase		Purchasing Power	
		CPI	PERS	Initial	PERS
1964	40	604.72	476.02	16.5%	78.7%
1965	39	591.60	465.70	16.9%	78.7%
1966	38	576.59	453.88	17.3%	78.7%
1967	37	559.44	440.38	17.9%	78.7%
1968	36	545.46	429.37	18.3%	78.7%
1969	35	527.01	414.85	19.0%	78.7%
1970	34	502.26	395.37	19.9%	78.7%
1971	33	481.85	379.31	20.8%	78.7%
1972	32	469.82	369.83	21.3%	78.7%
1973	31	456.45	359.31	21.9%	78.7%
1974	30	428.48	337.29	23.3%	78.7%
1975	29	381.97	300.68	26.2%	78.7%
1976	28	348.53	274.36	28.7%	78.7%
1977	27	326.62	257.11	30.6%	78.7%
1978	26	302.69	238.28	33.0%	78.7%
1979	25	274.93	216.42	36.4%	78.7%
1980	24	241.99	190.49	41.3%	78.7%
1981	23	213.57	173.96	46.8%	81.5%
1982	22	196.07	163.76	51.0%	83.5%
1983	21	190.05	159.06	52.6%	83.7%
1984	20	188.02	152.99	53.2%	81.4%
1985	19	181.21	145.65	55.2%	80.4%
1986	18	174.60	141.93	57.3%	81.3%
1987	17	172.18	139.96	58.1%	81.3%
1988	16	167.99	137.25	59.5%	81.7%
1989	15	162.42	134.59	61.6%	82.9%
1990	14	154.73	131.95	64.6%	85.3%
1991	13	146.23	129.36	68.4%	88.5%
1992	12	139.13	126.82	71.9%	91.2%
1993	11	133.26	124.34	75.0%	93.3%
1994	10	128.75	121.90	77.7%	94.7%
1995	9	125.12	119.51	79.9%	95.5%
1996	8	121.61	117.17	82.2%	96.3%
1997	7	117.47	114.87	85.1%	97.8%
1998	6	113.60	112.62	88.0%	99.1%
1999	5	111.49	110.41	89.7%	99.0%
2000	4	107.94	107.94	92.6%	100.0%
2001	3	104.66	104.66	95.5%	100.0%
2002	2	102.14	102.14	97.9%	100.0%
2003	1	101.36	101.36	98.7%	100.0%
2004	0	100.00	100.00	100.0%	100.0%



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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January 27, 2006

TO: Members of the PERS Board
FROM: Dale S. Orr, Coordinator
Actuarial Analysis Section
SUBJECT: Principal Actuary Transition

MEETING DATE	1/27/06
AGENDA ITEM	A.2.f. MERCER ACTUARY

EXECUTIVE SUMMARY:

Mercer Human Resource Consulting (Mercer) provided official notification on September 29, 2005, that PERS' principal actuary, Marcia Chapman was leaving the firm. Mercer's contract states that PERS has the right to review the qualifications and interview key replacement candidates. PERS must also submit written acceptance of the candidate if his/her qualifications meet the terms of the contract. On January 13, Mercer recommended Annette Strand, FSA as its replacement to oversee PERS' actuarial services. PERS staff has reviewed Ms. Strand's qualifications (biography attached), and determined her to be qualified within the terms set forth in PERS' contract with Mercer.

STAFF RECOMMENDED ACTION:

This report serves as Board notification of staff's due diligence to ensure Mercer's contractual compliance in this matter. Unless otherwise directed by the Board, PERS staff will provide written acceptance of Ms. Strand as PERS principal consultant for actuarial services.

Ms. Strand will be present at the January 27 Board meeting to present her credentials and answer questions.

Attachment: Biography of Annette Strand, FSA

MERCER

Human Resource Consulting

Annette Strand, FSA, EA

Present Responsibilities

Ms. Strand is a Principal in Mercer's Northwest Retirement Business (Seattle office). She is a member of the Retirement leadership group for the West Zone, as well as a member of the editorial board for the *Mercer Perspective on Retirement* publication – a series of articles written by senior Mercer consultants that reflect their unique insights and observations on a variety of important topics affecting retirement and benefit programs. Ms. Strand also contributes to maintaining professional standards for actuarial services by performing Best Practice reviews throughout the U.S. company with Mercer's chief actuary, Mr. Ethan Kra.

Ms. Strand provides actuarial and consulting services for traditional and nontraditional retirement programs for US and multinational companies, with a particular focus on developing Retirement Program design and financial risk management strategies for plan sponsors. She also has extensive experience presenting in front of Boards, management and administrative staff and is able to articulate complex actuarial issues in a non-technical fashion.

Experience

Ms. Strand has over 25 years of experience in the retirement consulting field. She joined Mercer in 1995 after 14 years of retirement consulting experience with another prominent consulting firm.

Education

Ms. Strand graduated from St. Olaf College with a Bachelor of Arts degree in English and Mathematics. She has been a Fellow of the Society of Actuaries since 1989 and an Enrolled Actuary under the Employee Retirement Income Security Act since 1995. She is also a Member of the Western Pension and Benefit Conference.



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING	1/27/06
DATE	
AGENDA	B.1.
ITEM	Reemployment

SUBJECT: First Reading for OAR 459-017-0060, *Reemployment of Retired Members*

OVERVIEW

- **Action:** None. This is the first reading of OAR 459-017-0060, Reemployment of Retired Members.
- **Reason:** The current rule needs to be amended to correct statutory citations, reflect the most recent Social Security annual compensation limitations, and include existing policy regarding reemployment restrictions for retirees who elected the total lump sum option. The current rule does not provide comprehensive guidance on the reemployment of retirees under ORS 238.078, including such issues as reestablishing active membership, rebuilding of the member account, earnings crediting, and the actuarial equivalency factors to be used for calculating the subsequent retirement benefit, so these issues are addressed by the proposed modifications.
- **Subject:** Reemployment of retired members of the Chapter 238 Program.
- **Policy Issues:**
 1. Should rebuilt member accounts of reemployed retirees be credited with earnings for the period the funds were in the Benefits in Force Reserve (BIF) and, if so, at what rate?
 2. When should these rule modifications be implemented to ensure the consistent treatment of members who have passed their first retirement and to provide adequate notice to future retired members?

BACKGROUND

Members who retire from the Chapter 238 Program may be reemployed by a participating employer as an active member under the provisions of ORS 238.078 or remain retired and be employed, subject to certain limitations, under ORS 238.082. If a retired member returns to work under ORS 238.078 and thereby reestablishes active membership, the member's retirement is canceled.

If the member returns to work less than six months after retirement, they are required to repay all retirement benefit amounts in a lump sum. If the member returns to work more than six months after retirement, their benefits cease and the statute directs that their account be rebuilt. Rebuilding their account entails transferring moneys back from the

Benefits-in-Force Reserve (“BIF”) but accounting for the fact that part of their original account has been disbursed to them in retirement benefit payments.

At some point subsequent to reestablishing active membership, the member will retire again. This subsequent or “second” retirement benefit is calculated using the rebuilt member account and the total creditable service, recalculated final average salary, and other calculation elements in effect on the subsequent retirement date, as affected by the second period of employment.

POLICY ISSUES

1. Should rebuilt member accounts of reemployed retirees be credited with earnings for the period the funds were in the Benefits in Force Reserve (BIF) and, if so, at what rate?

ORS 238.078 requires that the member’s account be rebuilt from the BIF, which receives earnings crediting. The funds transferred to the BIF at the member’s retirement receive earnings crediting during the period they are in the BIF. The proposed rule would credit rebuilt accounts with earnings for the period the funds were in the BIF. Otherwise, the member’s account would lie fallow for the period between their retirement and subsequent re-employment. As PERS has use of those funds, they should be credited with earnings for that period. Otherwise, every second retirement would disadvantage the member because of this period when the account would not receive earnings.

The BIF earnings crediting rate is determined by the Board (ORS 238.670(2)). Although funds are transferred to the BIF on the assumption that they will earn the assumed rate, the BIF in fact is subject to positive or negative earnings.

The funds transferred to the BIF at retirement are in fact credited with earnings at the BIF rate while held in the BIF. The proposed rule would use that rate or the assumed rate, whichever is less, to credit earnings (or losses) during that period in rebuilding the member’s account. Using the lesser of these rates will stabilize the account rebuilding process, avoid any crediting of rebuilt accounts at a rate higher than the assumed rate, and diminish the significance of crediting rates in the member’s reemployment decision.

2. When should these rule modifications be implemented to ensure the consistent treatment of members who have passed their first retirement and to provide adequate notice to future retired members?

The proposed rule’s calculation methodology may result in a different benefit payment upon a member’s second retirement than they may have expected when they returned to work. Members who previously retired and returned to work may be under the impression that their payment amount cannot be less upon the second retirement. Under many prior paradigms (unchanging actuarial factors, continued contributions), this statement may have been true. With the 2003 PERS reforms (mandating updated actuarial factors, stopping future contributions), no such guarantee could be maintained.

Applying the proposed rule’s crediting method upon rebuilding member accounts could result in positive or negative earnings. Regardless of the actual impact, that policy was not in effect at the time members made their initial retirement and re-employment

decisions. To apply it retroactively would create frustration and uncertainty for previously retired members and an administrative burden for the agency. Staff recommends that the proposed rule's calculation methods only apply to members whose initial effective retirement date is on or after the effective date of this rule. This would ensure adequate notice to members of the policy changes and allow the agency sufficient time to implement the policy changes prospectively.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

Several minor, non-substantive edits of terminology, citation, and structure were made for clarity. The following substantive modifications have been made in this version:

Section (1)(b) – Removed “adopted by the Board.” Adoption is implicit in the adoption of the rule.

Section (4) – Section deleted in response to public comment (explained below).

Sections (5)(b), (10)(b), and (11)(b) – Language pertaining to “Break in Service” removed. This requirement exists in statute and does not need to be included.

Section (6) – Clarified that the return to work was within the six month period following retirement, as there is a different process mandated by statute.

Section (7) – Clarified that the return to work was not within the six month period following retirement, as there is a different process mandated by statute.

Sections (10)(c)(A) and (10)(d)(A) – These sections were rewritten. Subsection (A) was divided into subsections (A) and (B). Changes effective date of rebuild of member account from “date of reemployment” to “date active membership is reestablished.” For example, a retired member who exceeds the 1039 hour limitation becomes an active member on the first of the month following the date the limitation is exceeded while a retired member reemployed under ORS 238.078(1) becomes an active member on the date of reemployment. Also changes rate of crediting to the lesser of the BIF rate or the assumed rate for the reasons set forth above. Distribution of the BIF balance to the funds from which it was derived is now positioned prior to crediting to comply with system requirements. Also excluded member lump sum repayments from earnings crediting. Any such repayment must include the interest the amount would have earned.

Section (10)(e)(A) – Rewritten to also exclude lump sum repayments from crediting, for the same reason. Subsection (A) was divided into subsections (A) and (B).

Section (13) – The reference to section (12) regarding actuarial factors to be used is deleted. The use of actuarial factors in effect at the time of the calculation is required and section (12) could be interpreted as limiting the application of the appropriate factors.

Section (14) – Subsections (a) and (b), “Upon request by PERS,…” were added. Subsection (c) added to establish 30 day requirement for response by employer.

Section (15) – Minor edits to clarify applicability of sick leave restriction.

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 rules are presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on December 27, 2005 at PERS headquarters in Tigard and no members of the public attended. The public comment period ends on January 31, 2006 at 5:00 p.m.

To date, PERS has received public comment from two individuals. Denise Yunker, the Oregon University System Optional Retirement Plan Retirement Committee Chair, wrote on December 9, 2005 requesting deletion of the reference to the Optional Retirement Plan in section (4) of the rule. She indicated that promulgating administrative rules for the OUS defined contribution plan was outside PERS' scope and that the Board had concurred with this statement early in 2004 when repealing OAR 459-005-0320, Employer Contributions to an Optional Retirement Plan - OSSHE. She also indicated that section (4) had no practical effect as retirees reemployed under ORS 238.082 were not eligible for and could not elect to participate in the ORP.

Staff agrees and has deleted the section from the rule.

Greg Hartman, representing the PERS Coalition, submitted comment on December 19, 2005, expressing general support for the approach to the rulemaking and citing two concerns. First, section (11)(d) of the noticed rule, (10)(d) in the current draft, addressing the reemployment of retired members within six months of their effective retirement date under ORS 238.078(2), provides that the member account will be rebuilt in the amount that existed at the time of the member's retirement. No crediting of the account for the period the funds were in the BIF is permitted. Mr. Hartman suggests an amendment to the rule to "...permit interest to continue to accrue on the member account to the extent it was not withdrawn in the form of a retirement payment."

Staff notes that ORS 238.078(2) states, "The member account of the member shall be reestablished just as it was at the time of earlier retirement after the lump sum repayment is made." The statute does not permit the member account to be rebuilt with interest.

Second, Mr. Hartman addresses section (15) of the noticed rule, (14) in the current draft. He wrote, "For those individuals who are going to have an employee account rebuilt it would seem more consistent with the overall philosophy of the rule that in those instances where an account is going to be rebuilt, that there should not be a bar to the reinstatement of the sick leave account if the employee returns to the same employer and both employee and employer are willing to rebuild that sick leave account."

Staff believes that, while this language does intrude upon the employer/employee relationship, the restriction on the availability of accumulated unused sick leave is necessary to ensure that the unused sick leave is not considered for more than one retirement benefit. When reported at retirement by an employer participating in the sick

leave program, sick leave is used to increase the final average salary of the retiring member for the purposes of retirement benefit calculation. If made available to the retired member upon reemployment, it could be reported again and used in a subsequent retirement calculation. If the retired member utilized any portion of the sick leave during reemployment, payment for the sick leave would become salary and could be considered for final average salary purposes for a second time.

The rule does not restrict the availability of accumulated unused sick leave to retired members whose reemployment requires them to repay all retirement benefits received and rebuilds their account as it was at the time of retirement.

IMPACT

Mandatory: No, the Board could retain the existing rule language. The current rule, however, is imprecise and does not provide policy guidance on a number of issues relevant to the re-employment of retirees.

Impact: PERS processes approximately 50 “second” retirements annually. The policies implemented by the rule will impact all “second” retirement benefit calculations for members whose initial retirement date is on or after the effective date of this rule. The impact upon each member will vary with the retirement status particular to each member at the time of the “second” retirement. Retired members will benefit from the updated Social Security annual compensation limitations. Members, employers, and staff will benefit from the clarification of policy.

Cost:

- *Members:* There will be no new costs to members.
- *Employers:* There will be no new costs to employers.
- *Administration:* The rebuilding of member accounts and the calculation of “second” retirement benefits will continue to be done manually. Ultimately, there may be a programming cost which cannot be determined at this time. There are no new administrative costs attributable to the other provisions of this rule.
- *Fund:* There will be no significant effect on the Fund. The effect of including BIF earnings in the amount transferred to the rebuilt member account is diminished by the minimal number of “second” retirements.

RULEMAKING TIMELINE

- | | |
|-------------------|--|
| November 15, 2005 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| December 1, 2005 | <i>Oregon Bulletin</i> published the Notice. |
| December 16, 2005 | PERS Board notified that staff began the rulemaking process. |
| December 27, 2005 | Rulemaking hearing held at 2:00 p.m. in Tigard. |
| January 27, 2006 | First Reading of rule. |

January 31, 2006 Public comment period ends at 5:00 p.m.

February 24, 2006 Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

PERS staff will return with this rule to request adoption by the Board at the February 24, 2006 Board meeting.

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

MEETING	1/27/06
DATE	
AGENDA	B.1.
ITEM	Reemployment

1 **459-017-0060**

2 **Reemployment of Retired Members**

3 (1) **Reemployment under ORS 238.082[(2)]**. A retired member of the system
 4 receiving a service retirement allowance, who has elected an option other than the total
 5 lump sum option under ORS 238.305(3), including those who have retired at a reduced
 6 benefit under ORS 238.280(1) or (2), may be employed under ORS 238.082[(2)] by a
 7 participating employer without loss of retirement benefits provided:

8 (a) The period or periods of employment *[by]* with one or more public employers
 9 participating in the system do not exceed 1039 hours in a calendar year; or

10 (b) If *[a]* the retired member is receiving retirement*[old age]*, survivors, or
 11 disability benefits under the federal Social Security Act, the period or periods of
 12 employment do not exceed *[is limited to]* the greater of 1039 hours in a calendar year or
 13 the total number of hours in a calendar year that, at *[a]* the retired member's specified
 14 hourly rate of pay, *[so that the]* limits the annual compensation of the *[retiree]* retired
 15 member to an amount that does not exceed the following Social Security annual
 16 compensation limits: *[following:]*

17 (A) For retired members who have not reached *[the]* full retirement age under the
 18 Social Security Act, the annual compensation limit is \$12,480 *[11,640 for the calendar*
 19 *year 2004]*; or

20 (B) For the calendar year in which the retired member reaches *[the]* full retirement
 21 age under the Social Security Act and only for compensation for the months prior to

1 reaching *[the]* full retirement age, the annual compensation limit is \$33,240.*[\$31,080*
2 *for the calendar year 2004.]*

3 (2)[(c)] A [R]retired member[s] described in section (1) of this rule who has
4 reached [the] full retirement age under the Social Security Act may work an unlimited
5 number of hours without loss of retirement benefits.

6 *[(2) Limitations on employment in section (1) of this rule will be based on the*
7 *number of hours employed on and after the retired member's effective retirement date.]*

8 (3) The limitations on employment in section (1) of this rule do not apply if:

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

12 (b) The retired member is on active state duty in the organized militia and meets
13 the requirements under ORS 399.075(8).

14 *[(4) Except as provided under section (3) of this rule, limitations on employment in*
15 *section (1) of this rule shall also apply to retired members who, upon reemployment, elect*
16 *to participate in an Optional Retirement Plan under ORS 243.800, or an Alternative*
17 *Retirement Plan under ORS 353.250(2).]*

18 *[(5)] A participating employer may be required to certify to PERS that a retired*
19 *member has not exceeded the number of hours allowed in ORS 238.082(2) and this rule.*
20 *In addition, the participating employer may be required to provide PERS with business*
21 *and employment records to substantiate the actual number of hours a retired member*
22 *was employed.]*

1 **(4)** *[(6) Exceeding the hourly limitation.]* If a retired member is reemployed **subject**
2 **to** *[within]* the limitations of ORS 238.082*[(2)]* and section (1) of this rule, but the period
3 or periods of employment subsequently exceed*[s]* those *[limits]* **limitations**, the
4 following will occur if employment continues into the month following the date the
5 *[limits]* **limitations** are exceeded:

6 (a) PERS will **cancel** *[terminate]* the *[retired]* member's **retirement** *[benefits]*. The
7 last monthly service retirement allowance **payment** the member is entitled to will be for
8 the month in which the *[limits]* **limitations** were exceeded. **A member who receives**
9 **benefits to which he or she is not entitled must repay those benefits to PERS.**

10 (b) The member will reestablish active membership *[in accordance with]* **as**
11 **required by** ORS 238.078 the first of the calendar month following the date the *[limits]*
12 **limitations** were exceeded. *[If the member has incurred a break in service as defined in*
13 *OAR 459-070-0001(1), then the employee will become a member of the Oregon Public*
14 *Service Retirement Plan (OPSRP) pension program.]*

15 *[(c) A member who receives benefits to which he or she is not entitled must repay*
16 *those benefits to PERS.]*

17 **(c) The member's account shall be rebuilt in accordance with the provisions of**
18 **section (9) of this rule.**

19 **(5) Reemployment of retired member who elected the total lump sum option. A**
20 **retired member who has elected the total lump sum option under ORS 238.305(3)**
21 **may return to work with a participating employer in the six month period following**
22 **the member's effective retirement date without having to repay the retirement**
23 **benefits paid to them provided:**

1 (a) The retired member is designated by the employer(s) as a casual,
2 emergency, or seasonal worker as defined in OAR 459-005-0001; and

3 (b) The period or periods of employment with one or more public employers
4 participating in the system do not exceed 599 hours.

5 (6) The return to work in a qualifying or other position after six months
6 following the retirement date of a member who elected the total lump sum option
7 has no effect on the retirement status of that member and, upon such
8 reemployment, the member is not required to repay retirement benefits.

9 (7) If a retired member described in section (5) of this rule, is working subject
10 to the limitation of section (5)(b) of this rule and the member exceeds that limitation,
11 the member's retirement will be cancelled. The member will be required to repay
12 to PERS in a single payment the total amount of all retirement benefits received.
13 The member will reestablish active membership as required by ORS 238.078
14 effective the first of the calendar month following the date the member exceeded
15 that limitation. The member's account shall be rebuilt in accordance with ORS
16 238.078(2) and subsection 10(d) of this rule. Upon subsequent retirement, the
17 member may choose a different retirement payment option.

18 (8) Limitations on hours of employment in sections (1) and (5) of this rule will
19 be based on the number of hours employed on and after the retired member's
20 effective retirement date.

21 (9)[(7)] Reemployment under ORS 238.078(1). If a [retired] member has been
22 retired for service for more than six calendar months and is reemployed in a

1 qualifying position by a participating employer under the provisions of ORS 238.078(1),
2 the following will occur *[and will be effective on the date of reemployment]*:

3 (a) PERS will cancel *[terminate]* the *[retired]* member's retirement *[benefits.]*
4 effective the date of the member's reemployment.

5 (b) The member will reestablish active membership as required by ORS 238.078
6 on the date the member is reemployed. *[If the member has incurred a break in service,*
7 *as defined in OAR 459-070-0001(1), then the employee will become a member of the*
8 *OPSRP pension program.]*

9 *[The last monthly service retirement allowance to which the member is entitled will*
10 *be for the month prior to the calendar month the member is reemployed. A member who*
11 *receives benefits to which he or she is not entitled must repay those benefits to PERS;*
12 *and]*

13 (c) If the member elected an option other than a lump sum option under ORS
14 238.305(2) or (3), the member need not repay any service retirement allowance
15 payment received that is attributable to the period the member was separated from
16 service. The last monthly service retirement allowance payment to which the
17 member is entitled will be for the month prior to the calendar month in which the
18 member is reemployed. A member who receives benefits to which he or she is not
19 entitled must repay those benefits to PERS. Upon subsequent retirement, the
20 member may choose a different retirement option.

21 (A) The member's account shall be rebuilt effective the date active membership

1 is reestablished. The total amount transferred to the Benefits in Force Reserve (BIF)
2 at the member's retirement shall be reduced by the total amount of retirement
3 allowance payments received by the member in accordance with subsection (c).

4 (B) The balance will be distributed on a pro rata basis to the funds from which it
5 was derived and credited with earnings at the BIF rate or the assumed rate,
6 whichever is less, from the date of retirement to the date of active membership.

7 (d) If the member elected a partial lump sum option under ORS 238.305(2), the
8 member need not repay any service retirement allowance payment received that is
9 attributable to the period the member was separated from service. The last monthly
10 service retirement allowance payment to which the member is entitled will be for
11 the month prior to the calendar month in which the member is reemployed. A
12 member who receives benefits to which he or she is not entitled must repay those
13 benefits to PERS. No repayment of lump sum payment(s) received during the period
14 the member was separated from service is required. Upon subsequent retirement,
15 the member may not choose a different retirement option unless the member has
16 repaid to PERS an amount equal to the lump sum payment(s) received and the
17 interest that would have accumulated on that amount.

18 (A) The member's account shall be rebuilt effective the date active membership
19 is reestablished. The total amount transferred to the BIF at the member's
20 retirement shall be reduced by the total amount of retirement allowance payments
21 and lump sum payment(s) received by the member in accordance with subsection
22 (d) and increased by the amount of any lump sum repayment by the member.

1 (B) The balance will be distributed on a pro rata basis to the funds from which
2 it was derived and, excluding any amounts attributable to any lump sum
3 repayment(s) by the member, credited with earnings at the BIF rate or the assumed
4 rate, whichever is less, from the date of retirement to the date of active membership.

5 (e) If the member elected the total lump sum option under ORS 238.305(3), no
6 repayment of the total lump sum payment received is required. Upon subsequent
7 retirement, the member may not choose a different retirement option unless the
8 member has repaid to PERS in a single payment an amount equal to the total lump
9 sum payment received and the interest that would have accumulated on that
10 amount.

11 (A) If the member repays PERS as described in subsection (e) the member's
12 account shall be rebuilt effective the date that PERS receives the single payment.
13 The total amount transferred to the BIF at the member's retirement shall be
14 reduced by the amount of the total lump sum payment received by the member and
15 increased by the amount of the repayment from the member.

16 (B) The balance will be distributed on a pro rata basis to the funds from which
17 it was derived.

18 (10) Reemployment under ORS 238.078(2)[(c) If the member has been retired less
19 than six months as of the [effective] date of reemployment, all retirement benefits
20 received by the member must be repaid to PERS in a lump sum payment before the
21 member can be reemployed.] If a member has been retired for service for less than
22 six calendar months and is reemployed in a qualifying position by a participating
23 employer under the provisions of ORS 238.078(2), the following will occur:

1 (a) PERS will cancel the member's retirement effective the date of the
2 member's reemployment.

3 (b) All retirement benefits received by the member must be repaid to PERS in a
4 single payment before the member can be reemployed.

5 (c) The member will reestablish active membership as required by ORS 238.078
6 effective the date the member is reemployed.

7 (d) The member account shall be rebuilt effective the date that PERS receives
8 the single payment. The amount in the member account shall be the same as the
9 amount in the member account at the time of the member's retirement.

10 (e) Upon subsequent retirement, the member may choose a different retirement
11 payment option.

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

16 (12) The provisions of subsections (9)(c)(A), (9)(d)(A), and (9)(e)(A) of this rule
17 are applicable to members who reestablish active membership under ORS 238.078
18 whose initial effective retirement date is on or after the effective date of this rule.

19 (13)[(8)] Reporting requirement. The employer shall notify PERS under which
20 statute a [the] retiree is reemployed in a format acceptable to PERS.

21 (a) Upon request by PERS, a participating employer shall certify to PERS that
22 a retired member has not exceeded the number of hours allowed in ORS 238.082
23 and sections (1) and (5) of this rule.

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

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

6 *[(9) The provisions of this rule are not applicable to a reemployed retired member*
7 *who is not defined as an employee under OAR 459-005-0001.]*

8 (14)*[(10)]* Sick leave. Accumulated unused sick leave reported by the employer to
9 PERS upon a member's retirement, as provided *[for]* in ORS 238.350, shall *[will]* not
10 be made available to a retired member *[employee]* returning to employment *[work]*
11 under *[the provision of]* sections (1) or (9) *[(7)]* of this rule.]

12 *[(11) The provisions of this rule are effective January 1, 2004.]*

13 Stat. Auth.: ORS 238.650

14 Stats. Implemented: ORS 238.078 & 238.082



Oregon
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December 9, 2005

David K. Martin, Rules Coordinator
Public Employees Retirement System
P.O. Box 23700
Tigard, OR 97281

Re: Public comment on OAR 459-017-0060

Dear Mr. Martin:

In response to your notice of rulemaking on OAR 459-017-0060, the Oregon University System (OUS) requests you delete reference to the Optional Retirement Plan in paragraph (4) as part of your amendment.

Although extension of the 1039 hours limit to Optional Retirement Plan participants has been in the rule since 1996, in 2003 the OUS and PERS revisited other rulemaking that occurred during implementation of the Optional Retirement Plan, and agreed that promulgating administrative rules for the OUS defined contribution plan is outside PERS' scope. In early 2004, the PERS Board concurred and revoked OAR 459-005-0320 for this reason. OAR 459-017-0060 is the same issue, i.e., it imposes a work limitation rule on the Optional Retirement Plan that operates under the provisions of ORS 243.800 and its own plan document.

In practical application, deleting reference to the Optional Retirement Plan will have no effect on work after retirement for PERS members or for Optional Retirement Plan participants. Eligibility to join the Optional Retirement Plan requires that an employee be eligible to become a member of PERS. Retirees working on 1039 hour reappointments are not eligible to elect PERS membership when they become employed by the OUS, and are not eligible to elect the Optional Retirement Plan. Consequently, there is no circumstance under which the worked hours of an ORP participant, as described in the current rule, would be limited. Paragraph (4) of the rule has done no harm to employees or to either plan, but is without meaning and should be removed.

Integration of the rules and statutes affecting the Optional Retirement Plan and PERS has been an ongoing effort, and we appreciate the willingness of the PERS Board and staff in revisiting rules that were adopted early in the process of establishing the Optional Retirement Plan.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Denise Yunker'.

Denise Yunker, ORP Retirement Committee Chair

c: ORP Retirement Committee and Trustees
Vice Chancellor

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

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December 19, 2005

BY FAX AND MAIL

Steve Rodeman

Public Employee Retirement System

PO Box 23700

Tigard, OR 97281-3700

FAXED

Re: Proposed OAR 459-017-0060

Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to provide formal comment on proposed OAR 459-017-0060 on behalf of the PERS Coalition. While the PERS Coalition generally supports the PERS board's approach to rulemaking in this instance we do have two concerns. Paragraph 11(d) recites that in those instances where an employee has retired first and then returned to employment within six months, that while their member account will be rebuilt, it will be rebuilt in the amount of the account which existed at the time the member initially retired. Implicitly, then, it would appear that the member account would receive no interest during the period of time they were retired. While it is clear that they should earn no interest on the amount that they received in retirement benefits it is not clear why the remaining amount of their account would not bear interest during that period of time. I suggest an appropriate amendment would permit interest to continue to accrue on the member account to the extent it was not withdrawn in the form of a retirement payment.

The second area of concern relates to paragraph 16. Although there is no substantive change to paragraph 16, it seems to be entirely inconsistent with the remainder of the rule to provide that an employee would not have his or her leave bank reconstituted in the event of a return to employment. For those individuals who are going to have an employee account rebuilt it would seem more consistent with the overall philosophy of the rule that in those instances where an account is going to be rebuilt, that there should not be a bar to the reinstatement of the sick leave account if the employee returns to the same employer and both employee and employer are willing to rebuild that sick leave account.

Yours very truly,


Gregory A. Hartman

GAH:kaj

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cc: Clients (by email)



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING DATE	1/27/06
AGENDA ITEM	B.2.a. Final Average Salary

SUBJECT: Notice of Rulemaking for 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:** None. This is notice that staff has begun rulemaking.
- **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 2189 and 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 legislation also clarified whether specific payments of salary at the beginning and end of the time period considered for FAS would be included or excluded from the

calculation. The proposed amendments to OAR 459-005-0001 and 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 calculations be 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.

LEGAL REVIEW

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

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing is scheduled for February 28, 2006 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 10, 2006 at 5:00 p.m.

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 began the rulemaking process.
February 1, 2006	<i>Oregon Bulletin</i> to publish the Notice.
February 28, 2006	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
March 10, 2006	Public comment period ends at 5:00 p.m.
March 31, 2006	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing is scheduled for February 28, 2005. These rules are scheduled to be presented to the PERS Board for adoption at the March 31, 2006 Board meeting.

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

MEETING DATE	1/27/06
AGENDA ITEM	B.2.a. Final 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) and (3) for all PERS Tier Two members who are not
8 employed by a 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 238

17

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

MEETING	1/27/06
DATE	
AGENDA	B.2.a.
ITEM	Final 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	1/27/06
AGENDA ITEM	B.2.a. Final 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 service" means a period concluding on or after August 29, 2003,
 19 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).

8 ~~[(2)]~~ (3) "Calendar month" means a full month beginning on the first calendar day of
9 a month and ending on the last calendar day of the same month.

10 ~~[(3)]~~ (4) "Calendar year" means 12 calendar months beginning on January 1 and
11 ending on December 31 following.

12 ~~[(4)]~~ (5) "Employee" has the same meaning as "eligible employee" in ORS
13 238A.005(4).

14 ~~[(5)]~~ (6) "Employee class" means a group of similarly situated employees whose
15 positions have been designated by their employer in a policy or collective bargaining
16 agreement as having common characteristics.

17 ~~[(6)]~~ (7) "Employee contributions" means contributions made to the individual
18 account program by an eligible employee under ORS 238A.330, or on behalf of the
19 employee under ORS 238A.335.

20 (8) "Final Average Salary" (FAS) has the same meaning given the term in:

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

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

3 (9) [(7)] "Member" has the same meaning given the term in ORS 238A.005(10).

4 (10) [(8)] "Member account" means the account of a member of the individual
5 account program.

6 (11) [(9)] "Member of PERS" has the same meaning as "member" in ORS
7 238.005(12)(a), but does not include retired members.

8 (12) [(10)] "OPSRP" means the Oregon Public Service Retirement Plan.

9 (13) [(11)] "Overtime" means the salary or hours, as applicable, that an employer
10 has designated as overtime.

11 (14) [(12)] "PERS" means the retirement system established under ORS chapter 238.

12 (15) [(13)] (a) "Qualifying position" means a position or positions in which an
13 employee is expected to perform 600 or more combined hours of service in a calendar
14 year.

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

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

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

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

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

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

17 *(c) Salary is considered earned when earned for purposes of calculating final*
18 *average salary.]*

19 **(17)** ~~[(15)]~~ "School employee" has the meaning given the term in ORS
20 ~~[238A.140(6)]~~ **238A.140(7)**.

21 **(18)** ~~[(16)]~~ "Service." Except as provided in subsection (c) of this section, a person is
22 still providing "service," for purposes of determining whether a "break in service" has

1 occurred under Section 2a, Chapter 733, Oregon laws 2003 (Enrolled HB 2020), during
2 any calendar month that a member:

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

4 (b) Receives a payment of "salary," as that term is defined in *[ORS 238.005(20)]*
5 [238.005\(21\)](#) or similar payment from workers compensation or disability.

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

10 [\(19\)](#)~~*[(17)]*~~ The provisions of this rule are effective on January 1, 2004.

11 Stat. Auth.: 238A.450

12 Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330, 238A.335, [Oregon](#)
13 [Laws 2005 chapter 332, chapter 808](#)

14

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

MEETING	1/27/06
DATE	
AGENDA	B.2.a.
ITEM	Final 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

16 Stats. Implemented: OL 2003 Ch. 733

17

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

MEETING	1/27/06
DATE	
AGENDA	B.2.a.
ITEM	Final Average Salary

1 **459-080-0150**

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

1 Stats. Implemented: ORS 238A.330

2



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING DATE	1/27/06
AGENDA ITEM	B.2.b. Full Cost Purchase

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

OVERVIEW

- **Action:** None. This is notice that staff has begun rulemaking.
- **Reason:** House Bill 3262, enacted in 2005 in the legislative session, modified the military full cost purchase 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 the opportunity to purchase up to 4 years of retirement credit. This purchase amount is the system's full cost of the retirement credit, plus administrative fees. Depending on the benefit calculation method used, that full cost can vary. ORS 238.300 provides that a member is to receive the highest benefit calculation; that also makes for the most expensive full cost purchase.

Depending on individual circumstances, this full cost purchase can be tens of thousands of dollars, making this purchase prohibitive. The 2005 Oregon State Legislature amended the purchase provision to allow a member to choose the benefit calculation methodology. Therefore, the member can select the method, thereby establishing the purchase's full cost. Selecting a method that yields a lower cost will also, consequently, result in a lower benefit allowance to the member.

The proposed rule is simply to implement these new purchase provisions; no policy issues have been identified at this time.

LEGAL REVIEW

The attached drafts have been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are 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. The public comment period ends on March 1, 2006 at 5:00 p.m.

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 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> to publish 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.
February 24, 2006	First Reading of the rule.
March 1, 2006	Public comment period ends at 5:00 p.m.
March 31, 2006	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

The rule is scheduled for a first reading at the February 24, 2006 Board meeting.

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

MEETING	1/27/06
DATE	
AGENDA	B.2.b.
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



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING	1/27/06
DATE	
AGENDA	B.2.c.
ITEM	Designation of Beneficiary

SUBJECT: Notice of Rulemaking for OAR 459-050-0060, *OSGP Designation of Beneficiary*

OVERVIEW

- **Action:** None. This is notice that staff has begun rulemaking.
- **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

The attached drafts have been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are 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. The public comment period ends on February 28, 2006 at 5:00 p.m.

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.
February 24, 2006	First Reading of the rule.
February 28, 2006	Public comment period ends at 5:00 p.m.
March 31, 2006	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

The rule is scheduled for a first reading at the February 24, 2006 Board meeting.

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

MEETING	1/27/06
DATE	
AGENDA	B.2.c.
ITEM	Designation of Beneficiary

1 **459-050-0060**

2 **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, [Oregon Laws 2005 chapter 285](#)

9



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

MEETING	1/27/06
DATE	
AGENDA	B.2.d.
ITEM	OPSRP Definitions

SUBJECT: Notice of Rulemaking for OAR 459-070-0001, *OPSRP Definitions*

OVERVIEW

- **Action:** None. This is notice that staff has begun rulemaking.
- **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.2.a.).

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

LEGAL REVIEW

The attached drafts have been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are 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. The public comment period ends on February 28, 2006 at 5:00 p.m.

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.
February 24, 2006	First Reading of the rule.
March 1, 2006	Public comment period ends at 5:00 p.m.
March 31, 2006	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

The rule is scheduled for a first reading at the February 24, 2006 Board meeting.

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

MEETING DATE	1/27/06
AGENDA ITEM	B.2.d. OPSRP Definitions

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 service" means a period concluding on or after August 29, 2003,
19 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).

8 ~~[(2)]~~ (3) "Calendar month" means a full month beginning on the first calendar day of
9 a month and ending on the last calendar day of the same month.

10 ~~[(3)]~~ (4) "Calendar year" means 12 calendar months beginning on January 1 and
11 ending on December 31 following.

12 ~~[(4)]~~ (5) "Employee" has the same meaning as "eligible employee" in ORS
13 238A.005(4).

14 ~~[(5)]~~ (6) "Employee class" means a group of similarly situated employees whose
15 positions have been designated by their employer in a policy or collective bargaining
16 agreement as having common characteristics.

17 ~~[(6)]~~ (7) "Employee contributions" means contributions made to the individual
18 account program by an eligible employee under ORS 238A.330, or on behalf of the
19 employee under ORS 238A.335.

20 **(8) "Final Average Salary" (FAS) has the same meaning given the term in:**

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

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

3 (9) [(7)] "Member" has the same meaning given the term in ORS 238A.005(10).

4 (10) [(8)] "Member account" means the account of a member of the individual
5 account program.

6 (11) [(9)] "Member of PERS" has the same meaning as "member" in ORS
7 238.005(12)(a), but does not include retired members.

8 (12) [(10)] "OPSRP" means the Oregon Public Service Retirement Plan.

9 (13) [(11)] "Overtime" means the salary or hours, as applicable, that an employer
10 has designated as overtime.

11 (14) [(12)] "PERS" means the retirement system established under ORS chapter 238.

12 (15) [(13)] (a) "Qualifying position" means a position or positions in which an
13 employee is expected to perform 600 or more combined hours of service in a calendar
14 year.

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

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

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

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

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

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

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

19 (17) ~~[(15)]~~ "School employee" has the meaning given the term in ORS
20 ~~[238A.140(6)]~~ 238A.140(7).

21 (18) ~~[(16)]~~ "Service." Except as provided in subsection (c) of this section, a person is
22 still providing "service," for purposes of determining whether a "break in service" has

1 occurred under Section 2a, Chapter 733, Oregon laws 2003 (Enrolled HB 2020), during
2 any calendar month that a member:

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

4 (b) Receives a payment of "salary," as that term is defined in *[ORS 238.005(20)]*
5 [238.005\(21\)](#) or similar payment from workers compensation or disability.

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

10 [\(19\)](#)~~[\(17\)](#)~~ The provisions of this rule are effective on January 1, 2004.

11 Stat. Auth.: 238A.450

12 Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330, 238A.335, [Oregon](#)
13 [Laws 2005 chapter 332, chapter 808](#)

14



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

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

MEETING DATE	1/27/06
AGENDA ITEM	B.2.e. Break in Service

OVERVIEW

- **Action:** None. This is notice that staff has begun rulemaking.
- **Reason:** House Bill 2189, enacted in the 2005 legislative session, modified the “Break in Service” (BIS) provisions. These modifications require small 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 are simply to reflect these additions; no policy issues have been identified at this time.

LEGAL REVIEW

The attached drafts have been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are 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. The public comment period ends on March 1, 2006 at 5:00 p.m.

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, not intrinsically by the rule.
- ♦ *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> to publish 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.
February 24, 2006	First Reading of the rule.
March 1, 2006	Public comment period ends at 5:00 p.m.
March 31, 2006	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

The rule is scheduled for a first reading at the February 24, 2006 Board meeting.

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

MEETING	1/27/06
DATE	
AGENDA	B.2.e.
ITEM	Break in Service

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 [b]
12 **“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) Oregon Laws 2003 chapter 733:*

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 member of PERS on August 28, 2003, and returns to a qualifying position
3 before January 1, 2006 with the same participating public employer the employee
4 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**reak in [s]Service”, the employee shall be entitled to benefits under PERS for
7 all service performed prior to the “**B**reak in [s]Service”, and benefits under the OPSRP
8 pension program for all service performed after the “**B**reak in [s]Service.”

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

19 ([e]f) If a member of PERS ceases performance of service for one of the reasons
20 described in OAR 459-070-0001(1)(b), the member returns to a qualifying position if the
21 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) If a member of PERS ceases performance of service for reasons other than those
7 described in OAR 459-070-0001(1)(b), the member returns to a qualifying position if the
8 member resumes performance of service and performs 600 hours in the calendar year of
9 the return to service.

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

13 (h) If a member of PERS ceases performance of service to serve in the uniformed
14 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 **“Break in [s]Service.”**

18 **(i) 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 **(j) 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 “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, chapter 733,]* Oregon Laws 2003
19 [chapter 733 \(2a\)](#), Oregon Laws 2005 chapter 332



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January 27, 2006

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

MEETING	1/27/06
DATE	
AGENDA	C.1.
ITEM	Recovery of Overpayments

SUBJECT: Adoption of OAR 459-005-0610, *Recovery of Overpayments*

OVERVIEW

- **Action:** Adopt proposed permanent rule modifications to OAR 459-005-0610, Recovery of Overpayments.
- **Reason:** These rule modifications incorporate statutory changes made in the 2003 legislative session and clarify the agency's processes in this area.
- **Policy Issues:** None; these modifications do not change the agency's policies in this area.

SUMMARY OF RULE MODIFICATIONS

Staff began rulemaking on these proposed modifications principally to incorporate changes to the statute that were adopted by the 2003 Oregon Legislature and to better reflect the agency's practices in seeking recovery of overpayments. In summary, the major changes are:

- Definitions. Removing definitions of words that were deleted from the statute or not otherwise needed and incorporating consistent use of the term "payee" as defined in this rule.
- Section 3. Clarifying the distinction between the notice required by statute to commence recovery and the explanation that details the overpayment.
- Sections 4-6. Providing more clear explanation of the methods staff uses to calculate and collect overpayments, including reducing the payee's obligation to PERS by applying any lump-sum payment owed to them.
- Section 8. Incorporating the new statutory standard for collecting interest, fees, and costs in addition to the overpayment amount.

LEGAL REVIEW

The proposed rule modification has been submitted to legal counsel for review and any comments or changes have been incorporated in these rules as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 29, 2005 at 2:00 p.m. at PERS headquarters in Tigard. No one attended the hearing.

The comment period ended on December 23, 2005 at 5:00 p.m. In the December 16, 2005 packet, staff addressed the public comments that had been received to date. Greg Hartman submitted an additional comment on behalf of the PERS Coalition after the December meeting, a copy of which is attached. He suggested two modifications to the proposed rule that have been incorporated into the version presented for adoption:

- (1) Clarify that if the explanation creates separate appeal rights from the notice of overpayment that those rights will be specified in the explanation.
- (2) Designate the actuarial reduction method to be the preferred method of collection if the overpayment is caused by the actions of PERS or an employer. This designation is consistent with the Board's direction on recovery methods in the *Strunk/Eugene* situation.

IMPACT

Mandatory: Yes. The rule should be changed to conform to the statutory directives.

Impact: None.

Cost:

- *Members:* There will be no new costs 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

October 14, 2005	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
October 21, 2005	Board notified that staff began the rulemaking process.
November 1, 2005	<i>Oregon Bulletin</i> published the Notice.
November 29, 2005	Rulemaking hearing held at 2:00 p.m. in Tigard.
December 16, 2005	First Reading of the proposed rule at the PERS Board meeting
December 23, 2005	Public comment period ended at 5:00 p.m.
January 27, 2006	Rule is presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-005-0610, 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 2003 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 005 – ADMINISTRATION**

MEETING	1/27/06
DATE	
AGENDA	C.1.
ITEM	Recovery of Overpayments

1 **459-005-0610**

2 **Recovery of Overpayments**

3 **(1) Authority and Purpose.** In accordance with ORS 238.715, this rule sets forth
4 the criteria and process for the recovery of overpayments and erroneous payments made
5 by PERS. It is the policy of the Board to implement wherever possible, and if cost
6 effective, a *[one hundred percent (100%)]* **full** recovery of all overpayments and
7 erroneous payments. Staff shall attempt recovery of overpayments and erroneous
8 payments in the most efficient method available and in the least amount of time possible.

9 *[(1)]* **(2) [Definitions] For the purposes of this rule:**

10 (a) "Overpayment" *[means a payment, or series of payments,]* **refers to an amount**
11 that is in excess of the amount a *[member, beneficiary, or other person]* **payee** is entitled
12 to under ORS chapters 238 **and 238A**;

13 (b) "Improperly made payment" or "erroneous payment" means any payment *[, or*
14 *series of payments]* **that has been** made from the Public Employees Retirement Fund *[,*
15 *that has been made]* in error, including a payment to a *[person or entity]* **payee** that is
16 not entitled to receive the payment;

17 *[(c) "Fraudulent" means making a false representation to a person or entity with the*
18 *intent that the other person or entity will act on that representation to his or her damage;*

19 *(d) "Intentional" means that an individual acts or fails to act with the conscious*
20 *objective of:*

21 *(A) Causing a result;*

1 *(B) Acting in a manner prohibited by law or regulation; or*

2 *(C) Failing to act in a manner required by law or regulation.]*

3 *[(e)]* (c) "Good cause" means a cause beyond the reasonable control of the person.

4 "Good cause" exists when it is established by satisfactory evidence that factors or
5 circumstances are beyond the reasonable control of a rational and prudent person of
6 normal sensitivity, exercising ordinary common sense;

7 *[(f)]* (d) "Monthly payment" means any gross pension, annuity, service or disability
8 retirement allowance, death benefit, or other benefit under ORS chapters 238 or 238A
9 that is paid monthly to or on behalf of a payee; *[member, a member's beneficiary, an*
10 *alternate payee or the beneficiary of an alternate payee, or a combination of the*
11 *aforementioned;]*

12 *[(g)]* (e) "Lump-sum payment" means any *[gross]* one-time distribution or
13 payment *[of a benefit]* made under ORS chapters 238 or 238A, or any other law
14 directing PERS to make a *[benefit]* payment, including a retroactive adjustment, that is
15 not scheduled to be paid *[monthly]* to or on behalf of a *[member, a member's*
16 *beneficiary, an alternate payee or the beneficiary of an alternate]* payee on a regular
17 monthly basis;

18 *[(h)] "Lump-sum installments" paid in accordance with ORS 238.305(3) shall have*
19 *the same meaning as lump-sum payment in subsection (g) of this section;*

20 *(i) "Deduction" means the subtraction of a specified amount, on a pre-tax basis,*
21 *from any distribution by PERS;*

1 (j) "Reduction" means an actuarial calculation of ongoing monthly benefit payments
2 from PERS that permanently lessens the amount of each benefit payment;]

3 [(k)] (f) "Payee" means:

4 (A) A member, a trust established by the member, the member's estate;

5 (B) A member's beneficiary, a trust established by the member's beneficiary, the
6 estate of the member's beneficiary;

7 (C) An alternate payee, as defined in OAR 459-045-0001([9]6), a trust established
8 by an alternate payee, or the estate of an alternate payee;

9 (D) The beneficiary of an alternate payee, a trust established by the beneficiary of an
10 alternate payee, or the estate of the beneficiary of an alternate payee; [and] or

11 (E) Any other recipient of a benefit payment by PERS [of a benefit payable].

12 [(2)] (3) In addition to the notice of an overpayment or erroneous payment
13 [Notification] to a payee required by ORS 238.715(4), PERS [of an overpayment or
14 erroneous payment] shall also send [include]:

15 [(a) Invoice for overpayment or erroneous payment;]

16 [(b) Explanation] an explanation of the overpayment or erroneous payment;

17 [(c) Methods for repayment or collection of overpayment or erroneous payment;

18 [(d) Appeal rights under OAR 459-001-0030;]

19 [(e)] (c) W]whether the Board asserts a [The Board's] right to assess interest,
20 penalties and costs of collection; and a description of the manner in which the payee
21 may appeal the determinations reflected in the explanation, if applicable.

22 [(f) That the recovery process begins with the mailing of the notice and invoice.]

1 (4) In determining the amounts owed by a payee and setting a repayment
2 schedule under sections (5) or (6) of this rule, PERS shall reduce the amount owed
3 by any lump-sum payment then owed by PERS to that payee. If the payee should
4 subsequently become entitled to any lump sum payment, it shall be applied against
5 the amounts then owed by that payee. PERS, in its discretion, may revise the
6 repayment schedule or continue on the established schedule until the remaining
7 amounts owed are fully repaid.

8 *[(3) Voluntary methods, as approved by]* (5) The following list includes possible
9 methods for PERS to*[, for the]* recover*[y of]* an overpayment under an agreement with
10 the payee. These methods are listed in order of preference. Unless otherwise
11 ordered by the Board, PERS Staff is granted the discretion to select the method
12 deemed most likely to *[or erroneous payment of a PERS benefit shall be as follows, in*
13 *priority order, and shall]* effect a *[one hundred percent (100%)]* full recovery *[within*
14 *two years from the date of mailing notice and invoice]:*

15 (a) A *[one hundred percent (100%)]* repayment of all amounts owed in a single
16 payment *[upon receipt of an invoice from PERS];*

17 *[(b) In the event a payee is entitled to receive a lump-sum payment as described in*
18 *subsections (g) and (h) of section (1) of this rule:*

19 (A) *A deduction of one hundred percent (100%) of the amount owed to PERS from*
20 *the lump-sum payment;*

21 (B) *A deduction of one hundred percent (100%) of the amount owed to PERS from*
22 *one or more future lump-sum installments.]*

1 *[(c)] (b) A [In the event there is no lump-sum payment due the payee, a] deduction*
2 of a **percentage or fixed dollar amount** *[specified amount of not less than ten percent*
3 *(10%)]* **to be agreed upon between the payee and PERS,** from future monthly
4 payments for a period not to exceed two years that will *[satisfy in full the PERS invoice]*
5 **fully repay the amounts owed;**

6 **(c) A fixed monthly dollar amount to be agreed upon between the payee and**
7 **PERS that will fully repay the amounts owed;**

8 *[(d) A repayment schedule of monthly remittances for a period not to exceed two*
9 *years that will satisfy in full the PERS invoice.]*

10 **(d) A deduction of a percentage or fixed dollar amount from future monthly**
11 **payments, to be agreed upon between the payee and PERS, for a specified period**
12 **greater than two years that will fully repay the amounts owed if PERS deems that a**
13 **longer repayment period is warranted by the payee's personal financial**
14 **circumstances.**

15 *[(4)] (6)* If the payee does not agree to *[a voluntary]* **one of the recovery** methods
16 *[of recovery]* under section *[(3)] (5)* of this rule, PERS shall *[, if possible,]* use one of the
17 following *[involuntary]* methods *[for the]* **to effect a full** recovery of any overpayment
18 or erroneous payment *[and shall effect a one hundred percent (100%) recovery within*
19 *two years from the date of mailing notice and invoice]:*

20 *[(a) A deduction of one hundred percent (100%) of the amount owed at the time of*
21 *any future lump-sum payment as described in subsection (1)(g) of this rule;]*

1 *[(b) A deduction of a specified amount of not more than ten 10 percent (10%) from*
2 *current and future monthly payments to a payee until the overpayment or erroneous*
3 *payment is recovered, not to exceed two years;]*

4 **(a) Deducting not more than 10 percent from current and future monthly**
5 **payments to a payee until the full amounts owed are recovered;**

6 **(b) Making an actuarially determined reduction, not to exceed 10 percent, to**
7 **current and future payments from PERS calculated to repay the full amount of the**
8 **overpayment or erroneous payment during the period which monthly payments will**
9 **be made to the payee;**

10 *[(c) In the event a payee is entitled to receive two or more installments as described*
11 *in subsection (1)(h) of this rule:*

12 *(A) A deduction of one hundred percent (100%) of the amount owed to PERS, less*
13 *amounts recovered under subsection;*

14 *(b) of this rule, from the next annual lump-sum installment.*

15 *(B) A deduction of one hundred percent (100%) of the amount owned to PERS, less*
16 *amounts recovered under subsection (b) of this rule, from one or more lump-sum*
17 *installments.]*

18 *(5) If the overpayment or erroneous payment cannot be recovered under sections*
19 *(3) and (4) of this rule, PERS may implement one of the following actions as appropriate*
20 *to maximize recovery and minimize costs for PERS and the Trust:*

1 *(a) A deduction of a specific amount of not more than 10% from current and future*
2 *monthly payments from PERS to a payee until the overpayment or erroneous payment is*
3 *recovered;*

4 *(b) An actuarially determined reduction, not to exceed 10%, to current and future*
5 *payments from PERS; such actuarial reduction to repay the full amount of the*
6 *overpayment or erroneous payment;]*

7 *[(c)] (c) Seeking [restitution] recovery of the overpayment or erroneous payment*
8 *by using any remedy available to the Board under applicable law; or*

9 *(d) Engaging the services of [an] outside collection [agency] agencies]; or*
10 *(d) Any other remedy available to the Board under applicable law].*

11 *[(6)] (7) If a recovery method has to be selected under section (6) and the*
12 *overpayment is caused solely by the actions of PERS or a participating employer,*
13 *the actuarial reduction method described in (6)(b) will be the preferred method to*
14 *recover that overpayment unless otherwise ordered by the Board.*

15 (8) The base or original benefit payment used to calculate cost-of-living adjustments,
16 ad hoc increases, or other benefit increases shall not be altered by an actuarial reduction
17 provided for in subsection *[(5)(b)] (6)(b)* of this rule.

18 *[(7)] (9)* In the event that PERS determines that an overpayment or erroneous
19 payment was not caused by PERS or by the actions of a participating public
20 employer, PERS *[the result of a fraudulent or intentional act of the person who received*
21 *the payment(s), the staff shall] may [assess the person who received the payment]*
22 include within the amounts owed by the payee:

1 (a) All costs incurred by PERS in recovering the overpayment or erroneous payment,
2 including attorney fees, and fees assessed by an outside collection agency;

3 (b) Interest in an amount equal to one percent ~~[(1%)]~~ per month on the balance of
4 the overpayment or erroneous payment until that payment is fully recovered.

5 ~~[(8)]~~ (10) The Board authorizes the Director, or the Director's designee, to waive:

6 (a) The interest and costs of collection associated with the recovery of an
7 overpayment or erroneous payment for good cause shown;

8 (b) The recovery of any overpayment or erroneous payment if the total amount of
9 overpayments or erroneous payments is less than \$50~~;~~

10 ~~(c) The two-year limitation on deductions in sections (3) and (4) of this rule].~~

11 ~~[(9)]~~ (11) Recovery of an overpayment or erroneous payment shall not be effected if
12 PERS has not initiated recovery of those payments within six years after the date the
13 overpayment or erroneous payment was made. PERS initiates recovery on the date it
14 mails the notification required by ORS 238.715(4) ~~[section (2) of this rule].~~

15 ~~[(10)]~~ (12) The recovery of an overpayment or an erroneous payment shall take
16 precedence over other deductions or reductions as set forth in OAR 459-005-0600.

17 Stat. Auth.: ORS 238.715(9) & ORS 238.650

18 Stats. Implemented: ORS 238.715



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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

MEETING DATE	1/27/06
AGENDA ITEM	C.2.a. Earnings Crediting

SUBJECT: Adoption of Earnings Crediting and COLA Rules:
OAR 459-007-0001, *Earnings and Interest Distribution Definitions*
OAR 459-007-0003, *Determination of Tier One Year-to-Date Calculation*
OAR 459-007-0005, *Annual Earnings Crediting*
OAR 459-007-0090, *Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments*
OAR 459-007-0095, *Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or More Installment Payments* (Repeal)
OAR 459-013-0300, *HB 2003 Retirement Allowance Recalculations* (Repeal)

OVERVIEW

- **Action:** Adopt permanent rule modifications to OAR 459-007-0001, 459-007-0003, 459-007-0005 and 459-007-0090 and repeal OAR 459-007-0095 and 459-013-0300. These rules were adopted to incorporate provisions of the 2003 PERS Reform Legislation that were subsequently found invalid by the Oregon Supreme Court in the *Strunk* case. As an administrative procedure, the temporary rules adopted in October 2005 are to be repealed as part of this rulemaking.
- **Reason:** The *Strunk* decision voided certain portions of the PERS reform legislation as unconstitutional. Consequently, the administrative rule provisions based on those statutes can no longer operate. Adopting these rule modifications allows the agency to move forward with earnings crediting in compliance with the court's decision.
- **Subject:** Earnings crediting rule modifications to conform to the *Strunk* decision.
- **Policy Issue:** None. These rule modifications put the administrative rules into compliance with the state of the law as articulated in the *Strunk* decision. The modifications do not attempt to imbed or impede policy options that the PERS Board may choose to consider for crediting 2005 earnings or subsequent years earnings.

SUMMARY OF RULE MODIFICATIONS

The Oregon Supreme Court determined two elements of the 2003 PERS Reform Legislation to be invalid. One was the crediting limitation on Tier One member regular accounts. The other was the legislation's COLA Freeze method to recover overpayments.

Previously, the agency had adopted administrative rules that incorporated those elements. After the decision was announced, PERS staff identified the following rule provisions that need to be modified to remove those elements and conform to the current state of the law after *Strunk*. These modifications were adopted as temporary rules at the PERS Board's October 21, 2005 meeting and this action will make these changes as permanent.

OAR 459-007-0001, *Definitions*: The only change in this rule is the verb tense used in reference to the Deficit and Rate Guarantee reserves as they will now be ongoing accounts, not just reflections of prior deficits.

Note that in this and the other rule modifications, an effective date is specified. These dates correspond to when the prior, now invalid, version of the rules became effective. These modifications will, by operation of these dates, supercede the non-conforming versions. The modifications to this rule are effective back to July 1, 2003, which is the first date that the invalid statutory provisions became effective.

459-007-0003, *Determination of Tier One Year-to-Date Calculation*: This rule reflected the limitations on Tier One member regular account earnings crediting that were voided in *Strunk*. The rule modifications clarify that Tier One member regular accounts, for purposes of mid-year crediting, will receive no less than a pro-rate of the assumed interest rate. The rule also notes that such accounts cannot be credited with more than that rate until the conditions of ORS 238.255 are met. HB 2001 (2003 regular session) adopted limitations that prevent the PERS Board from crediting more than the assumed interest rate to Tier One member regular accounts. Those limitations were not challenged in the *Strunk* case, so the rule modifications continue to conform to them.

The effective date of these rule modifications is also July 1, 2003.

459-007-0005, *Annual Earnings Crediting*: The substantive modifications are to sections (8) and (10) of the rule to reflect the assumed rate guarantee for Tier One member regular accounts. The other modifications correct terminology and references that were not consistent.

The effective date of these rule modifications is April 15, 2004, which corresponds to when the PERS Board first adopted this rule.

459-007-0090, *Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments*: This rule reflected an interim provision that credited lump sum installment retirements from August 2003 to April 1, 2004 with a special rate. The *Strunk* decision held that provision invalid, so this modification removes reference to the April trigger date.

The effective date of these rule modifications is April 1, 2004 because retirements prior to that date were, by operation of law, subject to the old earnings crediting rules.

459-007-0095, *Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or More Installment Payments (Repeal)*: This rule was adopted to reflect that interim provision referenced above. That restriction was invalidated in *Strunk*, so staff is asking the Board to repeal the rule implementing it.

459-013-0300, HB 2003 Retirement Allowance Recalculations: The *Strunk* court also found that the COLA Freeze method specified in the legislation was not a permissible way to recover overpaid amounts. This rule was adopted to support that COLA Freeze process, so staff is asking the Board to repeal the rule.

LEGAL REVIEW

The attached drafts of OAR 459-007-0001, 459-007-0003, 459-007-0005, 459-007-0090, 459-007-0095 and 459-013-0300 have been submitted to legal counsel for review. Any concerns will be brought forward before the rule is presented for adoption at the meeting.

RULEMAKING TIMELINE

October 14, 2005	Staff initiated the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
October 21, 2005	PERS Board adopted temporary rules. PERS staff will proceed with permanent rulemaking unless otherwise directed.
November 1, 2005	<i>Oregon Bulletin</i> published the Notice of Rulemaking.
November 29, 2005	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 27, 2006	Public comment period ends at Board meeting
January 27, 2006	PERS Board may adopt the proposed new permanent rules.

IMPACT

Mandatory: Yes. Rule modifications must be adopted to conform to the current state of the law after the *Strunk* decision.

Impact: The rule modifications themselves do not carry a discrete impact since they just conform to the requirements established by *Strunk*. The *Strunk* decision will have significant administrative and fiscal impacts that are addressed more fully under the staff reports provided separately to the Board.

Cost: There is no discrete cost associated with these rule modifications as, again, they are just conforming the rules to the state of the law after *Strunk*. That decision will incur substantial costs in crediting to Tier One member regular accounts, both in terms of the dollars to be credited and the administrative costs in implementing that decision, particularly on a retroactive basis for transactions that were previously completed.

- *Members.* No discrete costs to members.
- *Employers.* No discrete costs to employers.
- *Administration.* No discrete costs to administer these rule modifications.
- *Fund.* No discrete cost impact to the PERS Fund by adoption of these rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “repeal temporary rules adopted in October 2005 and adopt permanent rule modifications to OAR 459-007-0001, 459-007-0003, 459-007-0005 and 459-007-0090 and repeal OAR 459-007-0095 and 459-013-0300, 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 *Strunk* decision.

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 007 – EARNINGS AND INTEREST
DISTRIBUTION**

MEETING DATE	1/27/06
AGENDA ITEM	C.2.a. Earnings Crediting

1 **459-007-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in
 4 ORS Chapter 238 and OAR 459-005-0001. Specific and additional terms for purposes of
 5 this Division are defined as follows unless context requires otherwise:

6 (1) "Annual rate" means the rates determined by the Board for crediting earnings to
 7 Tier One regular accounts, Tier Two regular accounts and member variable accounts,
 8 effective as of December 31 of each year.

9 (2) "Assumed rate" means the actuarial assumed rate of return on investments as
 10 adopted by the Board for the most recent actuarial valuation.

11 (3) "Average annualized rate" means the monthly rate provided by the Oregon State
 12 Treasury representing the rate credited to cash accounts.

13 (4) The "Benefits-in-Force Reserve" or "BIF Reserve" means the reserve established
 14 under ORS 238.670(2).

15 (5) "Capital Preservation Reserve" means the reserve established under ORS
 16 238.670(3).

17 (6) "Contingency Reserve" means the reserve established under ORS 238.670(1).

18 (7) The "date of distribution" is the date inscribed on the check, warrant, or
 19 electronic transfer issued to or on behalf of the member, the member's beneficiary, or an
 20 alternate payee.

21 (8) "Date of payment" means the date a payment is received by PERS.

1 (9) "Earnings" means all income to the Fund from investments and other sources, but
2 does not include member or employer contributions.

3 (10) "Tier One Member Deficit Reserve" and "Deficit Reserve" mean the deficit
4 reserves established in ORS 238.255(1) that *[have been]* **are** used to fund crediting of the
5 assumed rate to Tier One regular accounts and that are used to reflect losses attributable
6 to Tier One regular accounts.

7 (11) "Tier One Member Rate Guarantee Reserve" and "Rate Guarantee Reserve"
8 mean the reserve referenced in ORS 238.255(1) that enables the Board to credit earnings
9 at or above the assumed rate under the conditions specified in ORS 238.255.

10 (12) "Year-to-date calculation" means the factor used to credit a pro-rata distribution
11 of year-to-date earnings, allowing for reserves and expenses, to Tier One regular
12 accounts, Tier Two regular accounts, or member variable accounts. These factors are
13 calculated by staff on a monthly basis using the market value of investments in the Fund
14 as supplied by the Oregon State Treasury. Year-to-date calculations for Tier One member
15 regular accounts will be determined in accordance with OAR 459-007-0003.

16 **(12) The provisions of this rule shall be applied retroactively to July 1, 2003.**

17 Stat. Auth.: ORS 238.650
18 Stats. Implemented: ORS 238

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

MEETING DATE	1/27/06
AGENDA ITEM	C.2.a. Earnings Crediting

1 **459-007-0003**

2 **Determination of Tier One Year-to-Date Calculation**

3 **(1)** Any year-to-date calculation ("factor") used to credit earnings to Tier One

4 member regular accounts *[is subject to the following conditions:*

5 *(1) If the balance in the Deficit Reserve is other than zero at the time the factor*
6 *would be applied, the factor shall be zero.*

7 *(2) In any month in which the factor would be less than a year-to-date equivalent of]*
8 **shall be a pro-rate of** the assumed **interest** rate*], the Rate Guarantee Reserve shall be*
9 *used to the extent available to credit Tier One regular accounts up to a year-to-date*
10 *equivalent of the assumed rate.*

11 *(3) The factor shall not] **and cannot** be greater [than a year-to-date equivalent of*
12 *the assumed rate] **unless and** until the conditions in ORS 238.255[(3)] have been met.*

13 *[(4) For purposes of crediting the regular accounts of Tier One members who retire*
14 *before April 1, 2004, and alternate payees of those members, the factor shall be*
15 *determined in accordance with the Oregon Administrative Rules in effect on June 30,*
16 *2003.]*

17 **(2) The provisions of this rule shall be applied retroactively to July 1, 2003.**

18 Stat. Auth.: ORS 238.650
19 Stats. Implemented: ORS 238

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

MEETING DATE	1/27/06
AGENDA ITEM	C.2.a. Earnings Crediting

1 **459-007-0005**

2 **Annual Earnings Crediting**

3 1) For purposes of this rule, “remaining earnings” means earnings available for
4 distribution to a particular account or reserve after deduction of amounts required or
5 authorized by law for other purposes.

6 (2) Except as otherwise specified in this division, earnings on all accounts and
7 reserves in the Fund shall be credited as of December 31 of each calendar year in the
8 manner specified in this rule.

9 (3) **Health insurance accounts.** All earnings attributable to the Standard Retiree
10 Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the
11 Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account
12 from which they were derived, less administrative expenses incurred by each account, as
13 provided in ORS 238.410, 238.415 and 238.420, respectively.

14 (4) **Employer lump sum payments.** All earnings or losses attributable to the
15 employer lump sum payment accounts established under ORS 238.225(9) shall be
16 credited to the accounts from which they were derived.

17 (5) **Administrative expenses.**

18 (a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata
19 share of administrative expenses in accordance with ORS 238.260(6). If the Variable
20 Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of
21 administrative expenses.

1 (b) Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee
2 Reserve, Tier Two member regular accounts, employer contribution accounts, the
3 Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation
4 Reserve shall first be used to pay the system’s remaining administrative expenses under
5 ORS 238.610.

6 (6) **Member variable accounts.** All remaining earnings or losses attributable to the
7 V[v]ariable A[a]nnuity A[a]ccount shall be credited to the participants of that account,
8 as provided under ORS 238.260(6) and (7)(b).

9 (7) **Contingency Reserve.**

10 (a) In any year in which total earnings on the Fund equal or exceed the assumed rate,
11 an amount not exceeding seven and one-half percent of remaining earnings attributable to
12 Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two regular
13 accounts, Benefits-in-Force Reserve, employer contribution accounts, the Capital
14 Preservation Reserve and the Contingency Reserve shall be credited to the Contingency
15 Reserve to the level at which the Board determines it is adequately funded for the
16 purposes specified in ORS 238.670(1).

17 (b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for
18 use in preventing a deficit in the fund due to employer insolvency may only be credited
19 using earnings attributable to employer contribution accounts.

20 (8) **Tier One Member Deficit Reserve.**

21 [(a)] All remaining earnings attributable to Tier One regular accounts and the Tier
22 One Rate Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve
23 established in ORS 238.255(1) until the deficit is eliminated.

1 *[(b) Any losses attributable to Tier One regular accounts shall be charged to the*
2 *Tier One Member Deficit Reserve in accordance with ORS 238.255(1).]*

3 (9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two
4 member regular accounts, employer contribution accounts, the Benefits-in-Force
5 Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited
6 from those sources to one or more reserve accounts that may be established under ORS
7 238.670(3) to offset gains and losses of invested capital.

8 (10) **Tier One regular accounts.** All remaining earnings attributable to Tier One
9 regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier One
10 member regular accounts *[in accordance with the following:]*

11 *[(a) No earnings shall be credited in any year in which there is a balance other than*
12 *zero in the Tier One Member Deficit Reserve, in accordance with ORS 238.255(2).]*

13 *[(b) Earnings shall be credited] at [to the greatest level possible without exceeding]*
14 *the assumed rate in any year in which [there is a zero balance in the Deficit Reserve and]*
15 *the conditions set out in ORS 238.255[(3)] have not been met. Crediting under this*
16 *subsection shall be funded first by all remaining earnings attributable to Tier One regular*
17 *accounts and the Tier One Rate Guarantee Reserve, then moneys in the Tier One Rate*
18 *Guarantee Reserve.*

19 *[(c) In any year in which remaining earnings attributable to Tier One regular*
20 *accounts and the Rate Guarantee Reserve exceed the assumed rate, and the conditions*
21 *set out in ORS 238.255(3) have been met, earnings in excess of the assumed rate may be*
22 *credited to Tier One regular accounts.]*

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

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

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

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

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

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

19

20 Stat. Auth.: ORS 238.650

21 Stats. Implemented: ORS 238

22

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

MEETING DATE	1/27/06
AGENDA ITEM	C.2.a. Earnings Crediting

1 **459-007-0090**

2 **Crediting Earnings upon Tier One Service Retirement, Two or More Installment**
3 **Payments**

4 Notwithstanding 459-007-0070, if a Tier One member retires *[on or after April 1,*
5 *2004,]*and elects to receive installment payments under ORS 238.305(4), earnings shall
6 be credited from the effective date of the last annual rate to the date of distribution of the
7 final installment payment in the manner specified in this rule.

8 (1) **Regular account.** Earnings shall be credited to the member's regular account as
9 follows:

10 (a) **Prior year earnings.** If earnings for the calendar year prior to the effective
11 retirement date have not yet been credited, earnings shall be credited for that year based
12 on the latest year-to-date calculation available for that year.

13 (b) **Retirement year earnings.** Earnings for the calendar year of the effective
14 retirement date shall be based on the latest year-to-date calculation as of the effective
15 retirement date.

16 (2) **Variable account.** If the member is participating in the Variable Annuity
17 Account, earnings or losses shall be applied to the member's variable account as follows:

18 (a) **Prior year earnings.** If earnings or losses for the calendar year prior to the
19 effective retirement date have not yet been credited to the member's variable account,
20 earnings or losses for that year shall be credited based on the latest year-to-date
21 calculation available for that year.

1 (b) **Retirement year earnings.** Earnings or losses for the calendar year of the
2 effective retirement date shall be credited based on the latest year-to-date calculation as
3 of the effective retirement date.

4 (c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as
5 provided in subsections (a) and (b) of this section, and prior to the distribution of the first
6 installment, the adjusted balance of the member's variable account shall be transferred to
7 the member's regular account as of the effective retirement date.

8 (3) **Initial installment.** Earnings shall be credited to the initial installment as
9 follows:

10 (a) If the initial installment is distributed in the same year as the effective retirement
11 date, earnings shall be paid with the initial installment based on the average annualized
12 rate prorated from the effective retirement date to the date of distribution of the initial
13 installment.

14 (b) If the initial installment is distributed in the year following the effective
15 retirement date, earnings shall be paid with the initial installment based on the average
16 annualized rate prorated from January 1 of the year following the effective retirement
17 date to the date of distribution of the initial installment.

18 (4) **Annual earnings -- initial year.** Earnings from the effective retirement date to
19 December 31 of the year of retirement shall be credited to the member's regular account
20 in the following amount:

21 (a) The member's regular account balance as of December 31 of the year of
22 retirement, excluding the remaining earnings credited to the member's regular account

1 under subsection (1)(b) of this rule and to the member's variable account under
2 subsection (2)(b) of this rule; multiplied by

3 (b) The annual rate for that year less the latest year-to-date calculation as of the
4 effective retirement date.

5 (5) **Annual earnings -- subsequent years.** Earnings shall be credited to the
6 member's regular account as of December 31 of each calendar year subsequent to the
7 effective retirement date in the manner specified in this section.

8 (a) Earnings from January 1 to the date of distribution of the annual installment shall
9 be credited in the following amount:

10 (A) The member's regular account balance as of the date of distribution of the annual
11 installment; multiplied by

12 (B) The annual rate for that year, prorated from January 1 to the date of distribution.

13 (b) Earnings from the date of distribution of the annual installment to December 31
14 shall be credited in the following amount:

15 (A) The member's regular account balance as of December 31; multiplied by

16 (B) The annual rate for that year, prorated from the date of distribution to December
17 31.

18 (6) **Final installment.** The final installment shall include the remaining balance of
19 the member's regular account as of the date of distribution of the final installment, plus
20 earnings credited as follows:

21 (a) If earnings for the calendar year prior to the year of the final installment have not
22 yet been credited to the member's regular account, earnings shall be credited based on the
23 latest year-to-date calculation available for that year.

1 (b) Earnings for the calendar year of the final installment shall be credited based on
2 the latest year-to-date calculation as of the date of distribution of the final installment.

3 **(7) The provisions of this rule shall be applied retroactively to April 1, 2004.**

4 Stat. Auth.: ORS 238.305(3)(c) & ORS 238.650

5 Stats. Implemented: ORS 238.260, 238.300, 238.305 & ORS 238.315

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

MEETING DATE	1/27/06
AGENDA ITEM	C.2.a. Earnings Crediting

1 ***[459-007-0095***

2 ***Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or***
 3 ***More Installment Payments***

4 *Notwithstanding 459-007-0070, if a Tier One member retires with an effective*
 5 *retirement date on or after August 1, 2003, and prior to April 1, 2004, and elects to*
 6 *receive installment payments under ORS 238.305(4), earnings shall be credited from the*
 7 *effective date of the last annual rate to the date of distribution of the final installment*
 8 *payment in the manner specified in this rule.*

9 *(1) Regular account. Earnings shall be credited to the member's regular account as*
 10 *follows:*

11 *(a) Prior year earnings. If earnings for the calendar year prior to the effective*
 12 *retirement date have not yet been credited, earnings shall be credited for that year based*
 13 *on the greater of the assumed rate or the latest year-to-date calculation available for that*
 14 *year.*

15 *(b) Retirement year earnings. Earnings for the calendar year of the effective*
 16 *retirement date shall be based on the greater of the assumed rate or the latest year-to-*
 17 *date calculation as of the effective retirement date.*

18 *(2) Variable account. If the member is participating in the Variable Annuity*
 19 *Account, earnings or losses shall be applied to the member's variable account as follows:*

20 *(a) Prior year earnings. If earnings or losses for the calendar year prior to the*
 21 *effective retirement date have not yet been credited to the member's variable account,*

1 *earnings or losses for that year shall be credited based on the latest year-to-date*
2 *calculation available for that year.*

3 *(b) Retirement year earnings. Earnings or losses for the calendar year of the*
4 *effective retirement date shall be credited based on the latest year-to-date calculation as*
5 *of the effective retirement date.*

6 *(c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as*
7 *provided in subsections (a) and (b) of this section, and prior to the distribution of the first*
8 *installment, the adjusted balance of the member's variable account shall be transferred to*
9 *the member's regular account as of the effective retirement date.*

10 *(3) Initial installment. Earnings shall be credited to the initial installment as follows:*

11 *(a) If the initial installment is distributed in the same year as the effective retirement*
12 *date, earnings shall be paid with the initial installment based on the average annualized*
13 *rate prorated from the effective retirement date to the date of distribution of the initial*
14 *installment.*

15 *(b) If the initial installment is distributed in the year following the effective*
16 *retirement date, earnings shall be paid with the initial installment based on the average*
17 *annualized rate prorated from January 1 of the year following the effective retirement*
18 *date to the date of distribution of the initial installment.*

19 *(4) Annual earnings -- initial year. Earnings from the effective retirement date to*
20 *December 31 of the year of retirement shall be credited to the member's regular account*
21 *in the following amount:*

22 *(a) The member's regular account balance as of December 31 of the year of*
23 *retirement, excluding earnings credited to the member's regular account under*

1 *subsection (1)(b) of this rule and to the member's variable account under subsection*
2 *(2)(b) of this rule; multiplied by*

3 *(b) The Tier Two annual rate for that year less the latest year-to-date calculation for*
4 *Tier Two as of the effective retirement date.*

5 *(5) Annual earnings -- subsequent years. Earnings shall be credited to the member's*
6 *regular account as of December 31 of each calendar year subsequent to the effective*
7 *retirement date in the manner specified in this section.*

8 *(a) Earnings from January 1 to the date of distribution of the annual installment*
9 *shall be credited in the following amount:*

10 *(A) The member's regular account balance as of the day before the date of*
11 *distribution of the annual installment; multiplied by*

12 *(B) The Tier Two annual rate for that year, prorated from January 1 to the date of*
13 *distribution.*

14 *(b) Earnings from the date of distribution of the annual installment to December 31*
15 *shall be credited in the following amount:*

16 *(A) The member's regular account balance as of December 31; multiplied by*

17 *(B) The Tier Two annual rate for that year, prorated from the date of distribution to*
18 *December 31.*

19 *(6) Final installment. The final installment shall include the remaining balance of*
20 *the member's regular account as of the date of distribution of the final installment, plus*
21 *earnings credited as follows:*

1 *(a) If earnings for the calendar year prior to the year of the final installment have*
2 *not yet been credited to the member's regular account, earnings shall be credited based*
3 *on the latest Tier Two year-to-date calculation available for that year.*

4 *(b) Earnings for the calendar year of the final installment shall be credited based on*
5 *the latest Tier Two year-to-date calculation as of the date of distribution of the final*
6 *installment.*

7 *(7) The provisions of this rule are effective on July 30, 2003.*

8 *Stat. Auth.: ORS 238.305(3)(c) & ORS 238.650*

9 *Stats. Implemented: ORS 238.260, 238.300, 238.305 & 238.315; OL 2003 Ch.625*

10 *(Enrolled HB 3020)]*

11

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

MEETING DATE	1/27/06
AGENDA ITEM	C.2.a. Earnings Crediting

1 **[459-013-0300**

2 ***HB 2003 Retirement Allowance Recalculations***

3 *(1)(a) The provisions of this rule apply to Tier One members, and the alternate*
 4 *payees and beneficiaries of Tier One members, who receive a service retirement*
 5 *allowance calculated under ORS 238.300(2)(b)(A) and who have an effective retirement*
 6 *date that is on or after April 1, 2000, and before April 1, 2004.*

7 *(b) The provisions of this rule do not apply to:*

8 *(A) Judge members and the beneficiaries or alternate payees of judge members.*

9 *(B) A member who receives a disability retirement allowance.*

10 *(2) Revised service retirement allowance. The "revised service retirement*
 11 *allowance" provided for in section 10, chapter 67, Oregon Laws 2003 (Enrolled HB*
 12 *2003, as amended by section 13, Enrolled HB 3020) shall be calculated as follows:*

13 *(a) An account balance for the member as of the member's effective retirement date*
 14 *shall be determined as though the balance in the member's regular account as of*
 15 *December 31, 1999, had been credited with 11.33 percent earnings for the calendar year*
 16 *1999.*

17 *(b) The member's service retirement allowance shall then be calculated for that*
 18 *member as of the member's effective retirement date using the account balance*
 19 *established in subsection (a) of this section. This calculation shall be made under ORS*
 20 *238.300; section 4, chapter 68, Oregon Laws 2003 (Enrolled HB 2004); and any other*
 21 *provisions of ORS Chapter 238 that are applicable to the calculation or adjustment of the*
 22 *member's service retirement allowance.*

1 (c) *The retirement allowance calculated in subsection (b) of this section shall be*
2 *converted to the form of benefit selected by the member under ORS 238.305, if any, and*
3 *adjusted as required by section 4, chapter 68, Oregon Laws 2003 (Enrolled HB 2004), or*
4 *by any other provision of ORS Chapter 238.*

5 (d) *The allowance calculated under subsection (b) or, if applicable, subsection (c) of*
6 *this section shall then be adjusted as if the cost of living adjustment provided for in ORS*
7 *238.360 had applied to that benefit for each calendar year after the member's effective*
8 *retirement date.*

9 (3) *Fixed service retirement allowance. The "fixed service retirement allowance"*
10 *provided for in section 10, chapter 67, Oregon Laws 2003 (Enrolled HB 2003, as*
11 *amended by section 13, Enrolled HB 3020) shall be the amount payable to or on account*
12 *of the member on July 1, 2003, or on the member's effective retirement date, whichever is*
13 *later. The fixed service retirement allowance includes any benefit increases such as those*
14 *provided by ORS 238.375, 238.385, or 238.387, and cost of living adjustments that have*
15 *been made to the member's actual retirement allowance prior to July 1, 2003.*

16 (4) *The service retirement allowance payable to or on account of members described*
17 *in section (1) of this rule shall be the greater of the revised service retirement allowance*
18 *calculated under section (2) of this rule or the fixed service retirement allowance*
19 *calculated under section (3) of this rule.*

20 (5) *The provisions of this rule are effective July 1, 2003.*

21 *Stat. Auth: ORS 238.650*

22 *Stats. Implemented: OL 2003 Ch. 67 & Ch. 625 (Enrolled HB 2003 & HB 3020)]*



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: Earnings Crediting and Reserve Deployment Policy Issues

MEETING DATE	1/27/06
AGENDA ITEM	C.2.b. Reserves

BACKGROUND

As part of the PERS Board's annual earnings allocation decision, the issue of whether any of those earnings should be set aside in reserves and, if so, how much, must be addressed. Currently, the Board has established the following reserve accounts (with approximate balances based on the *Strunk/Eugene* redeployment of 1999 earnings):

1. Contingency Reserve (ORS 238.670(1)): \$ 1,399 Million
2. Capital Preservation Reserve (ORS 238.670(3)): \$ 460 Million
3. Tier One Rate Guarantee Reserve (ORS 238.255): \$ 311 Million

The Tier One Rate Guarantee Reserve is funded from Tier One member regular account earnings in excess of the assumed rate. It will continue to be funded until its maximum level, as mandated by the statute (enough to pay all remaining Tier One members the assumed rate until retirement), is reached and held for three years. The Board's actuary has indicated that level is multiple years and billions of dollars in the future.

The Contingency and Capital Preservation Reserves, however, are to be funded at the Board's discretion when earnings are available until the Board deems them adequately funded. In advance of the annual crediting for 2005 earnings, therefore, PERS staff needs some initial direction on whether these reserves are adequately funded and, if so, to what degree so those allocations can be incorporated into the preliminary earnings crediting recommendation we bring to the Board's February 2006 meeting.

HISTORIC AND FUTURE USES OF RESERVES

The statutes and rules provide general guidance on the permissible uses (and funding sources) of reserve accounts. Set forth in detail in a memo to the Board from October 2005 (copy attached), the information relevant to this discussion is summarized below:

1. Contingency Reserve: Pay for (almost) any contingency identified by the Board. Funded by earnings on Tier One and Two member regular accounts, employer accounts, and the Benefits-in-Force Reserve when those earnings exceed the assumed rate.
2. Capital Preservation Reserve: To recover losses in invested capital. Funded by earnings on Tier Two member and employer accounts and the Benefits-in-Force Reserve.

3. Rate Guarantee Reserve: Pay the assumed rate to Tier One member regular accounts. Funded by earnings on Tier One member regular accounts over the assumed rate.
4. Benefits-in-Force Reserve: Pay system benefit payments. Funded by transfers from member and employer accounts and by earnings credited to the reserve.

These reserves have been funded at varying levels over the life of the PERS system, depending on the dynamics of the time. The Board reserved funds to accomplish various objectives, such as ensuring adequate funds were available to pay benefits, ensuring the assumed rate guarantee could be honored, or to cover anticipated extraordinary expenses. These dynamics have changed drastically with the 2003 PERS Reform and the effect those amendments had on the role of member accounts in establishing and funding retirement benefits.

The maturity of the system is such that adequate cash flow for benefit payments is no longer an issue that reserves need to address. Similarly, the assumed rate guarantee has been narrowed down to (and affirmed for) Tier One member regular accounts. The Rate Guarantee Reserve addresses that guarantee for those accounts. As will be seen later, staff does not recommend setting aside reserves to support that assumed rate guarantee in other contexts. That leaves covering extraordinary expenses as the most obvious reason for retaining reserves. For 2003 and 2004, while the system faced uncertain levels of liabilities that could be created depending on the outcome of the Oregon Supreme Court cases at issue, the Board reserved the maximum amount available for the Contingency Reserve and a significant portion of funds in the Capital Preservation Reserve.

Bill Hallmark's financial modeling presentation at the Board's December 2005 meeting explored another possible use of reserves: managing employer rate volatility. While Mr. Hallmark's review was not conclusive and he recommended more analysis, his presentation does strongly suggest that, while reserves could be used for that purpose, they are not the most effective or efficient way to a collar rate volatility associated with investment return volatility.

Reviewed at a high level, the various fund components don't appear to benefit from reserving current earnings against future costs beyond the reasons discussed above:

- Tier One Member Accounts: The *Strunk* case held that these accounts must be credited with the assumed rate each calendar year. The Rate Guarantee Reserve is established for that obligation (previously, the Gain/Loss Reserve met that function). There is no other obligation to Tier One accounts that reserving would support.
- Tier Two Member Accounts: These accounts have philosophically been credited with whatever earnings (or losses) they generated. Because Tier Two member accounts no longer receive contributions, additional earnings credited to them will not increase the associated liability of funding their retirement benefit. Tier Two members are almost certain to retire under the Full Formula method, so their account balance will not be the principle driver of their benefit amount. Consequently, there is no reason to limit earnings to these accounts to control liabilities nor reserve earnings from one period to credit those funds back to those accounts at a later time.

- **Benefits-in-Force Reserve:** Member and employer accounts are transferred to the BIF upon a member's retirement in an amount deemed adequate by the actuary to fund the member's anticipated retirement benefit, assuming those funds earn the assumed rate over the expected benefit payment period. Many subsequent dynamics affect the funded status of the BIF, such as whether members actually meet the demographic assumptions (e.g., mortality) used by the actuary. In any case, whether the BIF is adequately funded is based on the system's overall asset status; reserving earnings to later apply to the BIF would only understate that status until the reserves are deployed at a later time.
- **Employer Accounts:** Employers make contributions that are calculated by the actuary to be sufficient to pay their retirement benefit obligations when their employees retire. Those contributions are expected to generate earnings at the assumed rate until they are transferred to the BIF to fund the employee's retirement. The contribution rate is therefore dependent on whether the actuary accurately estimated liabilities and whether the contributions in fact earn the assumed rate. When those rates are reevaluated at each system valuation, the actuary will adjust the rates based on changes in those liability and earnings dynamics. Reserves would only have the effect of shifting those employer assets from one period to another, artificially propping up rates in one time period to similarly depress them in another.

ENVIRONMENTAL SCAN FOR 2005 RESERVING

The reserve balances on the books at this point have to be reviewed given the current state of affairs and judged for adequacy on an annual and on-going basis. Looking at each category, then, results in the following conclusions:

1. **Rate Guarantee Reserve:** This positive balance needs to be retained to be applied in future years when Tier One member accounts do not earn the assumed rate.
2. **Capital Preservation Reserve:** These reserves were set aside as a hedge against future losses to invested capital. As the discussion above reveals, however, the efficacy of that approach does not fit with the current system dynamics. Rather, these funds could be deployed to apply against losses from 2002 still carried in employer and Tier Two member accounts and the Benefits-in-Force Reserve.
3. **Contingency Reserve:** These reserves were set aside because of the uncertainty surrounding the financial impact of the *Strunk* decision. The Oregon Supreme Court's opinion in that case added approximately \$2 billion in system liabilities by overturning the assumed rate "lifetime banking" concept for Tier One member regular accounts that the 2003 PERS Reform Legislation tried to create. Returning the reserve balance back to the asset accounts would blunt some of the effects of those additional liabilities.

The discussion above demonstrates that the remaining purpose for retaining reserves is for applying against foreseeable extraordinary expenses (aside from the Rate Guarantee Reserve's insular and insulated function). Those reserves are most prudently maintained

in the Contingency Reserve since that reserve has the most flexible purposes to which it can be applied. Foreseeable expenses that could be covered by that reserve include:

- **Litigation Expenses.** Attorney fee awards are still pending the Oregon Supreme Court over the *Strunk* case in the amount of around \$2.5 million. Also, PERS is facing a class action lawsuit over duty disability tax reporting with a possible exposure of \$2-3 million. Major cases still pending include the *White* case that may generate additional expenses beyond currently budgeted authority.
- **Employer Insolvency.** One of the specifically permitted uses for the Contingency Reserve in statute is to cover for employers whose insolvency prevents them from paying their PERS obligations. These costs need to be covered by earnings on employer accounts. Given the substantial unfunded actuarial liabilities being carried by many employers, it seems prudent to put at least some funds aside for such a contingency. For example, until resolved by the 2003 legislature, the proclaimed inability of Multnomah Fire District #10 to fund its PERS obligations had the system facing a \$75 million shortfall.
- **Failure to Recover All *Strunk/Eugene* Overpayments.** The actuary estimated that approximately \$175 million in overpayments has already been paid out to recipients as a result of the 1999 over-crediting. While PERS has initiated the process to halt on-going overpayments, we don't know how much of the prior overpayments will ultimately be recovered. Given the available reserve balance, holding some of that aside to cover for the contingency that some of those funds may not be collectible seems prudent.

STAFF RECOMMENDATION

When we return to the February 2006 Board meeting with our 2005 preliminary earnings crediting recommendation, we would like to incorporate deployment of the existing Contingency and Capital Preservation Reserves down to a recommended level given the remaining circumstances under which extraordinary system expenses are foreseeable.

These staff observations and the Mercer financial modeling analysis were discussed with the Legislative Advisory Committee (LAC) at their January 5, 2006 meeting. Generally, all stakeholders in attendance were supportive of deploying the Capital Preservation and Contingency reserves down to a foreseeable expense level. We are awaiting further discussion with the Board as to an acceptable level, but general discussions with the LAC were in the range of \$50 million to \$100 million retained in the Contingency Reserve, given the possible expenses discussed above.



Oregon

Theodore R. Kulongoski, Governor

October 26, 2005

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To: Members of the PERS Board

From: Steven Patrick Rodeman, Administrator
Policy, Planning, and Legislative Analysis Division

Re: Reserve Allocation Options

The following memo summarizes the statutory provisions on PERS Fund reserves.

Contingency Reserve

Statutory Authority: ORS 238.670(1)

When Funded? When income for the calendar year equals or exceeds the assumed rate.

How Funded? "Interest and other income received through investment of the [PERF]."

Limit on Annual Funding: Cannot exceed 7.5% of income in a year.

Limit on Total Funding: Until the board determines the reserve is adequately funded for the purposes specified.

Permitted Uses:

- 1) Prevent any deficit of moneys available to pay retirement allowances;
- 2) Prevent any deficit caused by an employer's insolvency (reserves for this purpose must come from earnings on employer contributions);
- 3) Pay legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.
- 4) Any other contingency that the board may determine to be appropriate (so long as the use is in furtherance of the PERS Funds' trust purpose).

Capital Preservation Reserve

Statutory Authority: ORS 238.670(3)

When Funded? This reserve can be funded at any time.

How Funded? 1) "Interest and other income received through investment of the fund" or 2) Transfers from the Contingency Reserve of "such amount as the board determines to be unnecessary" for those purposes but necessary for the purposes of the Capital Preservation Reserve.

Limit on Annual Funding: None.

Limit on Total Funding: "Such part of the income as the board considers necessary."

Permitted Uses: "To offset gains and losses in invested capital." "Losses" can include current and prior year losses as well as funding the gap between actual earnings and current obligations, such as the need to credit the assumed rate to Tier One member

regular accounts and for the Benefits-in-Force Reserve to be credited with the assumed rate to remain adequately funded. *Benefits in Force Reserve*

Statutory Authority: ORS 238.670(2)

When Funded? This reserve is credited at the close of each calendar year.

How Funded? “Interest and other income received during the calendar year.”

Limit on Annual Funding: “A sufficient amount adopted by the board as a result of periodic actuarial investigations.”

Limit on Total Funding: Same as the above limit on annual funding.

Permitted Uses: This reserve is used to pay retired members’ pensions and annuities.

Tier One Member Deficit Reserve

Statutory Authority: ORS 238.255(1)

When Used? This reserve is debited whenever there are insufficient earnings to credit the assumed rate to Tier One member regular accounts.

How Funded? “Earnings in excess of the assumed rate...shall first be applied to reduce or eliminate” the Deficit Reserve.

Annual Limit on Use: Only debited in years where earnings or other reserves are inadequate to credit the assumed rate to Tier One member regular accounts.

Limit on Deficit Status: This reserve may not be maintained on a deficit basis for more than five years.

Tier One Rate Guarantee Reserve

Statutory Authority: ORS 238.255(1)

When Used? This reserve is the “positive balance” twin of the Tier One Member Deficit Reserve. When funded, the balance in this reserve can be reduced to fund crediting of the assumed rate to Tier One member regular accounts.

How Funded? By rule, earnings from Tier One member regular accounts are used to fund this reserve.

Limit on Total Funding: This reserve is to be funded “with amounts determined by the board, after consultation with the actuary..., to be necessary to ensure a zero balance in the account when all [Tier One members] have retired.”

Other Conditions: Only when this reserve is fully funded to the limit described above for the three immediately preceding calendar years could the board credit more than the assumed rate to Tier One member regular accounts.



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January 27, 2006

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: *Strunk/Eugene* Policy Issues

MEETING DATE	1/27/06
AGENDA ITEM	C.3.a. Strunk/Eugene Policy Issues

BACKGROUND

At the PERS Board's November 2005 meeting, three *Strunk /Eugene* implementation policy issues were identified that were going to be further researched with staff recommendations to come at a later time. Those issues were:

1. Whether members whose accounts, after *Strunk /Eugene* adjustment, would no longer fail the One-Time Variable Transfer (OVT) test should now have their accounts moved from the Variable to regular as if the transfer had occurred when originally requested.
2. Whether members whose adjusted account balances would have resulted in one of the other three benefit calculation methods (Money Match, Full Formula, or Formula plus Annuity) being the highest benefit method should now receive that higher benefit method.
3. Whether PERS can or should accept lump sum payments as rollovers from tax qualified accounts (e.g., IRAs) to allow members who pay their overpayment with a lump sum a tax-advantaged method for payment.

ISSUE 1: ONE-TIME VARIABLE TRANSFER (OVT)

ORS 238.260(14) allowed qualifying members to make a One-Time Variable Transfer ("OVT") of their contributions and accumulated earnings from the Variable Annuity Account to the regular account only if those contributions earned as much in the Variable as they would have earned in the regular. This test, called the "VAR@VAR/VAR@REG" test, was dropped from the law for transfers occurring on and after January 1, 2004. Prior to that date, several Tier One members who requested OVTs and failed the VAR@VAR/VAR@REG test would now pass if their adjusted regular account balance as a result of the 1999 earnings reallocation was used in the test. The issue is whether PERS should retroactively make the transfer now that the account balances have been adjusted to subsequently give effect to those OVT requests.

To give you some idea of the relative numbers, 4,923 accounts failed the OVT for January 1, 2001, 2002, and 2003. Of those failed accounts, 313 would have passed had the 1999 earnings reallocation occurred before the test was conducted. 86 of those 313

accounts are currently active or inactive members of the system; one has withdrawn and the rest have retired. Of those 86 active or inactive members, only 9 have transferred out of the Variable (4 on 1/1/2004; 5 on 1/1/2005). The other 77 have elected to stay in the Variable Annuity Account.

Of the failed OVT members who retired, 20 stayed in the Variable at retirement; 2 received an OVT on 1/1/2004; 1 received an OVT on 1/1/2005, and the rest transferred out of Variable at retirement. From a practical standpoint, therefore, there is no clear preference of those who failed the OVT test: 90% of active or inactive members that could have subsequently transferred out after the test was repealed did not; and almost 10% of those retired members who could have transferred out at retirement did not.

Viewing this question from the three perspectives used consistently in constructing *Strunk/Eugene* policy issues yields the following analysis:

Legal: There is no statutory authority to revisit prior year's OVT tests based on subsequent account adjustments. In fact, the statute limits the effect of an OVT election to January 1 of the year following when the election is made and directs the Board to run the test as of the effective date of the election. To revisit those elections as of this time would not be consistent with the statute's express language. While an argument could be constructed that the Board might be able to rerun these tests, Keith Kutler's opinion is that argument would not prevail if challenged upon judicial review.

Fiscal: Giving effect to these OVT elections after the fact would have a fiscal impact that would have to be absorbed by some other source of funds. Once these elections failed, the money in the affected accounts stayed invested in the Variable Annuity Account and did in fact earn (or lose) what it was subsequently credited. To transfer that money from the Variable to the regular as of some prior period would require a source of funds from which to make up for earnings that would have been credited and an account to which to credit losses if the member lost money after the transfer.

Fiduciary: Analyzing the subsequent behavior of those members who failed the OVT does not yield a clear direction. The vast majority of the active/inactive members have stayed in the Variable, even though they could have affected an OVT on or after January 1, 2004. As a matter of fact, they may still do so. All those retired members who wanted to transfer out of the Variable had an unconditional right to do so at retirement, yet still a number of those people stayed in the Variable. Giving affect to an election made at least three years ago without a clear idea of whether the member would now opt to make the same choice does not seem to be prudent.

STAFF RECOMMENDATION

Given the statutory direction that the test is to occur on the effective date of the OVT election, and a lack of authority to reconsider that test should subsequent events give rise to changed circumstances, staff concludes that the Board does not have the authority to revisit failed OVTs after the effective date of the test. This recommendation is further supported by the findings that there is no clear direction from those members who failed that they would necessarily want the transfer to have effect now; and by the fiscal

implications of making adjustments to accounts that currently reflect where those dollars were in fact invested during this period.

ISSUE #2: BENEFIT CALCULATION METHOD

ORS 238.300 directs that a retired member will receive a refund annuity and life pension that results in a Full Formula benefit, but that the pension increases if the benefit would be higher under Money Match or Formula plus Annuity calculation methods. This right is unqualified by any reference to time frames other than noting that the right accrues when the member retires from service at normal retirement age or thereafter.

Under the three-pronged analysis, the statute creates a legal right that is not qualified as to time. Therefore, if a subsequent event results in a change to the parameters under which a member's benefit was calculated, the three methods have to be reviewed again to see which of them would fulfill the statutory requirement. From a fiduciary standpoint, there is no justification for failing to pay an increased benefit when the member is entitled to that increase – by a legal right that is not qualified as to time. Lastly, the financial impact of this action should be negligible, as we don't expect that many members will change calculation methods.

STAFF RECOMMENDATION

Pay the member the benefit based on the highest three methods of calculation. This change would be retroactive back to the member's effective retirement date.

ISSUE #3: LUMP-SUM ROLLOVERS

First, as always, PERS staff started with a review of the legal authorities related to this issue. There are two portions of statute that address rollovers: (1) ORS 238.220 allows the PERS Board to create rollover accounts and (2) ORS 238A.360 allows the Board to create a category of IAP accounts to accept rollovers.

Both of these options require action by the PERS Board to become operative, and such action has not been taken to date. Both sections are also very restrictive in the construction and use of these accounts. They are intended to be vehicles for PERS members to roll over contributions from qualified plans or IRAs into PERS, but as separately held accounts, not to be included in the regular member or IAP account. These rollover accounts are also not available to retired members of the respective programs. These restrictions make these statutory vehicles inappropriate for recipients to make a tax-free distribution to repay their overpayment.

Review of the IRS restrictions on rollovers and plan transfers did not result in any more of a fruitful result. No process could be identified within IRS laws and rules for PERS to point recipients to that would allow them to make a withdrawal from a qualified plan or IRA and use those funds to repay the overpayment without that withdrawal constituting a taxable event.

STAFF RECOMMENDATION

Allowing recipients to roll money back into PERS without tax consequence is the best result for all concerned, from a fiscal and particularly fiduciary point of view. PERS Staff has not been able to identify a methodology that, legally, it could recommend to make that opportunity available. Staff will continue to explore options and work with individual recipients as circumstances may allow to minimize the taxable nature of this transaction. If a method is identified, we will make it broadly available to the affected recipients.



Oregon

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January 27, 2006

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

MEETING	1/27/06
DATE	
AGENDA	C.3.b.
ITEM	Strunk/Eugene Final Order

SUBJECT: Final Order on *Strunk/Eugene* Overpayment Recovery Method

OVERVIEW

Action: Adopt a Final Order directing PERS staff in methods for recovering overpayments to recipients identified in the *Strunk/Eugene* project.

History: At the PERS Board's September 2005 meeting, staff reviewed various sources and methods to recover overpayments from benefit recipients affected by the *Strunk* and *Eugene* decisions; principally, the reallocation of 1999 earnings to Tier One member regular accounts.

PERS staff anticipates that members may dispute the method being used to recover the *Strunk/Eugene* overpayments. As explained in the September 2005 presentation, PERS staff recommends the actuarial reduction method for members receiving a monthly payment from PERS. Staff also recommends that recipients who do not receive monthly payments be required to repay in a single payment.

That determination as to methodology could, as a result of the procedural posture of this situation, be resolved in one of two ways:

1. Members could challenge the legality of that methodology in individual contested cases, where they may also challenge ancillary factual issues like whether the calculations were performed accurately. The issue would then be litigated in each contested case and, potentially, reviewed anew by the ALJs assigned to each case. The resolution of the legal issue by ALJs would not necessarily be consistent across all cases.
2. The Board could adopt an Order directing PERS Staff to use a particular methodology to recover these overpayments. That order is then reviewable by the Oregon Circuit Court as an Order in Other Than a Contested Case. Adopting the order puts the jurisdiction for reviewing the legal issues on the repayment methods in one court with one judge for one resolution. The individual contested cases over the factual matters could still be filed, but the legal issue on methodology would be resolved consistently and comprehensively.

If the Board adopts the Final Order, each recipient of an overpayment would be served a copy of the Order by regular US mail. Serving this Order on the recipient (with added information like appeal rights to constitute notice under ORS 238.715) most likely stops the six-year statute of limitations on collecting the overpayment.

The notice would include the recipient's appeal rights to challenge the matters covered by the Order. Specifically, the recipient would be informed that they are entitled to seek judicial review of this Order pursuant to ORS 183.484 by filing a petition for review within 60 days from service in the Circuit Court for Marion County or the Circuit Court in the county in which the recipient resides.

BOARD OPTIONS

The Board may:

1. Adopt the Final Order as presented.
2. Direct PERS staff to modify the Final Order and issue a modified order.
3. Do nothing; the staff will use the recovery methodology as outlined and defend it as necessary in the individual contested cases that are expected to be brought.

RECOMMENDATION

Staff recommends that the Board choose Option #1.

BEFORE THE PUBLIC EMPLOYEES RETIREMENT BOARD OF THE STATE OF
OREGON

In the Matter of the Recovery of Overpayments)
under *Strunk* and *City Of Eugene*) Order Adopting Repayment Methods

This matter came before the Board at its regularly scheduled meeting on January 27, 2006. As a result of Oregon Supreme Court decisions in *Strunk v. PERB*, 338 Or 145, 108 P3d 1058 (2005), and *City of Eugene v. PERB*, 339 Or 113, 117 P3d 1001 (2005), and the settlement agreement between the parties in the latter case, the Board previously determined that the earnings on Tier One member regular accounts for 1999 should be reallocated at an earnings rate of 11.33 percent, instead of the 20 percent rate that originally was used. That reallocation, together with the effect of eliminating the so-called “COLA freeze” as required by *Strunk*, results in a recalculation of benefit payments made to persons who had Tier One member regular accounts that received earnings crediting for 1999. This recalculation will affect Tier One members who retired on or after April 1, 2000, and before April 1, 2004, other persons who received or are receiving benefits based on those 1999 Tier One account balances, and former members or beneficiaries who withdrew their accounts prior to the earnings reallocation (referred to collectively as “recipients” hereafter). These recipients have received benefits in excess of the amounts they were entitled to under ORS chapter 238.

ORS 238.715 requires the Board to collect amounts paid in excess of the benefit amounts recipient is entitled to under ORS chapter 238. ORS 238.715 provides several methods by which the Board may recover such overpayments, but does not require the Board to make all of the methods available in every case.

IT IS HEREBY ORDERED that each recipient who, based on the decisions in *Strunk* and *City of Eugene*, including the settlement agreement in the latter case, has received benefits in excess of amounts that the recipient is entitled to under ORS chapter 238, shall repay the amounts overpaid using one of the following methods:

1. Each recipient shall repay the amounts overpaid in a single lump sum unless the recipient is receiving monthly payments.
2. Any recipient receiving a monthly payment will repay the overpaid amounts by actuarial reduction of their monthly payment pursuant to ORS 238.715(1)(b), unless the recipient elects to repay the overpaid amount in a lump sum by paying that amount within the time allowed in the explanation to be provided to the recipient by PERS.
3. If a recipient is due a payment from PERS other than a monthly payment, the amount overpaid shall be deducted from the recipient’s next payment and subsequent payments, if any, until the amount overpaid is recovered.

DATED this 27th day of January, 2006.

Michael J. Pittman
Board Chair



Oregon

Theodore R. Kulongoski, Governor

January 27, 2006

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TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: Administration of Contested Cases

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

BACKGROUND

ORS Chapter 183, the Administrative Procedures Act (APA), and administrative rules generally govern the contested case process. Although certain things are required under the statute and the APA, i.e. service, there is flexibility available for the way a state agency administers its appeals and contested cases.

The contested case process for PERS is set out in administrative rule, OAR 459-001-0035 and -0040. Although the existing process is currently working, for the most part, the process can be streamlined and simplified.

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.

CONTESTED CASE PROCESS

A party has 45 days to request a Contested Case Hearing after receiving a determination letter. The determination letter is the final agency staff position on the issue presented.

After the hearing, the Administrative Law Judge issues a Proposed Order. Their service standard is 45-60 days after the hearing, but we do not set or control, nor can we enforce that standard.

Parties have 45 days to file an objection to the Proposed Order. Staff (if we prevailed) can also request corrections to the proposed order, normally to address errors in citing to the record. The ALJ files a response to the objections or requested corrections.

RESOLVING CONTESTED CASES

There are several options for the administration of contested cases.

1. Before a hearing is held:

Options:

- A. Deny a request for a hearing under certain circumstances, e.g., where PERS has no authority to grant the relief requested.

Pros:

- + Saves money.
- + Saves staff and Board time.
- + Will cut down on number of cases.
 - o Staff can concentrate on other cases.
 - o Cases will move through the process faster.

Cons:

- The denial would be an Order in Other than a Contested Case, which would immediately trigger the right to judicial review.
- B. File a Motion for a Ruling on the Legal Issues under certain circumstances, e.g., where PERS has no authority to grant the relief requested.

Pros:

- + Saves money.
- + Will cut time for conclusion of cases.

Cons:

- Still involves attorney costs (DOJ).
- Leaves certain issues open to ALJ review and may not result in efficiencies.

Recommendation:

Staff recommends Option A. 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 rules can be drafted to require legal counsel oversight, to ensure staff is not acting outside of its purview. These cases will have direct appeal to the Court of Appeals.

2. After a hearing is held:

Options:

- A. Take no action on the Proposed Order. A Proposed Order will become final 90 days after service of the Order with no action required by the Board.

Pros:

- + No action by the Board is required.
 - o No need to have as part of the Board agenda.
 - o No appearance by parties before the Board.

- + Requires no Board and little staff time.

Cons:

- The ALJ's Order is adopted as the Final Order without input by the Board.

B. The Board reviews the Proposed Order and makes one of the following determinations (current process):

1. Adopts the Proposed Order as presented.
2. Adopts a modified Proposed Order and issues the modified order as the Final Order.
3. Rejects the Proposed Order and requests the ALJ to conduct further proceedings.

Pros:

- + More input and options are available to the Board.
- + Parties are allowed an opportunity to appear and make oral argument.

Cons:

- Action by the Board is required.
 - o Is included as part of the Board's open meeting agenda.
 - o The Board expands the process by inviting oral argument where the APA does not contemplate it.
- Requires more staff and Board time.

Recommendation:

Staff recommends Option B. This Option provides more flexibility in the administration of contested cases, especially in complex cases.

3. Options for Board review and deliberation on the Proposed Order if the staff recommendation under #2, above, is accepted:

A. Deliberate in open session during a meeting (current process).

- + Pro: Parties have an opportunity to appear and make oral argument.
- Con: The Board expands the process by conducting oral argument in open session where the APA does not require it.

B. Deliberate in a closed session at a time and place to be determined.

- + Pro: Board can deliberate without having to comply with open meeting requirements.
- Con: Parties do not have an opportunity to appear before the Board.

C. Review individually and deliberate over the phone/electronically.

- + Pro: Process can occur at more convenient time and on an as-needed basis instead of being locked into a meeting of the full Board.
- Con: Parties do not have an opportunity to appear before the Board.

Recommendation:

Staff recommends C. In most cases, parties do not appear before the Board. The rules can be drafted to allow for exceptions, i.e. per timely request, etc., if the Board wants to preserve that option.

NEXT STEPS

Staff will enter into rulemaking at the direction of the Board.



Oregon

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January 27, 2006

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

MEETING	1/27/06
DATE	
AGENDA	C.5.
ITEM	2007 Legislative Session

SUBJECT: 2007 Legislative Session

THE LEGISLATURE AND THE PERS BOARD

(9) *The board may review legislative proposals for changes in the benefits provided under this chapter and ORS chapter 238A and may make recommendations to committees of the Legislative Assembly on those proposed changes. In making recommendations under this subsection, the board acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommendations under this subsection on the Oregon Public Service Retirement Plan established by ORS chapter 238A, the board shall seek to maintain the balance between benefits and costs, and the relative risk borne by employers and employees with respect to investment performance, reflected in ORS chapter 238A as in effect on January 1, 2004.*

(10) *The board shall appoint a committee to advise the board on legislative proposals for changes in the benefits provided under this chapter and ORS chapter 238A. The committee must have an equal number of members representing labor and management. No costs of reviewing legislative proposals and making recommendations under this subsection may be charged to the fund. Any member of the committee who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the committee, and the wages or salary of the member may not be reduced by the employer during periods that the member is released from duty for the purpose of conducting the official business of the committee. [ORS 238.660]*

THE 2007 SESSION

Preparations for the 2007 session of the Oregon Legislature are underway. The Governor's Office will be leading the first Agency Legislative Liaisons meeting of the new year on Monday, January 23. Just this week all state agencies received from the Department of Administrative Services (DAS) the official timeline for use in submitting legislative concepts for consideration by the Oregon Legislature.

The timeline is as follows:

April 3, 2006 – 5:00 PM	Last day to submit concepts to DAS for review and approval.
June 1, 2006 – 5:00 PM	Last day for DAS to submit concepts to Legislative Counsel for drafting.
July 14, 2006 – 5:00 PM	Last day for agencies to submit additional information necessary for drafting.
November 1, 2006 – 5:00 PM	Deadline for requesting a revised draft, or fourteen calendar days after the date on the draft – whichever is sooner.
December 15, 2006- 5:00 PM	Deadline for Governor to pre-session file agency bills.
January 8, 2007	Session begins

THE PERS BOARD'S LEGISLATIVE ADVISORY COMMITTEE

The PERS Board discussed general legislative concepts briefly as part of the Board's retreat on Saturday, December 17, 2005. At that meeting PERS staff indicated our preference to not introduce any legislation in the 2007 session, as we are in the midst of our RIMS Conversion Program. Changes to PERS statute become very problematic as we program the new Oregon Retirement Information On-Line Network (ORION) system.

The Board did add however that PERS staff actively pursue "simplicity" wherever possible in the design and administration of the PERS plan.

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 legislative concepts:

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

The committee did suggest one example of an issue that would fit those principles, the recent change to the Equal-To-Or-Better test applied to police officer and firefighter benefits earned outside of the PERS plan. From the employer perspective the new two-year mandate for retesting is onerous and costly. From the member perspective they

don't believe the test is truly relevant, so they do not see a need to continually test on a two-year cycle either.

The committee did indicate that they would be very supportive of two PERS budget initiatives if introduced – restoration of one-on-one member counseling capabilities, and any information technology related employer outreach.

PERS staff will arrange for several additional meetings of the PERS Board's Legislative Advisory Committee over the course of the next two months to outline basic concepts that the committee would like to see the PERS Board introduce. Those concepts will be brought to the PERS Board at its meeting of March 31, 2006 for review and initial approval prior to submission to DAS. I say initial, because just as we did in 2004, the Board may want to allow some concepts to be initially drafted, allowing for further review, but would have an opportunity next Autumn to make a final determination prior to the Governor's submission of agency bills to the Oregon Legislature.