

# OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Tuesday March 29, 2005 1:00 P.M.		PERS 11410 SW 68 <sup>th</sup> Parkway Tigard, OR	
ITEM		PRESENTER	
<b>A. Administration</b>			
1.	February 18, 2005 Board Meeting Minutes	CLEARY	
2.	Director's Report		
a.	Forward Looking Calendar		
b.	OIC Investment Report		
c.	Budget Report		
d.	HB2020 and IAP Update		
e.	Miscellaneous – OSGP Trading Restrictions Report		
<b>B. Contested Cases</b>			
1.	Appeal of Billy R. Hunter	RODEMAN RODEMAN KUTLER KUTLER	
2.	Appeal of Jon Phillips		
3.	Adoption of a Revised Final Order on Reconsideration, Thomas Steinman		
4.	Adoption of a Revised Final Order on Reconsideration, Catherine C. Cordell		
<b>C. Consent Action and Information Items</b>			
1.	Notice of Rulemaking for OAR 459-045-0030, <i>Alternate Payee Withdrawal</i>	ROCKLIN / RODEMAN ROCKLIN / RODEMAN GRIMSLEY / DELANEY	
2.	Adoption of OAR 459-010-0035, <i>Six-Month Waiting Period</i>		
3.	Legislative Update		
<b>D. Action and Discussion Items</b>			
1.	Supreme Court <i>Strunk</i> Ruling – Effects and Implementation	RODEMAN / MERCER DALTON / RODEMAN	
2.	Adoption of Temporary Rules and Notice of Rulemaking for Earnings Crediting and COLA Rules		
3.	2004 Final Earnings Crediting	ORR / RODEMAN PITTMAN	
4.	Board Governance Matters		
<b>E. Executive Session Pursuant to ORS 192.660 (2) (f) (h) and ORS 40.225</b>			
1.	Litigation Update	LEGAL COUNSEL	

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**Note:** If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.

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

# **PUBLIC EMPLOYEES RETIREMENT BOARD**

PERS Board Meeting  
1:00 P.M.  
February 18, 2005  
Tigard, Oregon

MEETING	<b>3-29-05</b>
DATE	
AGENDA	<b>A.1.</b>
ITEM	2-18-05 Minutes

## **MINUTES**

### **Board Members:**

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

### **Staff:**

Paul R. Cleary, Director  
Donna Allen  
Marsha Bacon  
David Crosley  
Steve Delaney  
Brian DeForest

Gloria English  
Stephanie Gillette  
James Harris  
Debra Hembree  
Nancy Hill  
Rick Howitt  
Jenny Kumm

Jeff Marecic  
Dale Orr  
Steve Rodeman  
Dave Tyler  
Scott Warner  
Brendalee Wilson

### **Others:**

Gordon Allen  
Bruce Adams  
Karen Artiaco  
Ardis Belknap  
Cathy Bloom  
Nancy Brewer  
Tom Chamberlain  
Marcia Chapman  
Deanna Conner

BethAnne Darby  
Paul Downey  
Michelle Deister  
Linda Ely  
Jim Green  
DeeAnn Hardt  
Greg Hartman  
Teri Hunt  
Mark Johnson  
Julie Kallem

Maria Keltner  
Keith Kutler  
Steve Law  
Jerry LeLack  
Jeanne Mackie  
Steve Manton  
Everett Moreland  
Victor Nolan  
Cora Parker  
Tracy Rutten

Carol Samuels  
Angela Schiebout  
Jack Smith  
Hasina Squires  
Deborah Tremblay  
Jessie Villarreal  
Debbie Vuylsteke  
David Wimmer  
Denise Yunker

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

## **ADMINISTRATION**

### **A.1. BOARD MEETING MINUTES OF JANUARY 25, 2005**

Brenda Rocklin moved and Tom Grimsley seconded to approve the minutes of the January 25, 2005 meeting. The motion passed unanimously.

### **A.2. DIRECTOR'S REPORT**

Director Paul Cleary reported that the March Board meeting has been scheduled for March 29. Cleary said the April 15 meeting may focus on actuarial presentations or be a precursor to a joint meeting with the Oregon Investment Council (OIC).

Cleary presented the OIC retirement fund investment return report ending January 31, 2005. Cleary reported that a stock market decline in January, and a recovery in early February, was an example of stock market volatility that affects the retirement fund investment returns which must be factored into earnings crediting and reserve fund decisions.

Cleary provided the budget report and said that the drop in the projected positive budget variance is a result of moving Stage One of the RIMS Conversion Project into the current expenditure limitation. Cleary reported a positive variance in the Telecommunications Equipment account related to replacing existing customer service call center telephone equipment, software, and related services and projected that the project will come in substantially under budget.

Cleary summarized the HB2020 Employer Reporting Business Management Plan, reporting that substantial progress was occurring regarding employer reporting and member account postings, with less than \$1 million of member contributions yet to be posted for 2004.

### **CONTESTED CASES**

#### **B.1. APPEAL OF PAULA PTACEK**

Steve Rodeman, Policy, Planning and Legislative Analysis Group (PPLAG) administrator, reviewed the history of the contested case hearing of member Paula Ptacek.

Staff recommended that the Board adopt the draft final order as presented.

It was moved by Eva Kripalani and seconded by Tom Grimsley to approve the draft final order as presented by staff. The motion passed unanimously.

#### **B.1. APPEAL OF TRACY VANT**

Rodeman presented information and background of past hearing proceedings for the contested case hearing of member Tracy Vant.

Staff recommended that the Board adopt the draft final order as presented.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to approve the draft final order as presented by staff. The motion passed unanimously.

### **ACTION AND DISCUSSION ITEMS**

#### **C.1. 2003 VALUATION - JULY 2005 EMPLOYER RATES**

Actuary Mark Johnson presented the individual employer contribution rates based on the 2003 Actuarial Valuation to be effective July 1, 2005. Johnson provided a schedule containing final employer contribution rates for school districts and state and local governments. Johnson said he would be working with staff to contact the 63 employers who have liabilities or assets and currently do not have active members in the system. Johnson reviewed various issues, including legislative changes, employer lump-sum payments, litigation, normal cost rates, and amortization periods, which were considered in compiling the report.

It was moved by Eva Kripalani and seconded by Brenda Rocklin to accept the employer contribution rates as presented. The motion passed unanimously.

The Board recognized Johnson for his ability to present complex actuarial information in terms that were understandable by the Board, the legislature, employers, members, and stakeholders. Chair Pittman read a resolution that confirmed the Board's appreciation and thanks to Johnson for his commendable actuarial services over the years of Milliman's contract with PERS.

#### C.2. 2004 PRELIMINARY EARNINGS CREDITING

Cleary requested that the Board provide a preliminary earnings crediting decision that would then be submitted for the statutory 30-day review period by the Legislature's Ways and Means Committee. Cleary said this preliminary decision and subsequent review would provide the basis for the Board's final decision at the March 29, 2005 meeting.

Rodeman reviewed the earnings crediting report process and Actuarial Analysis Coordinator Dale Orr provided examples of the range of potential preliminary earnings crediting decisions.

The Board considered the following preliminary crediting decisions:

- Credit no 2004 earnings to either the Contingency or Capital Preservation Reserves
- Credit 7.5% of available earnings to the Contingency Reserve and no earnings to the Capital Preservation Reserves
- Credit 7.5% of available earnings to both the Contingency and the Capital Preservation Reserves

It was moved by Chair Pittman and seconded by Brenda Rocklin for a preliminary decision to fully credit the Contingency Reserve at 7.5% of available earnings. The motion passed unanimously.

It was moved by Chair Pittman and seconded by Brenda Rocklin to perform a thorough investigation regarding uses of the Capital Preservation Reserve and to indicate the Board's intent to credit from zero to 7.5% of available earnings to the Capital Preservation Reserve following that additional review. The motion passed unanimously.

#### C.3. ADOPTION OF OAR 459, DIVISION 30, EQUAL TO OR BETTER THAN (ETOB)

Rodeman summarized the key rule features, the public comments received, DOJ review, and the process and development of the proposed ETOB rule modifications. Rodeman said the existing rules should be changed to comply with legislative changes and would provide clarification of the testing process in comparing the Oregon Public Service Retirement Plan (OPSRP) to other plans.

It was moved by Eva Kripalani and seconded by Tom Grimsley to adopt the modifications to OAR 459-030-0011, 459-030-0025, and 459-030-0030 and repeal OAR 459-030-0000 and 459-030-0001, as presented, effective upon filing. The motion passed unanimously.

#### C.4. ADOPTION OF OAR 459-010-0003, PERS MEMBERSHIP ELIGIBILITY (600 HOURS)

Rodeman presented the background and summary for the proposed new rule that clarifies and articulates the standards for determining membership and eligibility for the Chapter 238 Program.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt OAR 459-010-0003, as presented, with a retroactive effective date of January 1, 2005. The motion passed unanimously.

**C.5. ADOPTION OF OAR 459-010-0014, CREDITABLE SERVICE**

Rodeman presented the proposed new rule that clarifies and articulates the standards by which creditable service time would be granted to members under the Chapter 238 Program.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt OAR 459-010-0014, as presented with a retroactive effective of January 1, 2005. The motion passed unanimously.

**C.6. ADOPTION OF OARS 459-005-0506 TO 0595, TAX RULES**

Rodeman presented the proposed repeal of temporary rules and adoption of permanent modifications to OAR 459-005-0506 to 0595, Tax Rules.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to repeal the temporary rules and adopt the permanent rule modifications to OAR 459-005-0506 to 0595, as presented, with a retroactive effective date of January 1, 2004. The motion passed unanimously.

**C.7. ADOPTION OF TEMPORARY RULE AND NOTICE OF RULEMAKING OF OAR 459-070-0001, DEFINITIONS**

Rodeman reviewed the temporary rule related to the definition of “qualifying position” under the OPSRP Pension Program and the Individual Account Program (IAP) that would be used to administer IAP contributions and distributions until a permanent rule can be adopted.

It was moved by James Dalton and seconded by Eva Kripalani to adopt OAR 459-070-0001, as a temporary rule, with a retroactive effective date of January 1, 2004. The motion passed unanimously.

**C.8. LEGISLATIVE UPDATE**

Deputy Director Steve Delaney reviewed current legislative bills for possible consideration by the Board, and discussed where the bills were in the legislative process.

**EXECUTIVE SESSION**

Pursuant to ORS 192.660 (2) (a), (b), (f), (h) and ORS 40.255, the Board went into executive session.

The Board reconvened to open session.

**B.3. WITHDRAWAL OF FINAL ORDER – THOMAS C. STEINMAN**

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the recommendation of the Appellate Division to withdraw for reconsideration the final order in this case. The motion passed unanimously.

**B.4. WITHDRAWAL OF FINAL ORDER – CATHERINE C. CORDELL**

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the recommendation of the Appellate Division to withdraw for reconsideration the final order in this case. The motion passed unanimously.

**C.9. BOARD GOVERNANCE MATTERS**

PERS Board meeting

February 18, 2005

Page 5 of 5

There were no Board governance matters.

Mike Pittman adjourned the meeting at 3:20 P.M.

Respectfully submitted,

Paul R. Cleary

Executive Director

*Prepared by Donna R. Allen, Executive Assistant*

<b>MEETING</b>	
<b>DATE</b>	<b>02-18-05</b>
<b>AGENDA</b>	<b>A.2.a.</b>
<b>ITEM</b>	Forward Looking Calendar

## **PERS Board Meeting Forward-Looking Calendar**

### **April 2005**

**Meeting: 1:00 P.M. April 15, 2005**

- Police and Fire Mortality Study
- Notice of Employer Payments Using Electronic Funds Transfer Rules
- Notice of Miscellaneous Rules Cleanup
- First Reading of OPSRP/IAP Definition Rules
- First Reading of Alternate Payee Withdrawal Rules
- Adoption of Division 15 Disability Rules
- Adoption of Division 76 Disability Rules

### **May 2005**

**Meeting: 1:00 P.M. May 20, 2005**

- Adoption of OPSRP/IAP Definition Rules
- Adoption of Alternate Payee Withdrawal Rules
- First Reading of Employer Payments Using Electronic Funds Transfer Rules
- ETOB Initial Determination Report

### **June 2005**

**Meeting: 1:00 P.M. June 24, 2005**

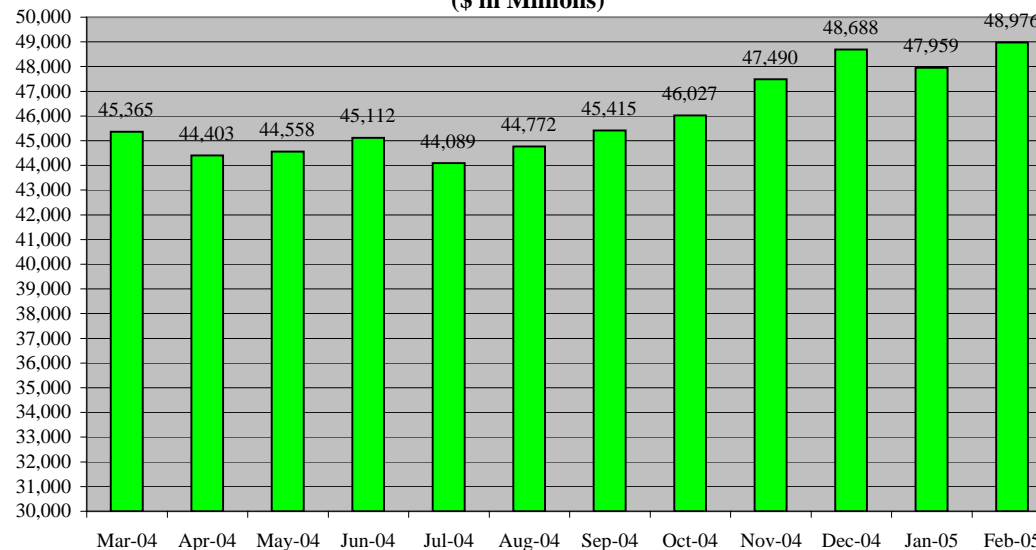
- Adoption of Employer Payments Using Electronic Funds Transfer Rules
- Adoption of Miscellaneous Rules Cleanup
- ETOB Final Report

OPERF	Regular Account				Historical Performance					
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands	Actual	Year-To-Date	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	30-40%	35%	\$ 17,076,299	36.1%	(0.83)	7.91	24.36	6.69	2.57	(0.71)
International Equity	15-25%	20%	10,901,072	23.0%	3.57	20.14	37.04	16.39	7.14	0.94
Alternative Equity	7-13%	10%	3,820,543	8.1%	N/A	26.60	12.32	5.76	(0.65)	4.27
<b>Total Equity</b>	<b>60-70%</b>	<b>65%</b>	<b>31,797,914</b>	<b>67.1%</b>						
<b>Total Fixed</b>	<b>22-32%</b>	<b>27%</b>	<b>12,448,136</b>	<b>26.3%</b>	<b>0.38</b>	<b>4.74</b>	<b>6.75</b>	<b>7.73</b>	<b>7.54</b>	<b>8.54</b>
<b>Real Estate</b>	<b>5-11%</b>	<b>8%</b>	<b>2,703,095</b>	<b>5.7%</b>	<b>(1.46)</b>	<b>16.92</b>	<b>18.15</b>	<b>14.33</b>	<b>13.01</b>	<b>13.88</b>
<b>Cash</b>	<b>0-3%</b>	<b>0%</b>	<b>408,969</b>	<b>0.9%</b>	<b>0.35</b>	<b>1.56</b>	<b>1.42</b>	<b>1.62</b>	<b>2.16</b>	<b>3.06</b>
<b>TOTAL OPERF Regular Account</b>		<b>100%</b>	<b>\$ 47,358,114</b>	<b>100.0%</b>	<b>0.52</b>	<b>11.73</b>	<b>19.81</b>	<b>9.60</b>	<b>5.66</b>	<b>4.09</b>
<b>OPERF Policy Benchmark</b>					<b>1.20</b>	<b>10.41</b>	<b>19.36</b>	<b>8.91</b>	<b>5.44</b>	<b>3.69</b>
<b>Value Added</b>					<b>(0.68)</b>	<b>1.32</b>	<b>0.45</b>	<b>0.69</b>	<b>0.22</b>	<b>0.40</b>

Asset Class Benchmarks:

Russell 3000 Index	(0.52)	7.64	23.33	5.79	1.92	(0.66)
MSCI ACWI Free Ex US	3.13	20.12	36.82	16.14	6.79	1.23
Russell 3000 Index + 500 bps--Quarter Lagged	6.98	18.24	20.96	9.80	5.88	5.24
LB Universal--Custom FI Benchmark	0.20	3.33	4.44	6.13	6.28	7.53
NCREIF Property Index--Quarter Lagged	N/A	12.41	10.09	8.61	8.99	9.54
91 Day T-Bill	0.33	1.50	1.31	1.44	1.98	2.84

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



<sup>1</sup>OIC Policy 4.01.18





# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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MEETING	<b>3-29-05</b>
DATE	
AGENDA	<b>A.2.c.</b>
ITEM	Budget Update

March 15, 2005

### MEMORANDUM

**TO:** Members of the PERS Board

**FROM:** Brian DeForest, Budget and Fiscal Operations Manager

**SUBJECT:** March, 2005 Budget Report

#### ACTUAL EXPENDITURES VS. PROJECTIONS

The projected budget surplus for the Administrative appropriation is approximately \$0.6 million with accounting data for the month of January and re-forecasting remaining expenditures. Total actual expenditures for the Administrative appropriation were \$1,918,419, an increase of \$198,124 above December expenditures. Actual expenditures for the month were \$415,398 below projections **with** the most significant variance occurring in Professional Services.

#### ISSUES/OPPORTUNITIES

Budget and Information Systems staff is evaluating projected expenditures for the remainder of the biennium for the HB2020/jClarety project and preparing necessary documentation to effectively move budget limitation from the current biennium into the 2005-07 biennium. The project continues to proceed on schedule. However, anticipated receipt of some project deliverables will occur after June 30, 2005. Oregon Accounting Manual prevents payment for deliverables received after the end of the biennium to be processed with 'prior' biennium funds necessitating the need to carry current biennium budget limitation into 2005-07. Staff anticipates the need to shift \$1.5 million to \$2.0 million from the HB2020 limitation into 2005-07.

The next round of PERS' budget presentations in front of the General Government Subcommittee to the Joint Ways & Means Committee will likely be held in mid-April. Budget staff is working with agency administrators to evaluate **potential** impacts to the 2005-07 biennial budget following the **Strunk** decision. Staff will prepare recommended modifications to budget **request** packages in response to the Supreme Court decision. Once the recommendations are complete **and shared with the Board**, both **DAS** Budget and Management and Legislative Fiscal Office staff will evaluate the modifications in preparation for presentation to the General Government Subcommittee.

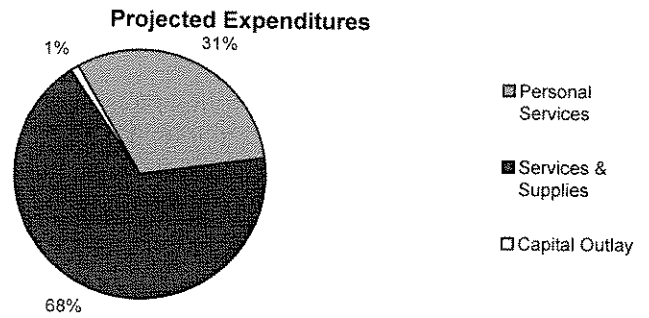
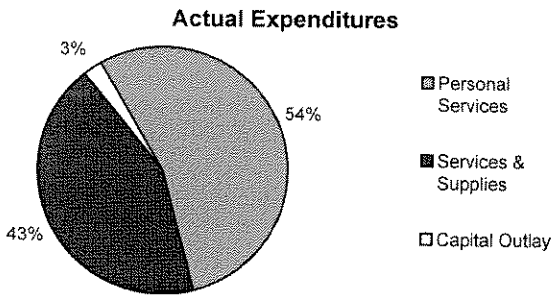
#### BUDGET VARIANCES

Budget variances remained relatively stable compared to the previous report.

**2003-05 Admin Budget Execution  
Summary Budget Analysis  
For the Month of: Jan. 2004**

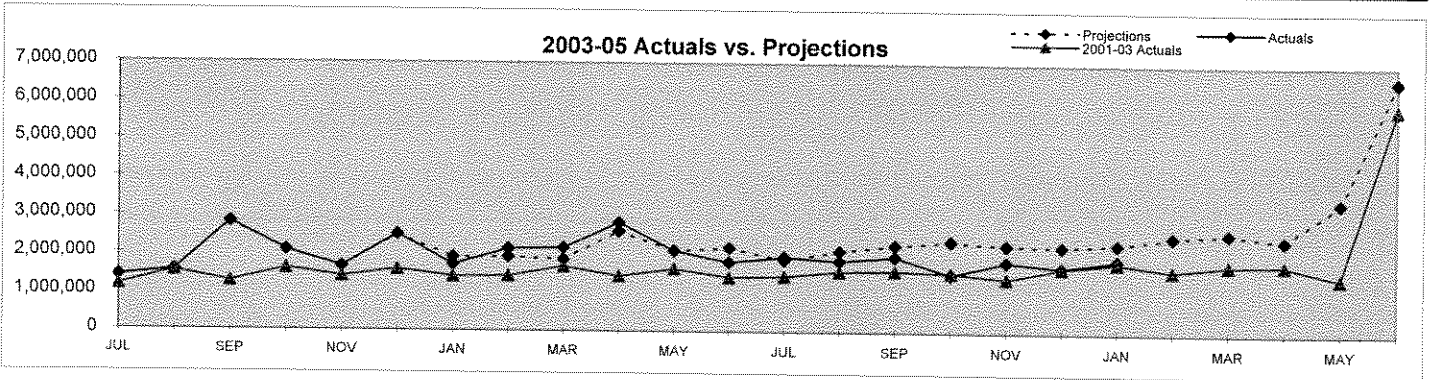
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2003-05 LAB	Variance
Personal Services	20,462,826	5,527,191	25,990,017	32,782,666	6,792,649
Services & Supplies	16,282,875	11,980,056	28,262,930	22,242,381	(6,020,549)
Capital Outlay	951,046	190,691	1,141,736	968,686	(173,050)
Special Payments					
<b>Total</b>	<b>37,696,747</b>	<b>17,697,937</b>	<b>55,394,684</b>	<b>55,993,733</b>	<b>599,049</b>



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	982,739	1,041,387	58,648	1,076,991	1,105,438
Services & Supplies	904,225	1,292,429	388,204	856,993	2,396,011
Capital Outlay	31,454		(31,454)	50,055	38,138
Special Payments					
<b>Total</b>	<b>1,918,419</b>	<b>2,333,816</b>	<b>415,398</b>	<b>1,984,039</b>	<b>3,539,587</b>



**2001-03 Biennium Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2001-03 LAB	Variance
Personal Services					
Services & Supplies					
Capital Outlay					
Special Payments					
<b>Total</b>					

**2003-05 Admin Budget Execution**  
 Spending Plan - Actual and Estimated Expenditures  
 2003-05 Summary

	2003-05 Summary								ACTUAL EXPEND TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND	03-05 LAB BUDGET	VARIANCE
	1st QTR	2nd QTR	3rd QTR	4th QTR	5th QTR	6th QTR	7th QTR	8th QTR						
<b>Personal Services</b>														
Salaries & Wages	2,284,380	2,242,259	2,331,581	2,111,846	2,198,765	1,749,056	2,040,266	2,212,994	13,521,403	3,628,746	17,151,149	23,463,108	6,311,958	
Temporary Appointments	48,684	39,226	31,980	90,125	62,544	19,095	52,035	62,763	271,347	104,605	376,452	142,417	(234,035)	
Overtime	60,190	65,131	137,755	89,225	54,015	26,795	50,970	53,442	478,453	89,070	567,523	353,978	(213,545)	
O/Class. Leadwork, Sp. Qual	8,254	16,585	21,715	22,038	20,922	19,319	18,643	19,674	114,762	32,785	147,547	157,382	9,835	
Unscheduled P.S.	980,231	916,481	937,669	966,339	1,094,410	854,074	985,553	1,012,591	6,076,362	1,670,985	7,747,347	9,534,991	1,787,644	
<b>Total Personal Services</b>	<b>3,381,739</b>	<b>3,309,582</b>	<b>3,460,099</b>	<b>3,249,572</b>	<b>3,430,657</b>	<b>2,668,339</b>	<b>3,148,469</b>	<b>3,361,461</b>	<b>20,452,826</b>	<b>5,527,191</b>	<b>25,980,017</b>	<b>32,782,666</b>	<b>6,792,649</b>	
<b>Services &amp; Supplies</b>														
Instate Travel	14,168	14,982	12,717	21,299	15,750	14,836	18,338	28,400	97,900	42,600	140,500	126,634	(13,866)	
Out-of-state Travel	568	205	94	126,922	100,365	108,380	208,865	2,000	857	2,000	2,867	23,549	20,682	
Office Expenses	102,207	216,537	235,723	4,867	4,895	3,980	5,179	184,922	932,011	353,910	1,285,921	1,803,998	518,077	
Dues & Subscriptions	5,801	15,006	3,326	4,867	4,895	3,980	5,179	10,118	44,125	14,578	58,703	45,394	(13,309)	
Publicity/Publications	9,098	9,971	28,418	12,680	25,574	9,598	15,677	166,807	89,908	182,307	212,216	324,975	52,759	
Telecommunications	26,567	64,495	51,413	99,762	60,635	58,425	69,435	82,147	374,809	139,269	514,078	650,658	136,586	
Data Processing	582,626	334,904	328,478	215,861	405,352	223,322	189,743	1,151,007	2,138,587	1,303,607	3,442,193	3,521,365	92,828	
Employee Training	18,309	43,398	13,426	18,359	17,520	10,942	25,328	118,607	128,322	139,170	267,492	280,048	12,556	
Empl. Recruit./Devel.	20,585	27,578	17,520	16,187	20,879	10,942	17,119	17,119	117,802	22,919	140,721	140,721	55,354	
Professional Services	779,983	1,282,876	1,363,423	1,490,396	1,239,143	1,696,611	6,669,192	8,425,795	29,161	21,809	50,970	703,007	17,538	
Dispute Res. Svc.	1,447	5,271	4,276	4,142	7,201	4,530	8,293	96,000	96,000	144,000	144,000	144,000	73,365	
Attorney General	7,593	213,220	91,416	115,707	68,304	50,218	91,997	96,000	590,385	110,543	703,007	703,007	(31,358)	
St. Gov. Svc. Chg.	313,914	121,792	64,506	29,556	248,532	114,725	60,386	88,588	931,157	110,543	1,041,701	1,864,293	812,592	
IntraAgency Charges														
Other S & S	1,101	3,515	2,428	933,804	1,576	896	88,712	6,000	1,030,032	8,000	1,038,032	1,005,500	(32,532)	
Facility Rental	13,625	40,749	70,026	57,735	58,033	51,012	53,216	87,100	303,738	127,758	431,497	581,708	150,211	
Fuels/Utilities	15,799	24,368	16,506	21,446	22,705	13,455	18,725	27,234	120,478	39,280	159,758	111,578	(48,160)	
Facility Maint.	77,082	79,406	38,466	76,710	74,444	55,228	66,111	113,620	422,248	158,820	581,068	777,338	196,270	
Other COP Costs		174		611	377	453			1,615	1,501	1,615	1,501	(114)	
Expendable Property	19,583	306,195	110,879	46,527	13,608	1,153	66,010	90,000	503,954	150,000	653,954	935,711	281,757	
Unscheduled S & S														
<b>Total Services &amp; Supplies</b>	<b>2,019,556</b>	<b>2,806,743</b>	<b>2,443,043</b>	<b>3,290,581</b>	<b>2,380,706</b>	<b>2,438,019</b>	<b>3,909,612</b>	<b>8,974,669</b>	<b>16,287,875</b>	<b>11,980,056</b>	<b>28,267,930</b>	<b>22,242,381</b>	<b>(6,025,549)</b>	
<b>Capital Outlay</b>														
Office Furn./Fixture														
Telecomm. Equip.			36,205	27,805								30,145	30,145	
Technical Equipment							31,454	190,691	95,464	190,691	286,155	519,981	233,827	
Data Proc.-Software	404,499	157,988	105,654	197,342	(5,720)	(4,162)			855,582		855,582	150,000	57,626	
Building & Structure	404,499	157,988	141,858	225,147	(5,720)	(4,162)	31,454	190,691	951,046	190,691	1,141,736	210,934	(644,649)	
<b>Total Capital Outlay</b>	<b>404,499</b>	<b>157,988</b>	<b>141,858</b>	<b>225,147</b>	<b>(5,720)</b>	<b>(4,162)</b>	<b>31,454</b>	<b>190,691</b>	<b>951,046</b>	<b>190,691</b>	<b>1,141,736</b>	<b>968,686</b>	<b>(173,050)</b>	
<b>Special Payments</b>														
<b>Total Special Payments</b>														
<b>Total Expenditures</b>	<b>5,785,794</b>	<b>6,274,394</b>	<b>6,045,000</b>	<b>6,765,301</b>	<b>5,805,643</b>	<b>5,102,196</b>	<b>7,089,536</b>	<b>12,526,821</b>	<b>37,696,747</b>	<b>17,697,937</b>	<b>55,394,684</b>	<b>55,993,733</b>	<b>599,049</b>	

Percent of 2003-05 LAB Expended: 67.32%  
 Percent of Biennium Expended: 79.17%



# Oregon

Theodore R. Kulongoski, Governor

March 18, 2005

## Public Employees Retirement System

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MEETING	<b>3-29-05</b>
DATE	
AGENDA	<b>A.2.d.</b>
ITEM	HB202 Update

**TO:** Members of the PERS Board

**FROM:** Marsha Bacon, Customer Service Division Administrator  
Jeff Marecic, Information Services Division Administrator

**SUBJECT:** Update of HB2020 Employer Reporting and Business Management Plan

The agency completed the of 2004 employer and member accounts reconciliation on March 16, 2004. Utilizing the Business Management Plan, the Membership and Employer Relations Section (MERS) worked in conjunction with both the technical and business sections to process reports into the posting category. There are a few employers with outstanding reports, but we continue to discover reports and contributions that are merged with previous reports which may not impact member accounts.

The retrospective (“Lessons Learned”) of the 2004 Annuals Project will assist in the planning for the 2005 Annuals Project, which begins in April 2005.

### Current Status

Based on the latest 2004 information from the Employer Production Report (as of March 18, 2005):

- |  |               |
|--|---------------|
| • Number of reports due for 2004 (est.)              | 12,677        |
| • Number of outstanding reports for 2004             | 30            |
| • Number of reports fully posted at 100%             | 11,459        |
| • Number of member records due for 2004 (est.)       | 2,986,209     |
| • Number of member records not posted for 2004       | 14,370        |
| • Amount of member contributions not posted for 2004 | \$230,575     |
| • Amount of member contributions posted for 2004     | \$384,355,139 |

As of this date, the 2005 employer reporting cycle indicates employers have posted 94% of the reports due, and of those, almost 70% are 100% accurate. These statistics indicate the major educational [effort and](#) progress employers have made in providing member demographic and wage information [from 2004 to 2005](#).



March 18, 2004

MEETING	3-29-05
DATE	
AGENDA	A.2.e.
ITEM	Misc

## MEMORANDUM

**TO:** Members of the PERS Board

**FROM:** Gay Lynn Bath, Deferred Compensation Manager  
Marsha Bacon, Customer Service Division Administrator

**SUBJECT:** Trading Restriction in Oregon Savings Growth Plan (OSGP)

### BACKGROUND

One goal of OSGP is to prevent excessive trading that may negatively impact the performance of a fund. Most mutual fund companies have implemented redemption fees for international and small cap equity funds on shares that have been held only a short time (generally 90 days), in an attempt to eliminate excessive trading and market timing. Excessive trading causes an increase in trading costs and a need to maintain higher levels of cash. Market timing of international equity funds enables investors to take advantage of stale pricing on fund shares to obtain gains and avoid losses that are shifted to long-term investors in the fund. Redemption fees are credited back to the mutual funds for the benefit of all remaining investors.

On December 10, 2004 the PERS Board approved a policy that gave authority to the deferred compensation manager to implement trading restrictions in the Oregon Savings Growth Plan to prevent excessive trading and market timing. These types of trades can be detrimental to the performance of the mutual funds and consequently have an adverse affect on investment returns. The Board approved the authority to implement trading restrictions based on information reported to the deferred compensation manager and included, but not limited, to the following:

1. Restricting the number of trades during a given time period.
2. Limiting the dollar amount of a trade.
3. Imposing a 90-day "round-trip" restriction (investment in and out of the same option).
4. Implementing redemption fees.

### BOARD REQUESTS

The Board made three requests of OSGP when approving the policy authorizing the deferred compensation manager to implement trading restrictions: 1) Post the new policy on both the OSGP website and Citistreet website, 2) Keep the Board informed of actions taken under the



new authority, and 3) Look into allowing participants to make large trades and assess them a special trading fee to do so.

### NEW POLICY DISSEMINATION

The new policy was been posted on both the OSGP and Citistreet web sites and also included an article in the Winter 2005 Plan Update that was distributed with the fourth quarter statements mid January 2005.

### ACTIONS TAKEN

Based on the monitoring process between Treasury, Citistreet and OSGP, staff has not deemed it necessary to implement any additional trading restrictions at this time. The deferred compensation manager continues to monitor trading activity in the plan using monthly reports provided by Citistreet. No new participants have been flagged during the last several months under the current policy (no more than an average of 2 trades per month in a 3-month consecutive period). OSGP and Treasury also monitor excessive and large trades from daily fund transfer reports provided by the record keeper.

One participant identified as a frequent trader continues to make large trades, but within the current restriction of one redemption per month in the International Equity Option. The record keeper has contacted this participant to notify them that any further trades in excess of \$100,000 in the International Equity or Small/Mid Cap Equity Options will result in the OSGP manager initiating additional restrictions, which if violated, will result in being banned from these options.

### SECURITIES AND EXCHANGE COMMISSION (SEC) RULING

On March 3, 2005, the SEC voted to adopt Rule 22c-2 regarding redemption fees:

**“Voluntary Redemption Fee.** The rule will require the boards of mutual funds that redeem shares within 7 days to:

- i. adopt a redemption fee of no more than 2 percent of the amount of the shares redeemed; or
- ii. determine that a redemption fee is not necessary or appropriate for the fund”

Treasury will wait to hear from the underlying funds in the plan, but does not anticipate any fees being imposed at this time.

### SPECIAL FEE FOR LARGE TRANSACTIONS

OSGP and Treasury staffs believe that imposing a special transaction fee for larger transactions has several drawbacks and believe it is not in the best interests of the Plan [at this time](#) because:

1. Implementation for an automated process would be expensive. The record keeper would charge OSGP for required programming charges. Initial estimates for the record keeper automation change range from \$10,000 to \$25,000. If the process were manual, errors are more likely and OSGP staff would be required to perform additional daily monitoring.
2. Due to the voluntary nature of the new SEC ruling, staff does not believe that any of the underlying funds in the plan will add redemption fees.

3. Underlying mutual funds may take issue with the fee unless it is returned to their funds for the benefit of all investors. In the event the moneys collected needed to be returned to the mutual funds, additional costs would be incurred.
4. Very few participants would be likely to ever trigger the fee knowingly.
5. Affected participants could challenge the fee as being arbitrary. OSGP could incur additional legal costs.

### CONCLUSION

Staff believes that it is not in the best interest of the plan to add redemption fees at this time. Staff is confident that the new policy recently approved by the Board is sufficient to help deter both excessive trading and large trades, and staff will continue to monitor trading activity to ensure this is the case.



# Oregon

Theodore R. Kulongoski, Governor

March 18, 2005

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MEETING	<b>3-29-05</b>
DATE	
AGENDA	<b>C.1.</b>
ITEM	Alternate Payee Withdrawal

**TO:** Members of the PERS Board  
Key Reviewer: Brenda Rocklin

**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

**SUBJECT:** Notice of Rulemaking for [OAR 459-045-0030](#), *Alternate Payee Withdrawal*

### OVERVIEW

- **Action:** None. This is notice that staff began rulemaking on OAR 459-045-0030.
- **Reason:** The current rule, which defines when an alternate payee (AP) may make a withdrawal, is unclear and more restrictive than the statute provides.
- **Policy Issues:**
  - o Should an AP be allowed to withdraw their awarded amount at any time, as long as the member would be eligible to withdraw if they separated from service?

### SUMMARY OF RULE AND POLICY ISSUES

ORS 238.465 permits a divorce judgment, order, or settlement to require that payments to APs may be made when a member actually separates from service or would be eligible if the member separated from service, whichever is earlier. The current rule provides, in part, that an AP may withdraw their award only when the member separates from service. The rule is unclear, however, in that it also provides that an AP is eligible for payment if the member would be eligible if the member separated.

**Policy Issue:** *Should an alternate payee be allowed to withdraw their awarded amount at any time, as long as the member would be eligible to withdraw if they separated from service?*

The proposed amendments bring the rule closer to the statute. As revised, the rule would recognize that a judgment, order, or settlement can allow an AP to withdraw their award if the member would be eligible if separated from service. The revisions remove the restriction that the member has to actually be separated from service.

The original rule was drafted with the belief that APs are subject to the in-service distribution restrictions that apply to members. Tax counsel has clarified that APs are not subject to the same restrictions, and therefore, should be allowed to withdraw if the member would be eligible if separated.



### LEGAL REVIEW

These proposed rule amendments will be submitted to legal counsel for review and any comments or changes will be incorporated before the rule is presented for adoption.

### PUBLIC COMMENT AND HEARING TESTIMONY

The comment period ends on May 3, 2005 at 5:00 p.m.

### IMPACT

**Mandatory:** No, but the rule modification clarifies the statutory provisions and removes an unnecessary restriction on the withdrawals of APs.

**Impact:** APs will have the ability to make their own decisions about their awards without being dependent on the member's actions. Allowing APs to withdraw their accounts will result in lower costs to employers and possible savings to the trust.

#### **Cost:**

- *Members:* There will be no cost to members.
- *Employers:* There may be reduced costs to employers.
- *Administration:* Administrative costs to implement these modifications are minimal.
- *Fund:* There may be a positive impact to the fund.

### RULEMAKING TIMELINE

March 15, 2005	Staff began the rulemaking process by filing Notice of Rulemaking Hearing with the Secretary of State. Following this filing, stakeholders and legislators were notified and the public comment period began.
March 29, 2005	Notice of Rulemaking to the PERS Board.
April 1, 2005	<i>Oregon Bulletin</i> publishes the Notice of Rulemaking Hearing.
April 26, 2005	Rulemaking hearing held at PERS headquarters in Tigard.
April 18, 2005	First reading.
May 3, 2005	Public comment period ends.
May 20, 2005	Rule is presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

### NEXT STEPS

Following the hearing and the public comment period, PERS staff will return to the Board for adoption, including any modifications.

Notice of Rulemaking – OAR 459-045-0030

3/18/2005

Page 3 of 3

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

MEETING	<b>3-29-05</b>
DATE	
AGENDA	<b>C.1.</b>
ITEM	Alternate Payee Withdrawal

1 **459-045-0030**

2 **General Administration**

3 (1) An alternate payee's award is payable to the alternate payee if the member  
4 would be eligible to receive benefits if the member separated from service. *[based on*  
5 *the member's eligibility for benefits. For this purpose, a member shall be considered*  
6 *eligible for benefits before separating from service only if he or she would be eligible to*  
7 *receive benefits if he or she separated from service.]*

8 *[(a) If the member or the member's beneficiary is not eligible for retirement,*  
9 *withdrawal, or death benefits, the alternate payee may not apply for or receive payment*  
10 *of his or her award.]*

11 [(b)2] A court order may restrict an alternate payee's award to be payable only when  
12 the member applies for and receives benefits.

13 *[(2) An alternate payee may request to withdraw his or her award if:*

14 *(a) The member ceases to be an active member of PERS, and remains an inactive*  
15 *member for a full calendar month following the month in which the member ceased active*  
16 *membership.*

17 *(b) The member ceases to be a member of PERS by reason of:*

18 *(A) The member electing to withdraw the member account under ORS 238.095(1), or*  
19 *(B) The member losing membership in PERS under ORS 238.095(2).]*

20 (3) Unless prohibited by court order, an alternate payee who requests a withdrawal  
21 shall receive an additional 50 percent of the alternate payee award as of the effective date  
22 of withdrawal if:

1 (a) The alternate payee's effective date of withdrawal is on or after July 1, 2004, and  
2 before June 30, 2006; and

3 (b) As of the alternate payee's effective date of withdrawal, the member has met the  
4 requirements of OAR 459-010-0055(4), or would meet them except that he or she has not  
5 withdrawn that portion of the member account that may be withdrawn by the member.

6 (4) Under no circumstance may an alternate payee withdraw less than the entire  
7 alternate payee award.

8 (5) The alternate payee may revoke the request for withdrawal if PERS receives a  
9 written request to revoke prior to the date of distribution.

10 (6) The separate account in the name of the alternate payee shall be credited with  
11 *[interest]* earnings in accordance with OAR 459, division 007 as follows:

12 (a) To the date of distribution *[from that]* on the separate account provided the  
13 member is a vested active or inactive member as provided in ORS 238.425 on the date  
14 the member is first eligible for a benefit.

15 (b) For up to a 60-month period from the date the alternate payee account is  
16 established a member who is not vested under provision of ORS 238.425 ceases to be an  
17 active member of PERS.

18 (c) To the date a non-vested member ceases to be a member as provided in ORS  
19 238.095(2).

20 (7) An alternate payee who is awarded a separate account in the Fund in his or her  
21 own name shall not be allowed to participate in the Variable Annuity Account in the  
22 Fund, as described in ORS 238.260, regardless of whether the member participated in the  
23 Variable Annuity Account in the Fund.

1            (8) Separate alternate payee accounts will be administered pursuant to ORS 238.250  
2 and 238.255 if:

3            (a) The member established membership in PERS or performed any period of  
4 service for a participating public employer that is credited to the six month period of  
5 employment required of an employee under ORS 238.015 prior to January 1, 1996, or

6            (b) The member ceased to be a member of PERS under the provisions of ORS  
7 238.095, 238.105, or 238.545, but restored part or all of the forfeited creditable service  
8 from before January 1, 1996, under the provisions of ORS 238.115 or 238.105, after  
9 January 1, 1996.

10           (c) All alternate payee separate accounts will be administered pursuant to ORS  
11 238.250 and 238.435, if the provisions of sections (8)(a) and (b) are not applicable to a  
12 member.

13           (9) An alternate payee who elects to begin receiving his or her award pursuant to a  
14 court order that uses the Division Methods described in OAR 459-045-0010 Sections (1)  
15 and (2), may select any retirement payment option available to the member, other than a  
16 joint and survivor annuity, but only if a court order allows the alternate payee to make  
17 any elections. The retirement payment to an alternate payee shall be:

18           (a) Contingent on the member's eligibility for retirement benefits, regardless of  
19 whether the member actually retires,

20           (b) Shall be separate and independent from the member's payment date and payment  
21 option, and

22           (c) Shall be actuarially computed based on the age and life expectancy of the  
23 alternate payee.

1 (10) The alternate payee shall elect to convert the award to one of the following  
2 optional forms:

- 3 (a) Refund Annuity Option, as described in ORS 238.300,
- 4 (b) Option 1, as described in ORS 238.305(1),
- 5 (c) Option 4, as described in ORS 238.305(1), or
- 6 (d) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and  
7 238.305(3).

8 (11) An alternate payee whose total award is less than \$200 per month under Option  
9 1, defined at ORS 238.305(1), shall receive in lieu of any and all allowances or other  
10 benefits or form of payment described in section (10) of this rule, a one time lump-sum  
11 payment equal to the actuarial value as of the effective date of the alternate payee's  
12 retirement, as is the case for a member under ORS 238.315.

13 (12) An alternate payee shall not receive any cost of living increase under ORS  
14 238.360, or special ad-hoc increase that may be granted by the Legislature under 238.365  
15 or 238.385, or any other type of increase that may be granted to PERS retirees until  
16 benefits are first paid by PERS to or on behalf of the member.

17 (13) An alternate payee shall not be entitled to health insurance benefits under ORS  
18 238.410, 238.415, and 238.420 regardless of whether a court order awards these benefits  
19 to an alternate payee.

20 (14) An alternate payee shall not be entitled to any benefits derived from the optional  
21 purchase of police officer and fire fighter benefit units under 238.440 regardless of  
22 whether a court order awards these benefits to an alternate payee.

1 (15) If an alternate payee begins receiving a payment prior to the member, the  
2 alternate payee is not entitled to any further increases in retirement credit that the member  
3 may earn or become entitled to prior to the member's actual retirement due to continued  
4 employment for an employer participating in PERS.

5 (16) Death benefits payable under a division of PERS benefits pursuant to a court  
6 order are as follows:

7 (a) Alternate payee awards are payable to the alternate payee's beneficiary or estate  
8 as provided by ORS 238.390 and 238.395. No benefits shall be payable under ORS  
9 238.395 with respect to an alternate payee unless the member would have been eligible  
10 for death benefits under ORS 238.395 had the member died on the same date as the  
11 alternate payee.

12 (b) If the member predeceases the alternate payee, the alternate payee's payment  
13 becomes due and payable unless the alternate payee was awarded a separate account in  
14 the Fund at the time of the divorce, or at the time the member becomes eligible for  
15 benefits, the alternate payee elects to establish a separate account.

16 (c) If the alternate payee was awarded a separate account in a final court order,  
17 whether at the time of divorce or at a later date, the alternate payee may elect to receive  
18 his or her account in the form of a death benefit under ORS 238.390 and/or 238.395 if the  
19 member predeceases the alternate payee before the alternate payee commences receiving  
20 benefits, provided that all other applicable conditions for the death benefit are satisfied. If  
21 the alternate payee elects a death benefit under ORS 238.390 [*and*]or 238.395, the death  
22 benefit shall be in lieu of any withdrawal, retirement, or other benefit. If the alternate  
23 payee does not elect a death benefit, he or she shall be eligible to withdraw the separate

1    account, or to leave the account in the Fund and elect to draw payments under one of the  
2    optional forms described in section (10) of this rule, any time on or after the date the  
3    member would have reached the earliest retirement age.

4            (17) Benefit payments to either the member or the alternate payee, or to both  
5    simultaneously, that exceed the allowable limits set forth in Section 415 of the Internal  
6    Revenue (IRC) shall be deducted from the benefit payment(s) to the member [*and*] or the  
7    alternate payee. Unless a final court order specifies the allocation of the deduction for  
8    benefits that exceed the limits in IRC Section 415, PERS shall pro rate the amount that  
9    exceed those limits in the same proportions that benefits were awarded to the member  
10    and the alternate payee as specified in a final court order.

11            Stat. Auth: ORS 238.465(3) & ORS 238.650  
12            Stats. Implemented: ORS 238.465 & OL 2003 Ch. 276 § 2





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Theodore R. Kulongoski, Governor

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MEETING DATE	3-29-05
AGENDA ITEM	C.2. Six-Month Waiting Period

March 18, 2005

**TO:** Members of the PERS Board  
Key Reviewer: Brenda Rocklin

**FROM:** Steven Patrick Rodeman, Administrator, PPLAG

**SUBJECT:** Adoption of OAR 459-010-0035, *Six-Month Waiting Period*

### OVERVIEW

- **Action:** Adopt OAR 459-010-0035.
- **Reason:** The current rule, which defines how an employee fulfills the six-month waiting period requirement for membership, is not adequate for the administration of ORS 238A.025 (related to “break in service”).
- **Policy Issue:**
  - o Should the six-month waiting period be defined as beginning on the date hired so that the administrative rule is consistent with PERS’ administrative practices and the determination of plan membership under ORS 238A.025?

### BACKGROUND

ORS 238A.025 determines eligibility for the Oregon Public Service Retirement Plan (OPSRP) for employees employed on or after August 29, 2003. The statute exempts PERS Chapter 238 Program members from OPSRP membership, including employees who began their six-month waiting period under the PERS Chapter 238 Program prior to August 29, 2003.

For ease of administration, PERS and OPSRP membership waiting periods end as of the first of the calendar month after serving six months. Under these programs, someone starting work January 15 becomes a member August 1. The statutes, particularly ORS 238A.025, contemplate that your six-month waiting period starts January 15, when you start work, and ends the first of the month after you complete six months of service.

### SUMMARY OF RULES AND POLICY ISSUES AND MODIFICATIONS TO RULE SINCE NOTICE

The current language of OAR 459-010-0035 does not comport with the statutory structure. Instead, the rule provides that the six-month waiting period begins on “the first of the calendar month following the date of employment...” Previously, this rule had no practical effect because membership under either structure always began on the first day of the month following six months of service. Now, however, with ORS 238A.025 making the starting date of membership a critical determining factor, PERS proposes to amend the rule so the waiting period commences as contemplated by the statutes.

- *Should the six-month waiting period be defined as beginning on the date hired so that the administrative rule is consistent with PERS' administrative practices and the determination of plan membership under ORS 238A.025?*

OAR 459-010-0035 is modified so the waiting period begins on the day the employee is hired. This modification does not result in the shortening or lengthening of the waiting period or affect the date of membership that follows the six-month waiting period. An employee hired on August 9, 2003, would become a member on March 1, 2004, under both the current language and under the proposed rule modifications. Under the amended version of the rule, however, that employee would become a member of the PERS Chapter 238 Program and not OPSRP.

Additionally, the rule has been amended to provide the commencement of the six full calendar months to include the month in which the employee is hired if employment begins on the first business day of the month.

To improve clarity and consistency, the term “waiting period” replaces the term “qualifying service” in this rule.

Since PERS initiated rulemaking on this rule, two modifications have been made. On page 1, line 14, a reference to “except for PERS holidays” was removed because it was determined to be superfluous. Also, a minor change was made to page 2, line 2, where a reference to “service” was deleted and “the waiting period” was inserted. This change was made because members don't earn service (which is the same as retirement credit or creditable service) while on a leave without pay.

The rule has also been modified to be effective retroactively on August 1, 2003 so that anyone who is hired into a qualifying position between August 1, 2003 and August 28, 2003 would begin their waiting period as provided in 238A.025(4)(b).

#### LEGAL REVIEW

These proposed rules were submitted to legal counsel for review. Suggested changes have been incorporated into the final draft of the rule.

#### PUBLIC COMMENT AND HEARING TESTIMONY

The public hearing was held on February 22, 2005 and no one testified. The comment period ended on February 28, 2005 and PERS received no public comment.

#### IMPACT

**Mandatory:** No, but the rule modification is necessary for PERS to correctly administer ORS 238A.025.

**Impact:** None. This rule modification does not exceed the definition of membership qualifications as outlined in ORS 238A.025.

#### **Cost:**

- *Members:* There will be no cost to members

- *Employers:* There is no cost to employers.
- *Administration:* Administrative costs to implement these modifications are minimal.
- *Fund:* There is no impact to the fund.

#### RULEMAKING TIMELINE

January 14, 2005	Staff began the rulemaking process by filing Notice of Rulemaking Hearing with the Secretary of State. Following this filing, stakeholders and legislators were notified and the public comment period began.
January 25, 2005	Notice of Rulemaking presented to the PERS Board.
February 1, 2005	<i>Oregon Bulletin</i> published the Notice of Rulemaking Hearing.
February 22, 2005	Rulemaking hearing held at PERS headquarters in Tigard.
February 28, 2005	Public comment period ended.
March 18, 2005	Rule is presented to the PERS Board for adoption.

#### BOARD OPTIONS

The Board may:

1. Make a motion to “adopt the permanent rule modifications to OAR 459-010-0035, as presented, to be effective upon filing, retroactive to August 1, 2003.”
2. Take no action and direct staff to make changes to the rule or take other action.

#### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

**Reason:** The rule modifications are necessary to allow PERS to adequately administer ORS 238A.025, related to “break in service.”

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 010 – MEMBERSHIP

MEETING DATE	3-29-05
AGENDA ITEM	C.2. Six-Month Waiting Period

1 459-010-0035

2 Six-Month *[Qualifying Service]* Waiting Period

3 (1) The six-month*[s' qualifying service]* waiting period required for establishing  
4 membership shall be six full calendar months of service (uninterrupted by a total of more  
5 than *[thirty (30)]* working days during such six months) to the same employer or  
6 concurrent employers*[,]. [beginning the first of the calendar month following the date of*  
7 *employment, or the first of the month in which employment occurred, if such employment*  
8 *occurred on the first of the calendar month or on the first working day of the month, as*  
9 *shown by the payroll records of the employer or employers concurrently employing the*  
10 *employee and so certified to PERS.]* The six full calendar months:

11 (a) Begins on the date hired, and

12 (b) Includes the month in which the employee is hired if employment begins on  
13 the first business day of the month. For the purposes of this rule, a business day is  
14 Monday through Friday when PERS is open for business.

15 (2) Membership in the system shall be established as of the first of the month next  
16 following six full calendar month*[']s of* service, as defined in section (1) of this rule,  
17 provided that the employee is employed on that date by the same employer or employers  
18 concurrently employing the employee during that six-month*[s]* period.

19 *[(3) For the purpose of this rule and ORS 238.015, a "full pay period" is defined as*  
20 *a calendar month.]*

21 *[(4)]* (3) In the event an employee is on a qualified leave of absence under OAR  
22 459-010-0010, the period of absence shall not constitute an interruption of *[service]* the

1 waiting period under Section (1) of this rule. The six-month waiting period shall be  
2 extended by the length of the qualified leave of absence.

3 (4) The provisions of this rule shall be applied retroactively to August 1, 2003.

4 Stat. Auth.: ORS 238.650

5 Stats. Implemented: ORS 238.015, 238A.025



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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March 18, 2005

MEETING	3-29-05
DATE	
AGENDA	C.3.
ITEM	Legislative Update

**TO:** Members of the PERS Board  
**FROM:** Steve Delaney, PERS Deputy Director  
Tom Grimsley, PERS Board Member  
**SUBJECT:** 2005 LEGISLATIVE UPDATE

As of this date, no major PERS reform bills have been introduced by any parties, even following the release of the *Strunk* decision. As might be expected, stakeholders seem to be waiting to see what comes out of the Supreme Court's review of the *City of Eugene* (Lipscomb) case.

Of the 34 PERS-related bills introduced thus far, they generally fall into one of four topical areas:

- (1) PERS Housekeeping,
- (2) Police and fire classifications,
- (3) The reemployment of retirees, and
- (4) The issue of "break in service."

### RECENT LEGISLATIVE ACTION

The five PERS sponsored bills were heard and passed by the Senate last week and assigned to the House Business, Labor and Consumer Affairs Committee.

SB 54 – Changes the trigger date for conversion to an Option 1 benefit from the date PERS is notified, to the date the event occurs.

SB 108 – Housekeeping measure pertaining to the interaction of PERS 238 and OPSRP 238A.

SB 109 – Amends unclear statutory direction regarding interest earnings for estimated payments.

SB 110 – Provides that withdrawal of an account invalidates any beneficiary notification on file with PERS.

SB 111 – For tax qualification purposes, clarifies that PERS is a single plan with component parts.

### NEW BILLS INTRODUCED SINCE THE FEBRUARY BOARD MEETING

Legislation Update

3/18/05

Page 2 of 6

SB 497 – Non-Oregon resident does not receive increased retirement benefit due to non-payment of Oregon income tax.

SB 499 – Classifies Telecommunicators as Police and Fire.

SB 506 – Classifies Dog Control Officers as Police and Fire.

SB 508 – Removes limitation of working hours for rehired retirees under OPSRP. Applies to employees working for a school district or community college in other than an academic or managerial position.

SB 767 – New Oregon School Board Association employees cannot become PERS members.

SB 874 – Directs PERS to allow for and collect retiree benefit deductions as contributions to organizations representing interests of retirees.

SB 893 – Removes limitation of working hours for retirees rehired to teach technology.

SB 941 – Identical to SB 893, allows rehired retiree to teach technology for unlimited hours.

SB 1010 – Allows member to buy service credit time from period served in elective office.

HB 2060 – Authorizes community college districts to offer alternative retirement programs.

HB 2572 – Requires PERS Board to pay member convicted of a work-related felony only benefits that are funded by employee contributions.

HB 2615 – Rules for accrual of retirement credit for school employees under OPSRP apply to OHSU instructors as well.

HB 2641 – Employer portion of PERS pension is subject to execution if member is convicted of job related felony.

HB 2735 – State agency must make good faith effort to fill a position for at least 45 days prior to rehiring a retired member.

HB 2925 – Classifies certain public employees as police officers for benefits under PERS. Applies to employees of the Oregon Military Department, OHSU and Juvenile detention workers.

HB 3041 – Allows police officer to receive retirement credit for service as a public safety officer with another state.

HB 3262 – Members who have armed forces active service credit may elect any calculation for determining retirement allowance.

HB 3410 – Allows for individual rollover of member's deferred compensation funds into rollover account that can be used to purchase retirement credit.

PERS BILLS

As of Friday, March 18, the following 34 bills have been introduced relating to PERS:

<b>Bill Numbers</b>	<b>Basic Concept</b>
SB 54	A PERS Board Bill – Changes the trigger date for conversion to an Option 1 benefit from the date PERS is notified, to the date the event occurs.
SB 105	Modifies break in service rule governing membership in OPSRP by person who leaves public employment for more than six months. Provides that employee does not have break in service by reason of period of time during which employee leaves public employment because of injury or disease that entitles employee to receive service disability allowance.
SB 108	A PERS Board Bill – Housekeeping measure pertaining to the interaction of PERS 238 and OPSRP 238A.
SB 109	A PERS Board Bill – Amends unclear statutory direction regarding interest earnings for estimated payments.
SB 110	A PERS Board Bill – Provides that withdrawal of an account invalidates any beneficiary notification on file with PERS.
SB 111	A PERS Board Bill – For tax qualification purposes, clarifies that PERS is a single plan with component parts.
SB 188	Modifies break in service rule governing membership in OPSRP by person who leaves public employment for more than six months. Provides that seasonal employee does not have break in service by reason of period of time during which employee leaves employment based on seasonal nature of employment.
SB 271	Provides that judge member of PERS who fails to make plan election be retired under Plan B. Allows judge to retire under Plan B if judge is at least 58 years of age and has at least 21.75 years of creditable service as judge.
SB 302	Limits number of terms to which member of OIC may be appointed. Limits number of years a chairperson may serve. Requires sound recording be made of every meeting.
SB 497	Prohibits PERS Board from paying increased benefit by reason of state income taxation of payments made by board if person receiving payments is not resident of State and does not pay Oregon income tax.
SB 499	Classifies telecommunicators certified by Department of Public Safety Standards and Training as police officers for purposes of benefits under PERS.



SB 506	Classifies dog control officers and persons commissioned by sheriff to perform animal control duties as police officers for purposes of benefits under PERS.
SB 508	Removes limit on number of hours retired member may work and still qualify for retirement under OPSRP if retired member is employed by school district or education service district as other than teacher or management employee.
SB 767	Provides that new employee of OSBA may not become member of PERS by reason of service to association.
SB 874	Requires PERS Board to allow retired members and beneficiaries to make voluntary annual contributions to organizations representing interests of retirees that have at least 100 members who are retired members of PERS and to certain charitable organizations.
SB 893	Allows school district or education service district to employ retired member of PERS to teach technology courses for any number of hours without affecting right of member to receive service retirement allowance if member has teaching license related to professional technical education.
SB 941	Identical to SB 893, allows retired member hired by a school district or education service district "to teach technology courses" to work unlimited hours.
SB 980	Classifies doctors and nurses who work at Oregon State Hospital as police officers for purposes of benefits under Public Employees Retirement System.
SB 1010	Allows member of Public Employees Retirement System who served in elective office before becoming member of system to acquire retirement credit for periods of service in elective office. Requires that member pay employee contributions for period of service sought, and interest.
HB 2060	Authorizes community college districts to offer alternative retirement programs.
HB 2104	Modifies provisions governing Optional Retirement Plan established by State Board of Higher Education. Provides that employer contribution rate for plan be based on employer contributions to PERS without adjustment for lump sum payments to system by employers.
HB 2189	Provides that salary used to determine benefits of members of PERS includes wages of deceased member paid to spouse or dependent children.

<p>HB 2434</p>	<p>Requires that employer of Tier One or Tier Two members continue to make contributions for member as though member continued to work during period in which member receives temporary total disability benefits under Workers' Compensation Law. Provides that contributions be based on salary of member at time member left work. Provides that final average salary of member be calculated as though member continued to work during period of temporary total disability, based on salary of member at time member left work.</p>
<p>HB 2436</p>	<p>Expands definition of 'salary' for purposes of benefits under Public Employees Retirement System. Provides that salary includes amounts contributed by employee to Health Savings Account or Health Reimbursement Arrangement. Expands definition of 'salary' for purposes of benefits under Public Employees Retirement System. Provides that salary includes amounts contributed by employee to Health Savings Account or Health Reimbursement Arrangement.</p>
<p>HB 2572</p>	<p>Directs PERS Board to calculate or recalculate retirement benefits of member of PERS if member is convicted of certain work related felonies. Requires board to pay convicted member only benefits that are funded by employee contributions.</p>
<p>HB 2615</p>	<p>Provides that rules for accrual of retirement credit by school employees under OPSRP apply to employees of Oregon Health and Science University engaged in teaching or other school activity.</p>
<p>HB 2641</p>	<p>Provides that employer-funded portion of pension or retirement plan of public employee is subject to execution if employee is convicted of felony and court determines that conduct on which conviction is based occurred while employee was engaged in performance of duties, or that employee's position allowed employee to engage in conduct that is basis of conviction.</p>
<p>HB 2735</p>	<p>Provides that state agency may employ retired member of PERS to fill position only if state agency certifies to Oregon DAS that state agency has made good faith efforts for at least 45 days to fill position and public employer has been unable to find suitable person who is not retired member to fill position.</p>
<p>HB 2925</p>	<p>Classifies certain public employees as police officers for purposes of benefits under PERS. Applies only to service rendered on or after effective date of Act. This bill applies to certain employees with Oregon Military Department, OHSU &amp; Juvenile case and detention workers.</p>

HB 3041	Allows member of PERS who is police officer to receive retirement credit for service as public safety officer with another state, or political subdivision of another state, before being employed in position that entitled member to credit in system. Requires lump sum payment of full cost of retirement credit
HB 3262	Provides that member of PERS who acquires retirement credit for active service in Armed Forces may elect to have service retirement allowance determined under any calculation for which person is eligible, even if calculation does not produce largest service retirement allowance.
HB 3410	Allows eligible state employee who has deferred compensation to direct PERS Board to pay all or part of deferred amounts to individual rollover account. Allows use of moneys in rollover accounts established by members of PERS to pay costs of restoring forfeited creditable service and purchasing retirement credit as authorized by law.
HB 5059	Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by Public Employees Retirement System. Authorizes specified non-limited expenditures.
HB 5060	Approves new or increased fee adopted by Public Employees Retirement Board.



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MEETING	3-29-05
DATE	
AGENDA	D.1.
ITEM	Strunk Ruling

March 18, 2005

**TO:** Members of the PERS Board

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

**SUBJECT:** Supreme Court Strunk Ruling - Effects and Implementation

At the PERS Board's March 29, 2005 meeting, staff will present a comprehensive report on its evaluation of the effect of the Oregon Supreme Court's recent ruling in the Strunk case that addressed the validity of the 2003 PERS Reform Legislation. At this point, we are expecting to address the following areas in this report:

- A summary of the decision's holdings
- A discussion of the status of other pending litigation, including the status of the City of Eugene case also currently before the Oregon Supreme Court and the related settlement agreement.
- An analysis of the potential effect of these two decisions in the following areas:
  - The net change in the system's unfunded actuarial liability
  - Projected effect on employer rates
  - The expected net result on reserve and member account balances
  - Estimated net effect on retired members' benefit payments
  - Projected increases in agency work load staffing and administrative costs
- Policy options and decisions for Board action along with staff recommendations
- Discussion of "downstream" effects on other agency activities

If there are other particular issues you would like to have us address in this report, please let me know and we will include them as well.



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MEETING	3-29-05
DATE	
AGENDA	D.2.
ITEM	Earnings Crediting and Cola Rules

March 18, 2005

**TO:** Members of the PERS Board  
Key Reviewer: James Dalton

**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

**SUBJECT:** Adoption of Temporary Rules; Notice of Rulemaking for 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 temporary rule modifications to OAR 459-007-0001, 459-007-0003, 459-007-0005 and 459-007-0090 and suspend 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 v. PERS* case.
- **Reason for Temporary Rulemaking:** The *Strunk* decision voided certain portions of the legislation as unconstitutional. Consequently, the administrative rule provisions based on those statutes can no longer operate. Adopting these rule modifications as temporary rules allows the agency to move forward in compliance with the court's decision immediately.
- **Subject:** Earnings crediting rule modifications to conform to the law as restored by 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.

### 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 using the COLA Freeze method to recover overpayments as determined under the legislation.

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*.

**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. These rule modifications would be effective back to July 1, 2003, which is the first date that the now 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 will be credited with no less than a pro-rate of the assumed 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 rate to Tier One member regular accounts. Those limitations were not challenged in the Strunk case, so the rule modifications acknowledge 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 with a special rate up until April 1, 2004. That provision was struck down in Strunk, so this rule 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*:** This rule was adopted to reflect that interim provision referenced above. The provision required that lump sum retirements from August 2003 to April 1, 2004 that were paid in two or more installments be credited with actual earnings or losses. 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 was not a permissible way to recover overpaid amounts as determined under the legislation. This rule was adopted to define and support the COLA Freeze process, so staff is asking the Board to repeal the rule.

### JUSTIFICATION FOR TEMPORARY RULEMAKING

These rule modifications respond to the holding in the *Strunk* decision that Tier One member regular accounts are to be credited with the assumed rate for each year. Previously, these rules had been drafted to conform to the 2003 PERS Reform Legislation provisions that prohibited crediting earnings to Tier One regular member accounts in any year in which a balance existed in the Deficit Reserve.

Transactions continue to be processed by the agency almost daily. These transactions (retirements, withdrawals, death benefits, etc.) should conform to the state of the law as articulated in *Strunk*. The proposed rule modifications should be adopted on a temporary basis so PERS has a conforming set of administrative rules in place as the basis for these transactions.

### 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.

### EFFECTIVE DATE

These rules will become effective upon filing but will be retroactively applied back to the dates stated in the rules. The maximum period the temporary rules can remain in effect is 180 days, but staff will immediately begin permanent rulemaking to replace (and in the case of OAR 459-007-0095 and 459-013-0300, permanently repeal) these temporary rules.

### RULEMAKING TIMELINE

March 29, 2005	PERS Board may adopt the proposed temporary rules. PERS staff will proceed with permanent rulemaking unless otherwise directed.
April, 2005	Staff initiates rulemaking process. Stakeholders and legislators notified and the public comment period begins.
May 1, 2005	<i>Oregon Bulletin</i> publishes the Notice of Rulemaking Hearing.
May 20, 2005	First reading of the proposed new rule. Staff may present recommended changes to the draft rules.
May 24, 2005	Rulemaking hearing takes place.
June 3, 2005	Public comment period ends.
June 24, 2005	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 in the law as it exists after *Strunk*. The *Strunk* decision

will have administrative and fiscal impacts that are addressed more fully under the staff report provided separately at this meeting.

**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 costs in crediting to Tier One member regular accounts, both in terms of the dollars needing to be credited and the administrative costs in implementing that decision, particularly on a retroactive basis for transactions that were previously completed under the former laws.

- ◆ *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. Make a motion to “adopt modifications to OAR 459-007-0001, 459-007-0003, 459-007-0005 and 459-007-0090 and suspend OAR 459-007-0095 and 459-013-0300 as temporary rules 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 adopt modifications to OAR 459-007-0001, 459-007-0003, 459-007-0005 and 459-007-0090 and suspend OAR 459-007-0095 and 459-013-0300 as temporary rules as presented. Staff will also proceed with permanent rulemaking unless otherwise directed.

- **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**

D.2. Attachment 1

**DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION**

OAR 459-007-0001 is Amended:

1 **459-007-0001**

2 **Definitions**

MEETING	<b>3-29-05</b>
DATE	
AGENDA	<b>D.2.</b>
ITEM	Earnings Crediting and Cola Rules

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

D.2. Attachment 2

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

OAR 459-007-0003 is Amended:

MEETING DATE	3-29-05
AGENDA ITEM	D.2. Earnings Crediting and Cola Rules

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 rate*[, the Rate Guarantee Reserve shall be used to the*  
9 *extent available to credit Tier One regular accounts up to a year-to-date equivalent of the*  
10 *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

OAR 459-007-0005 is Amended:

MEETING DATE	3-29-05
AGENDA ITEM	D.2. Earnings Crediting and Cola Rules

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

D.2. Attachment 4

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 OAR 459-007-0090 is Amended:

MEETING DATE	3-29-05
AGENDA ITEM	D.2. Earnings Crediting and Cola Rules

2 **459-007-0090**

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

5 Notwithstanding 459-007-0070, if a Tier One member retires *[on or after April 1,*  
6 *2004, ]*and elects to receive installment payments under ORS 238.305(4), earnings shall  
7 be credited from the effective date of the last annual rate to the date of distribution of the  
8 final installment 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 latest year-to-date calculation available for that year.

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

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

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

OAR 459-007-0095 is Repealed:

MEETING DATE	3-29-05
AGENDA ITEM	D.2. Earnings Crediting and Cola Rules

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

OAR 459-013-0300 is Repealed:

MEETING	3-29-05
DATE	
AGENDA	D.2.
ITEM	Earnings Crediting and Cola Rules

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*



1 *provisions of ORS Chapter 238 that are applicable to the calculation or adjustment of the*  
2 *member's service retirement allowance.*

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

7 *(d) The allowance calculated under subsection (b) or, if applicable, subsection (c) of*  
8 *this section shall then be adjusted as if the cost of living adjustment provided for in ORS*  
9 *238.360 had applied to that benefit for each calendar year after the member's effective*  
10 *retirement date.*

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

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

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

23 *Stat. Auth: ORS 238.650*

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



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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MEETING	<b>3-29-05</b>
DATE	
AGENDA	<b>D.3.</b>
ITEM	Earnings Crediting

March 21, 2005

**TO:** Members of the PERS Board

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

**SUBJECT:** 2004 Earnings Crediting

### EXECUTIVE SUMMARY

Staff has prepared a series of recommended motions that will guide the Board through the process of crediting 2004 calendar year earnings to the various reserves and accounts in the PERS Fund. Although these recommended motions take into consideration statutory requirements and administrative rules, the Board does have discretion in the areas noted.

The motions also reflect additional crediting of 2004 earnings to reserves resulting from the Oregon Supreme Court ruling on *Strunk v. PERS*. As a result, the amounts to be credited, particularly to Tier One member Regular Accounts, is different from the 2004 preliminary earnings crediting report made to the Board in February.

Final 2004 earnings will be made available prior to the Board meeting. All earnings reflected in this report are based on preliminary 2004 earnings.

### HISTORY

#### Preliminary Board Action:

The PERS Board, on February 18, 2005, made a preliminary decision to:

1. credit a full 7.5% of 2004 available earnings to the Contingency Reserve;
2. credit sufficient earnings to eliminate the Tier One Deficit Reserve from earnings attributable to Tier One member Regular Accounts (including a portion of earnings from those accounts transferred to the Benefits-In-Force Reserve to recover from 2004 retirees who previously received crediting from the Deficit Reserve);
3. credit 8.0% to Tier One member Regular Accounts;
4. place all remaining earnings attributable to Tier One member Regular Accounts in the Tier One Rate Guarantee Reserve;
5. credit from 0.0% to 7.5% of remaining 2004 available earnings to the Capital Preservation Reserve; and
6. credit Tier Two member Regular Accounts, Benefits-In-Force Reserve, and employer reserves equally with the remaining 2004 available earnings.

Report to the Legislature:

The Board's preliminary earnings crediting proposal was submitted on February 25, 2005 and presented to the Joint Ways & Means General Government Subcommittee on March 14, 2005. ORS 238.670(5) requires this action to give the Legislature an opportunity to review and comment on the report. Staff also presented the subcommittee with an update reflecting the overall effect of the Strunk v. PERS ruling on earnings crediting.

After the subcommittee asked several questions about employer rates and the impact of crediting on the system's funded status, it recommended acceptance of the report by the full Ways and Means Committee. The Committee acknowledged receiving the report later that week.

Impact of the Supreme Court Ruling (Strunk v. PERS)

One element of the Oregon Supreme Court's ruling will affect the Board's action in relation to the 2004 earnings crediting: the failure to credit 8% to Tier One member Regular Accounts for 2003. The Board must credit the assumed rate (8%) to those accounts; to accomplish this, staff has prepared a motion that will meet this crediting requirement out of 2004 earnings, resulting in an increase in the balance in the Tier One Deficit Reserve.

The motions set forth below assume the following:

1. The Contingency Reserve and the Capital Preservation Reserve will be funded at some level with 2004 earnings;
2. The 2003 earnings to Tier One member accounts will be charged to the Tier One Deficit Reserve prior to 2004 earnings being credited.

The impact these motions will have on the reserve and account balances can be seen on Attachments A and B. Both attachments reflect a 7.5% crediting to the Contingency Reserve. The first attachment assumes 0% crediting to the Capital Preservation Reserve; the second shows the effect of 7.5% crediting to that reserve.

RECOMMENDED 2004 EARNINGS CREDITING BOARD MOTIONS

These recommendations are intended to guide the Board through the process of crediting 2004 earnings. It is important that the sequence of motions be followed, as each motion is dependent on the Board's decision on prior motions. These motions are based on the following assumptions and preliminary steps, as outlined in OAR 459-007-0005:

- o The health insurance accounts in the PERS Fund are credited with their actual earnings, less administrative expenses incurred.
- o Employer lump sum payment accounts are credited with their actual earnings, less administrative expenses as authorized by ORS 238.225(10).
- o Variable Annuity Accounts are credited with their actual earnings, less a proportional charge for administrative expenses.
- o Earnings allocated below are net of the agency's administrative expenses, which are to be recovered first from available earnings according to ORS 238.610.

*1. Contingency Reserve*

This motion will fund the Contingency Reserve. By statute, the maximum amount that can be credited to this account is 7.5% of available earnings. Attachment A and B both show the impact of crediting 7.5% of preliminary 2004 earnings.

“I move that \_\_\_% of available 2004 earnings be credited to the Contingency Reserve as authorized by ORS 238.670(1).”

*2. 2003 Tier One Member Regular Account Earnings/Deficit Reserve*

This motion will credit Tier One member Regular Accounts with the assumed rate (8%) for 2003 in accordance with the Oregon Supreme Court ruling. This must be done first to create the base line for crediting 2004 earnings to these accounts. The funding for this action will come from the Tier One Deficit Reserve.

“I move that Tier One member Regular Accounts be credited at 8% for calendar year 2003. This action is to be funded by a charge to the Tier One Deficit Reserve.”

*3. 2004 Tier One Member Regular Accounts/Deficit Reserve*

This motion will credit Tier One member Regular Accounts with the assumed rate (8%) for 2004 and credit the remaining earnings attributable to Tier One member Regular Accounts to the Tier One Deficit Reserve.

“I move that Tier One member Regular Accounts be credited at 8% for calendar year 2004. All remaining earnings attributable to Tier One member Regular Accounts are to be credited to the Tier One Deficit Reserve.”

*4. Capital Preservation Reserve*

This motion will fund the Capital Preservation Reserve (CPR). Attachment A shows the impact if the Board chooses to credit zero to the CPR (based on preliminary 2004 earnings); Attachment B shows crediting the CPR at 7.5%. The CPR is funded from earnings attributable to Tier Two member Regular Accounts, employer reserves, and the Benefits-In-Force Reserve.

“I move that \_\_\_% of remaining 2004 available earnings be credited to the Capital Preservation Reserve as authorized by ORS 238.670(3).”

*5. Benefits-In-Force Reserve*

This motion will credit the Benefits-In-Force Reserve with available 2004 earnings and allocate a portion of these earnings to the Deficit Reserve to offset that portion of the Deficit Reserve that was previously credited to Tier One members who retired in 2004. (I will provide the final number at the meeting; currently, it's projected at \$18,260,000.)

“I move that from remaining 2004 earnings attributable to the Benefits-In-Force Reserve, \$\_\_\_\_\_ be credited to the Tier One Deficit Reserve with the remainder being credited to the Benefits-In-Force Reserve.”

6. *Tier Two Member Regular Accounts and Employer Reserves*

This motion will credit remaining earnings to Tier Two member Regular Accounts and employer reserves.

“I move that Tier Two member Regular Accounts and employer reserves be credited evenly with the remaining earnings that are attributable to those accounts and reserves.”

CONSOLIDATED 2004 EARNINGS CREDITING MOTION:

The Board can simplify the 2004 earnings crediting process by consolidating all of the previous motions as follows:

“I move that 2004 earnings be credited as outlined in the staff’s recommended motions from the March 21, 2005 memo. In the context of the wording and order of these recommended motions, I move that the Board place \_\_\_% of available 2004 earnings in the Contingency Reserve, \_\_\_% of available 2004 earnings in the Capital Preservation Reserve and from 2004 earnings that would otherwise be credited to the Benefits-In-Force Reserve, place \$\_\_\_\_\_ in the Tier One Deficit Reserve.”

SUPREME COURT RULING IMPACT MITIGATION

The Capital Preservation and Contingency Reserve balances may be used to offset the impact of the *Strunk* ruling by being applied against previous investment losses and increased pension liabilities. The actuary does not include these reserves when determining the system’s funded status or employer rates. Bringing these reserves “on-line” by distributing them to other reserves and accounts will offset a substantial portion of the liability increase caused by the court’s ruling.

Based on the status of accounts and reserves at this point (and not addressing what effect a resolution of the *City of Eugene* case would have), staff anticipates returning to the Board to allocate the Contingency and Capital Preservation Reserves as follows (the resulting impact from these actions are shown in Attachment C):

1. Apply the Capital Preservation Reserve Against the Tier One Deficit Reserve and Prior Losses to Tier Two, Employer, and Benefits-In-Force (BIF).

This action would eliminate the Tier One Deficit Reserve and credit the remaining balance of the Capital Preservation Reserve to the Tier Two member Regular Accounts, employer reserves, and the BIF to offset losses in those accounts from 2001 and 2002.

2. Apply the Contingency Reserve to the Benefits in Force Reserve

This action would allocate the Contingency Reserve (less a small hold-back for other contingencies) into the BIF. The purpose of this allocation would be to offset the increased system liabilities caused by the *Strunk* ruling. Staff recommends that the Contingency Reserve be allocated to the BIF because the BIF funds all member retirements; the increased liabilities reflect current and projected retirement costs.

Allocating the Contingency Reserve funds anywhere else would not directly offset the increased liabilities. Such action would also add a significantly complicated administrative process to decide how to allocate those funds fairly and evenly (what about members who left the system; employers with side accounts; etc.) as well as the physical process of adding the funds to the respective accounts. Lastly, any other allocation may result in an unintended or unwarranted consequence by compounding the increase in liabilities or not fully applying against those increased costs.

\*\*\*\*\*

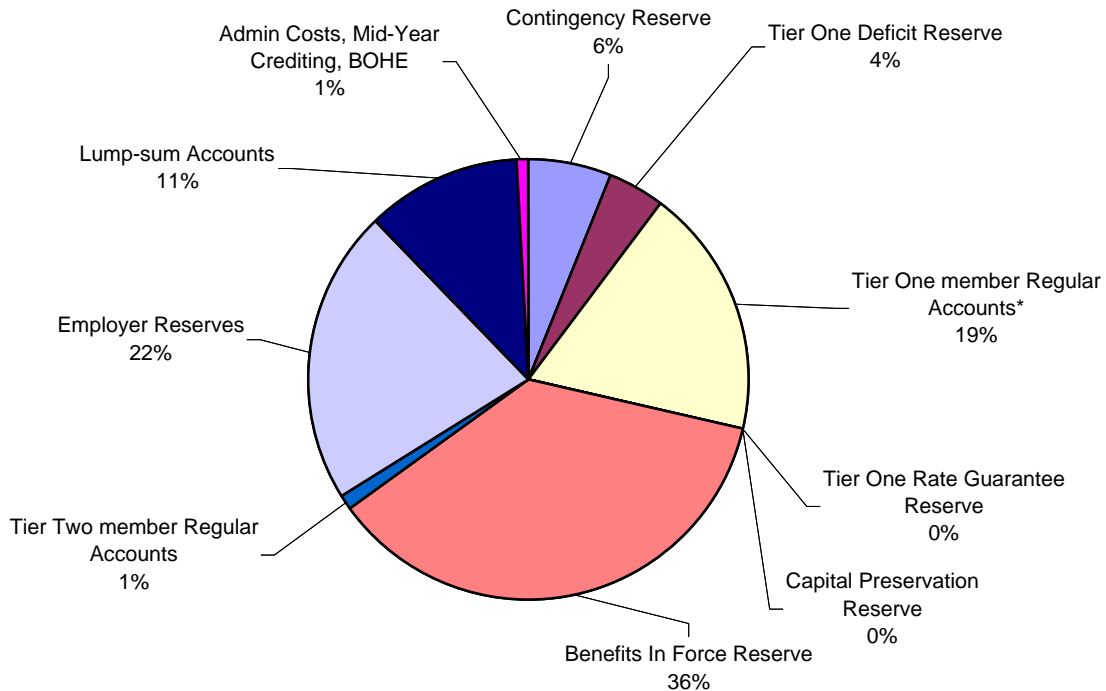
If you have any questions prior to the Board meeting about this, or other issues, please call me at (503) 603-7704.

- Attachment A: 2004 Post-Strunk Earnings Crediting (7.5% Crediting to Contingency Reserve and 0.0% to the Capital Preservation Reserve)
- Attachment B: 2004 Post-Strunk Earnings Crediting (7.5% Crediting to Contingency Reserve and 7.5% to the Capital Preservation Reserve)
- Attachment C: 2004 Post-Strunk Earnings Crediting Assuming Distribution of Contingency and Capital Preservation Reserves as Presented

**ATTACHMENT A**  
**2004 Post-Strunk Earnings Crediting**  
 (Based on 2004 Preliminary Earnings)  
 Contingency Reserve at 7.5%; Capital Preservation Reserve at 0%  
 (All dollar amounts in millions)

Reserve	2004 Crediting	Balance Before Crediting	Preliminary Earnings Distribution	Balance After Crediting
<b>Contingency Reserve</b>	7.50%	\$726.5	\$372.9	\$1,099.4
<b>Tier One Deficit Reserve</b>	N/A	-255.6	-260.1	-515.7
<b>Tier One member Regular Accounts*</b>	8.00%	6,949.7	1,156.4	8,106.2
<b>Tier One Rate Guarantee Reserve</b>	N/A	0.0	0.0	0.0
<b>Capital Preservation Reserve</b>	0.00%	432.9	0.0	432.9
<b>Benefits In Force Reserve</b>	13.24%	17,050.3	2,256.7	19,307.1
<b>Tier Two member Regular Accounts</b>	13.34%	522.2	69.7	591.8
<b>Employer Reserves</b>	13.34%	10,099.0	1,347.2	11,446.2
<b>Lump-sum Accounts</b>	13.68% Avg.	5,189.9	710.1	5,900.0
<b>Admin Costs, Mid-Year Crediting, BOHE</b>	Various	0.0	54.3	0.0
* Includes 8% crediting for 2003 & 2004				
<b>Total</b>		\$40,714.9	\$5,707.3	\$46,367.8

**Post-Strunk (2004 Preliminary Earnings)**  
 0% to Cap. Pres. Reserve



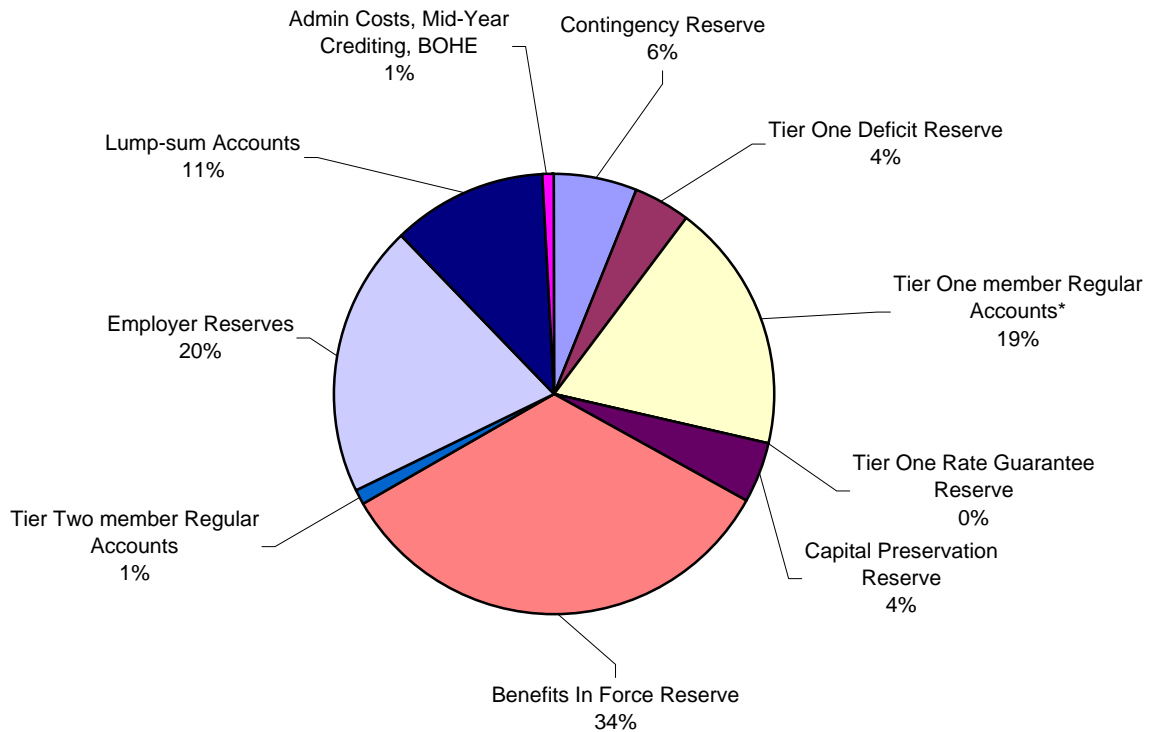
**ATTACHMENT B**  
**2004 Post-Strunk Earnings Crediting**

(Based on 2004 Preliminary Earnings)

**Proposal: Contingency Reserve at 7.5%; Capital Preservation Reserve at 7.5%**  
 (All dollar amounts in millions)

Reserve	2004 Crediting	Balance Before Crediting	Preliminary Earnings Distribution	Balance After Crediting
Contingency Reserve	7.50%	\$726.5	\$372.9	\$1,099.4
Tier One Deficit Reserve	N/A	-255.6	-260.1	-515.7
Tier One member Regular Accounts*	8.00%	6,949.7	1,156.4	8,106.2
Tier One Rate Guarantee Reserve	N/A	0.0	0.0	0.0
Capital Preservation Reserve	7.50%	432.9	275.5	708.5
Benefits In Force Reserve	12.24%	17,050.3	2,087.5	19,137.8
Tier Two member Regular Accounts	12.34%	522.2	64.4	586.6
Employer Reserves	12.34%	10,099.0	1,246.2	11,345.1
Lump-sum Accounts	13.68% Avg.	5,189.9	710.1	5,900.0
Admin Costs, Mid-Year Crediting, BOHE	Various	0.0	54.3	0.0
* Includes 8% crediting for 2003 & 2004				
<b>Total</b>		<b>\$40,714.9</b>	<b>\$5,707.3</b>	<b>\$46,367.8</b>

**Post-Strunk (2004 Preliminary Earnings)**  
**7.5% to Cap. Pres. Reserve**





**ATTACHMENT C**

**2004 Post-Strunk Reserve Re-allocation Impact**

(Based on 2004 Preliminary Earnings and Ending Reserve Balances)

**Assuming Distribution of Contingency and Capital Preservation Reserves**

**Contingency Reserve at 7.5%; Capital Preservation Reserve at 7.5%**

(All dollar amounts in millions)

Reserve	Balance After Crediting	Reserve Distribution	Balance After Crediting
Contingency Reserve	\$1,099.4	-\$1,091.5	\$7.9
Tier One Deficit Reserve	-515.7	515.7	0.0
Tier One member Regular Accounts	8,106.2	0.0	8,106.2
Tier One Rate Guarantee Reserve	0.0	0.0	0.0
Capital Preservation Reserve	708.5	-708.5	0.0
Benefits In Force Reserve	19,137.8	1,210.4	20,348.1
Tier Two member Regular Accounts	586.6	3.5	590.1
Employer Reserves	11,345.1	70.5	11,415.6
Lump-sum Accounts	5,900.0	0.0	5,900.0
Admin Costs, Mid-Year Crediting, BOHE	0.0	0.0	0.0
<b>Total</b>	<b>\$46,367.8</b>	<b>\$0.0</b>	<b>\$46,367.8</b>

**Post-Strunk (Contingency/Cap. Pres. Reserve Distribution)  
Ending Reserve Percentages**

