

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Tuesday January 25, 2005 1:00 P.M.	PERS 11410 SW 68th Parkway Tigard, OR
ITEM	PRESENTER
A. Administration	
<ol style="list-style-type: none"> 1. December 10, 2004 and January 7, 2005 Board Meeting Minutes 2. Director's Report <ol style="list-style-type: none"> a. Forward Looking Calendar b. OIC Investment Report c. Budget Report d. HB2020 and IAP Update e. Miscellaneous 	ALLEN CLEARY CLEARY CLEARY DEFOREST MARECIC / BACON
B. Contested Cases	
<ol style="list-style-type: none"> 1. Appeal of Karen L. McCutcheon 	KUTLER / RODEMAN
C. Consent Action and Information Items	
<ol style="list-style-type: none"> 1. Notice of Rulemaking of OAR 459-010-0035, <i>Six-Month Waiting Period</i> 2. First Reading of OAR 459, Division 30, <i>Equal to or Better Than</i> 3. First Reading of OAR 459-010-0014, <i>Creditable Service</i> 4. First Reading of OAR 459-005-0506 through 0595, <i>Tax Rules</i> 	ROCKLIN / RODEMAN ROCKLIN / RODEMAN ROCKLIN / RODEMAN ROCKLIN / RODEMAN
D. Action and Discussion Items	
<ol style="list-style-type: none"> 1. 2005 Mid-Year Earnings Crediting 2. 2003 Actuarial Valuation and July 2005 Employer Rates 3. Adoption of OAR 459, Division 05, 70 and 80, OPSRP Miscellaneous <ol style="list-style-type: none"> a. OAR 459-005-0310, 459-005-0350, 459-005-0370, <i>Division 5 Rules Related to Optional and Alternative Retirement Plans</i> b. OAR 459-005-0591, <i>Definitions - Direct Rollovers</i> c. OAR 459-070-0050, <i>Participation of Public Employers</i> d. OAR 459-080-0050, <i>IAP Employer Account Contributions</i> 4. Legislative Update 5. Board Governance Matters 	ORR / RODEMAN JOHNSON / ORR GRIMSLEY / RODEMAN GRIMSLEY / DELANEY PITTMAN
E. Executive Session Pursuant to ORS 192.660 (2) (f) and ORS 40.225	
<ol style="list-style-type: none"> 1. Litigation Update 	LEGAL COUNSEL

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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.
December 10, 2004

Tigard, Oregon

MEETING	1-25-05
DATE	
AGENDA	A.1.
ITEM	12-10-04 Minutes

MINUTES

Board Members:

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

Staff:

Paul R. Cleary, Director
Donna Allen
Marsha Bacon
Steve Delaney
Jon DuFrene
Brian DeForest
Karen Chavez

Craig Stroud
Carol Vogel
Debra Hembree
Dave Tyler
David Martin
James Harris
Jacqueline Reep
Dale Orr

Raul Torres
Steve Rodeman
Brendalee Wilson
Gloria English
Stephanie Gillette

Others:

Gordon Allen
Ken Armstrong
James Baker
Ardis Belknap
Cathy Bloom
Marcia Chapman
BethAnne Darby
Myrnie Daut

Joe DiNicola
Jerry Connelly
Richard Gilbert
Jim Green
Denise Hall
DeeAnn Hardt
Greg Hartman
Tracy Holland
Mark Johnson

Maria Keltner
Keith Kutler
Steve Law
Steve Manton
Amol Mhatre
Kevin Nordhill
Jeff Perry
Carol Samuels
Ron Schmitz

Tricia Smith
Jack Sollis
Marjorie Taylor
Deborah Tremblay
Mark Villegas
Debbie Vuylsteke
Pat West
Denise Yunker

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

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF NOVEMBER 19, 2004

Brenda Rocklin moved and Eva Kripalani seconded to approve the corrected minutes of the November 19, 2004 meeting. The motion passed unanimously.

A.2. DIRECTOR'S REPORT

Director Paul Cleary reported that staff is finalizing the new actuarial services contract with Mercer and working on a 3-month contract extension for Milliman, USA. Cleary introduced David Tyler, formerly Chief Financial Officer for the Oregon Department of Transportation (ODOT), who assumed the duties of PERS Chief Financial Officer on December 1, 2004.

A.2.a. FORWARD-LOOKING CALENDAR

Cleary briefly reviewed up-coming items for Board meetings through March 2005, noting that the date for the March meeting would have to be set for late in the month to accommodate 2004 final earnings crediting.

A.2.b. OIC INVESTMENT REPORT

Cleary presented the Oregon Investment Council's (OIC) retirement fund report for the period ending October 31, 2004 reporting regular account earnings to-date of 7.41% and reporting positive results for the variable account as well.

A.2.c. BUDGET REPORT

Brian DeForest, Budget and Fiscal Operations Manager, presented an agency budget report through October. DeForest said the projected budget surplus has increased to \$2.1 million as a result of cost allocation revisions provided by more detailed accounting and continued expenditure management.

Vice-Chair Rocklin requested that future reports provide additional details of the variances in the PERS budget.

DeForest also presented an overview of the Governor's Recommended Budget for PERS for the 2005-07 biennium.

A.2.d. HB2020 UPDATE

Customer Service Division Administrator Marsha Bacon provided a report on the implementation of HB2020 including an overview of the employer reporting and IAP account establishment. Bacon introduced six employer representatives who offered details of their experiences, concerns and recommendations for improving the employer reporting process. The employer representatives concluded that regular contact and clear communication with PERS was a key issue for successful execution of the HB2020 employer reporting system.

Chair Pittman asked staff to prepare a detailed business management plan for HB2020 employer reporting and IAP account postings, and to schedule a special Board meeting in January to review the plan.

CONTESTED CASES

B.1. APPEAL OF CALVIN W. GRAHAM

Steve Rodeman, Policy, Planning and Legislative Analysis Group (PPLAG) Manager, reviewed the history of the contested case hearing of Calvin W. Graham.

Attorney Phil Brockett spoke on behalf of Calvin Graham.

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. Tom Grimsley voted no. The motion passed.

CONSENT ACTION AND INFORMATION ITEMS

The Board took note of the following information items (no action required):

C.1. FIRST READING OF OAR 459, DIVISIONS 05, 70 AND 80, MISCELLANEOUS OPSRP RULES

- a. OAR 459-005-0310, 0350 and 0370, *Rules Related to Optional and Alternative Retirement Plans*
- b. OAR 459-005-0591, *Definitions – Direct Rollovers*
- c. OAR 459-070-0050, *Participation of Public Employers*
- d. OAR 459-080-0050, *IAP Employer Account Contributions*

ACTION AND DISCUSSION ITEMS

D.1. 2003 ACTUARIAL VALUATION SYSTEM-WIDE RESULTS

Actuary Mark Johnson presented the preliminary results of the 2003 Actuarial Valuation. Johnson reported that there were slightly over 300,000 members, with an increase of Tier Two members from 43% to 47% of total membership. Johnson said there was an overall decline in active membership from 2002 to 2003. Johnson will provide the final 2003 valuation and associated employer rates, to be effective July 1, 2005; at the January 2005 Board meeting. Johnson also described several employer rate implementation options which the Board requested additional information on for consideration at the January 2005 meeting.

D.2. AUDIT COMMITTEE CHARTER ADOPTION AND COMMITTEE MEMBERSHIP

Internal Audit Director Craig Stroud detailed the purpose and responsibilities of the proposed Board Audit Committee and described the proposed committee charter. Chair Pittman announced that Board member Dalton has volunteered to Chair the committee and that Pittman and Board member Kripalani have volunteered to serve on the committee.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the corrected Board Audit Committee Charter and to appoint James Dalton as Chair of the Audit Committee with Chair Pittman and Board member Kripalani as committee members. The motion passed unanimously.

D.3. ADOPTION OF POLICY ON TRADING RESTRICTIONS IN OSGP

Investment Officer Kevin Nordhill of the Oregon State Treasury office and PERS Customer Service Division Administrator Marsha Bacon presented a proposed policy regarding trading restrictions in the Oregon Savings Growth Plan (OSGP). Bacon said there are presently no administrative rules controlling excessive trading and indicated that excessive trading activities can impact the performance of underlying domestic and international funds. Nordhill said that Treasury supports the proposed policy to address concerns that OSGP fund participants could be disadvantaged through increased fees or negative investment performance caused by excessive trading of others.

Board member Dalton requested that staff research the possibility of requiring a special trading fee for those members who make large and frequent trades. Bacon said that staff would work jointly with the State Treasury to evaluate that option and would also provide quarterly updates on the OSGP program. The Board encouraged staff to use all available means to communicate the trading restriction policy to OSGP members and solicit feedback.

It was moved by James Dalton and seconded by Evan Kripalani to adopt the OSGP Trading Restrictions policy as presented, to be effective upon adoption. The motion passed unanimously.

3:30 P.M. Eva Kripalani was excused from the remainder of the meeting due to a business conflict.

D.4. NOTICE OF RULEMAKING AND ADOPTION OF TEMPORARY RULE FOR OAR 459-005-0506 TO 0595, TAX RULES

Steve Rodeman, Policy, Planning, and Legislative Analysis Group (PPLAG) Manager presented an adoption of temporary rule modifications that would fulfill the agency's obligation to administer the OPSRP programs under IRS restrictions and incorporate needed changes to administration of the PERS Plan overall to maintain compliance with federal law and rule changes.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the modifications to OAR 459-005-0535, -0590, -0591, and -0595 as presented in the Board packet, and to OAR 459-005-0506, -0525, and -0560 as presented in the December 10, 2004 memo from staff, as temporary rules to be effective January 1, 2004 to cover the 2004 tax year. The motion passed unanimously.

D.5. LEGISLATIVE CONCEPTS AND PROCESS UPDATE

Steve Delaney, PPLAG Administrator presented the five legislative concepts, which were previously approved by the Board and have now been submitted to the Department of Administrative Services for the upcoming legislative session. For reference, Delaney provided a Decision Matrix that was used during the 2001 legislative session to guide staff in relating potential Board positions during the legislative session. Pittman recommended that a sub-committee of Board member Grimsley and Vice-chair Rocklin meet with Delaney to discuss the Board's potential positions on various issues and prepare a revised Decision Matrix. Pittman asked that this item be on the agenda at the special Board meeting that will be scheduled in January.

D.6. BOARD GOVERNANCE MATTERS

There were no Board governance matters.

EXECUTIVE SESSION

E.1. LITIGATION UPDATE

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

The Board reconvened to open session.

Mike Pittman adjourned the meeting at 4:10 P.M.

Respectfully submitted,

Paul R. Cleary
Executive Director

*Prepared by Donna R. Allen, Executive Assistant
All meetings are recorded and the recordings are available to the public.*

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting

1:00 P.M.
January 7, 2005

Tigard, Oregon

MEETING	1-25-05
DATE	
AGENDA	A.1.a.
ITEM	1-7-05 Minutes

MINUTES

Board Members:

Mike Pittman, Chair

Brenda Rocklin

James Dalton

Teleconference: Thomas Grimsley

Excused: Eva Kripalani

Staff:

Paul Cleary

Donna Allen

Marsha Bacon

David Crosley

Steve Delaney

Gloria English

Stephanie Gillette

James Harris

Jeff Marecic

Brenda Pearson

Steve Rodeman

Eric Sokol

Raul Torres

Dave Tyler

Brendalee Wilson

Others:

Bruce Adams

Marcia Chapman

Teleconference:

James Baker

Michelle Deister

E. Marie Laird

Fred Boss

Heidi Franklin

Tracy Rutten

Keith Kutler

Tricia Smith

Jim Mayer

Board Chair Michael Pittman called the meeting to order at 1:00 P.M., noting that Board member Grimsley and legal counsel were participating by teleconference and that Board member Kripalani was excused due to an unavoidable business conflict.

ITEM 1. HB2020 UPDATE – BUSINESS MANAGEMENT PLAN

Director Paul Cleary reported on the Board's follow-up request for a detailed business management plan for HB2020 implementation. Cleary said that 79% of employers have successfully reported and posted all records, continuing the pattern of a steady but slow increase in successful report posting. Cleary noted the Board's concern about the status and pace of report posting given the critical nature of these records to member IAP accounts and the annual reconciliation process.

Information Services Division (ISD) Administrator Jeff Marecic addressed the essential steps to merge the new computer program application, (jClarety) and the old computer programming (RIMS). Marecic said that the agency is facing two fundamental problems: (1) Transitioning between two systems; and, (2) Learning the capabilities of the new system (jClarety). The business management plan addresses these two issues. First, the agency has accelerated some of the technical interface work that was scheduled for later this spring. This will enable the new system to synchronize data with the old system. Second, experienced jClarety consultants have been added to the data cleanup effort. This will enable PERS staff to enhance their knowledge of the system by working closely with Covansys staff. In addition, Covansys staff will analyze data issues and develop ways to clear suspended records much more quickly. Marecic said that while Covansys is creating the technical fixes, they must depend largely on PERS staff to initially identify complex processing problems and needs.

Membership and Employer Relations (MERS) and Customer Service Division Administrator Marsha Bacon said that staff from multiple sections has been reallocated to MERS to support the annual reconciliation project and to work with Covansys in order to address technical issues that arise. Bacon said one of the main issues is the need to bridge RIMS and the replacement jClarety system to insure there is no breakdown in processing accounts. Bacon said that in addition to on-going meetings with individual employers to update them on various processing issues and assist with record clearing, weekly employer announcements will be sent to employers to keep them updated on the processes.

Bacon acknowledged accurate posting of records ensures that member contributions are timely credited to the Individual Account Program (IAP), and provides the basis for the year end closing of PERS records, also known as the “annuals” reconciliation.

Chair Pittman requested that staff create an organizational chart and schedule that would clearly show the management of the project, including contractors, departments and staff leads who are involved in the project. Pittman also asked that staff make an all-out effort to keep employers and members well informed of the progress on IAP accounts and the annuals reconciliation, and establish firm target dates.

ITEM 2. BOARD LEGISLATION POSITIONS – DECISION MATRIX

Legislative Coordinator Steve Delaney presented a Decision Matrix that provides staff with direction in addressing bills during the legislative session and is used as a tool to help the PERS Legislative Advisory Committee and other interested parties understand the likelihood of the Board taking a position on various legislative proposals. The Board discussed the difference between individual Board member testimony voicing individual opinions and testimony being delivered on behalf of the Board which would require a formal Board position. Director Cleary suggested that the Board may want to retain flexibility by modifying the matrix to not rule out the potential of taking positions on any and all topic areas. It was moved by Brenda Rocklin and seconded by James Dalton to adopt the decision matrix as modified. The motion passed unanimously.

OTHER ITEMS

Director Cleary announced the appointment of Steve Delaney as PERS Deputy Director; Steve Rodeman as administrator of the Policy, Planning and Legislative Analysis Group (PPLAG); Craig Stroud as the administrator of the Benefit Payments Division (BPD) and Brendalee Wilson as the manager of PPLAG. In addition, Cleary said that Jenny Kumm will be replacing Stroud as Internal Audit Director, subject to confirmation by the Board’s Audit Committee, and that Jacqueline Reep has accepted a position as a principal contributor in PPLAG.

ITEM 3. EXECUTIVE SESSION – LITIGATION UPDATE

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

The Board reconvened to open session.

ITEM 4. PAMCORP Fidelity Bond Claim Settlement

It was moved by Brenda Rocklin and seconded by Tom Grimsley to accept the settlement and release agreement between the Hartford Fire Insurance Company, the Continental Casualty Company, the Oregon Public Employees Retirement Fund, and the State of Oregon, including the Oregon Public Employees Retirement Board, the Oregon Department of Treasury, the Oregon

PERS Board meeting

January 7, 2005

Page 3 of 3

Department of Justice and the Oregon Investment Council, and to authorize Chair Pittman's signature on behalf of the PERS Board to be signed by Assistant Attorney General Fred Boss. The motion passed unanimously.

Mike Pittman adjourned the meeting at 2:50 P.M.

Respectfully submitted,

Paul R. Cleary
Executive Director

*Prepared by Donna R. Allen, Executive Assistant
All meetings are recorded and the recordings are available to the public.*

MEETING	
DATE	01-25-05
AGENDA	A.2.a.
ITEM	Forward Looking Calendar

PERS Board Meeting Forward-Looking Calendar

February 18, 2005 1:00 P.M.

- Appeal of Paula Ptacek
- Appeal of Tracy Vant
- 2004 Preliminary Earnings Crediting
- Adoption of OAR 459-015-0000 to 0060, *PERS Chapter 238 Plan Disability*
- Adoption of OAR 459-076-0000 to 0060, *OPSRP Disability*
- Adoption of OAR 459, Division 30, *Equal to or Better Than*
- Adoption of OAR 459-010-0003, *PERS Membership Eligibility (600 Hours)*
- Adoption of OAR 459-010-0014, *Creditable Service*
- Adoption of OAR 459-005-0506 to 0595, *Tax Rules*
- First Reading of OAR 459-010-0035, *Six-Month Qualifying Service*

March 2005

- Appeal of Billy R. Hunter
- Appeal of Jon Phillips
- Appeal of Douglas Dvorak
- 2004 Final Earnings Crediting
- Adoption of OAR 459-010-0035, *Six-Month Qualifying Service*
- Notice of Rulemaking of *Employer Payments through Automated Clearing House*

April 2005

- First Reading of *Employer Payments through Automated Clearing House*

Returns for periods ending 12/31/04

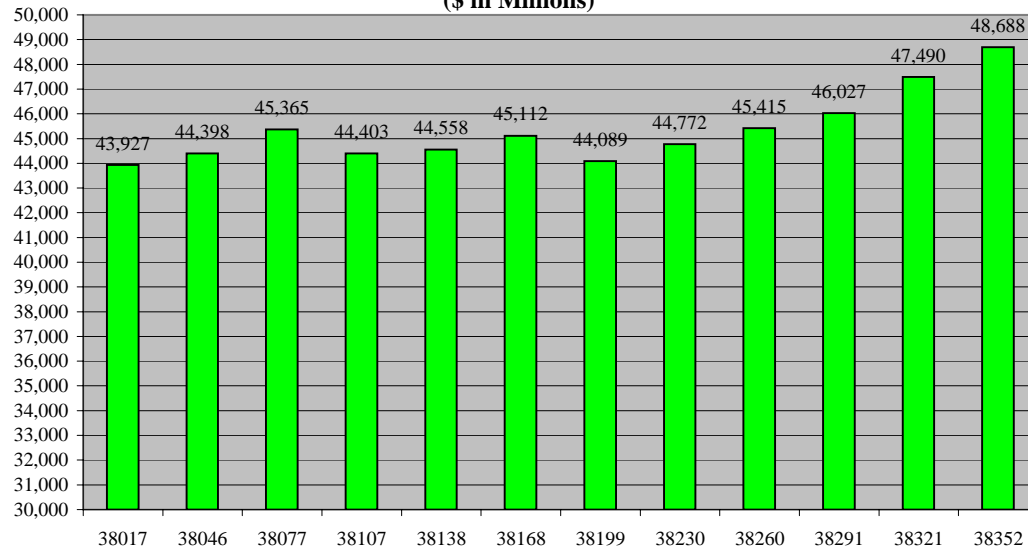
Oregon Public Employees Retirement Fund

OPERF	Regular Account				Historical Performance					
	Policy ¹	Target ¹	\$ Thousands	Actual	Year-To-Date	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	30-40%	35%	\$ 17,219,327	36.6%	12.92	12.92	22.41	5.52	1.11	0.19
International Equity	15-25%	20%	10,525,695	22.4%	21.42	21.42	31.01	13.97	4.53	0.32
Alternative Equity	7-13%	10%	3,831,550	8.1%	26.60	26.60	12.32	5.76	(0.65)	4.27
Total Equity	60-70%	65%	31,576,572	67.1%						
Total Fixed	22-32%	27%	12,202,106	25.9%	6.19	6.19	7.83	8.20	8.18	8.54
Real Estate	5-11%	8%	2,584,752	5.5%	21.12	21.12	19.02	15.17	13.34	14.12
Cash	0-3%	0%	683,030	1.5%	1.44	1.44	1.38	1.62	2.34	3.18
TOTAL OPERF Regular Account		100%	\$ 47,046,460	100.0%	14.47	14.47	18.50	8.95	4.87	4.30
OPERF Policy Benchmark					12.74	12.74	18.27	8.33	4.23	3.31
Value Added					1.73	1.73	0.23	0.62	0.64	0.99

Asset Class Benchmarks:

Russell 3000 Index	11.95	11.95	21.13	4.80	0.48	(1.16)
MSCI ACWI Free Ex US	21.36	21.36	31.00	13.56	4.20	0.02
Russell 3000 Index + 500 bps--Quarter Lagged	19.48	19.48	25.36	11.07	1.70	5.79
LB Universal--Custom FI Benchmark	4.98	4.98	5.21	6.63	6.94	7.56
NCREIF Property Index--Quarter Lagged	12.41	12.41	10.09	8.61	8.99	9.54
91 Day T-Bill	1.33	1.33	1.24	1.42	2.16	2.95

TOTAL OPERF NAV
(includes variable fund assets)
One year ending December 2004
(\$ in Millions)



¹OIC Policy 4.01.18



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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January 14, 2004

MEETING	1-25-05
DATE	
AGENDA	A.2.c.
ITEM	Budget Report

MEMORANDUM

TO: Members of the PERS Board

FROM: Brian DeForest, Budget and Fiscal Operations Manager

SUBJECT: January, 2004 Budget Report

ACTUAL EXPENDITURES VS. PROJECTIONS

The projected budget surplus for the Administrative appropriation remains at \$2.1 million with accounting data for the month of November and re-forecasting remaining expenditures, applying additional cost allocation factors and adding additional project costs. Total actual expenditures for the Administrative appropriation were \$1,859,048, an increase of \$336,194 above October expenditures. Actual expenditures for the month were \$433,463 below projections due primarily to contract payments that were anticipated in November but were actually paid in December.

ISSUES/OPPORTUNITIES

Cost allocation continues to appropriately shift expenditures from the Administrative appropriation to the AEF and HB2020 appropriations. Re-forecasting personal services and contract services projections prospectively moved projections the same direction. The additional projected administrative appropriation 'savings' have been offset by increased expenditure projections for two projects; Annuals Reconciliation and R*STARS Conversion. The Annuals Reconciliation Project is much more complex this year due to the integration of the jClarety and RIMS retirement applications. Additional software programming is required to complete the annuals project in a timely manner. The R*STARS Conversion project looks to eliminate the use of the SBT accounting application, which is unique to PERS, and convert to the State's Financial Management System application (SFMS) as the primary accounting system. With the additional limitation available in the Administrative appropriation, the conversion can be completed and implemented by July 1, 2005. A delay in the project could postpone implementation for an additional fiscal year, if not another biennium.

The agency was approved to move forward with the first phase of the RIMS Conversion Project (RCP) at the November 2004 meeting of the Emergency Board at a cost of approximately \$2 million for 2003-05, and \$27.5 million total over 44 months. The projections for RCP will be included in the next Board Report. PERS is authorized to request appropriation rescheduling, if necessary, to free up budget dollars for the project. However, I do not anticipate the need to reschedule funds at this time given the current status of the Agency's budget. This will effectively drive the 'surplus' back down. As new issues or opportunities arise, the Budget Unit will evaluate the need to reschedule allotment dollars. There is currently \$3,265,960 uncommitted in the Administrative appropriation.

BUDGET VARIANCES

At the request of the PERS Board at its last meeting, an explanation for projected budget variances for the Publicity and Publications, Attorney General and State Government Service Charges accounts are provided below:

Publicity and Publications – Projections for this account inappropriately included \$300,000 for completion of the annuals reconciliation process and production of annual statements. The projections for a significant portion of the project were included in this account instead of being spread across several accounts. Projections for other anticipated expenditures, such as hiring temporary staff, overtime and necessary modifications to the jClarety and RIMS applications, have been moved to the appropriate accounts. Only \$85,000 for the annuals project remains in the publications account as the projected cost to produce and mail statements. Other projected expenditures in the Publicity and Publications account include regular production and distribution of the Perspective newsletter and PERS annual financial statements.

Attorney General – Actual expenditures for this account, at least in the early part of the biennium, were higher than normal and trending toward over-expending the budget for the account. Projections for the account were re-forecast last spring and reflect early biennium expenditure patterns at an average of \$34,000 per month. More recent history indicates \$24,000 per month average over the last six months. Remaining projections have been reduced to the \$24,000 mark to reflect recent activity.

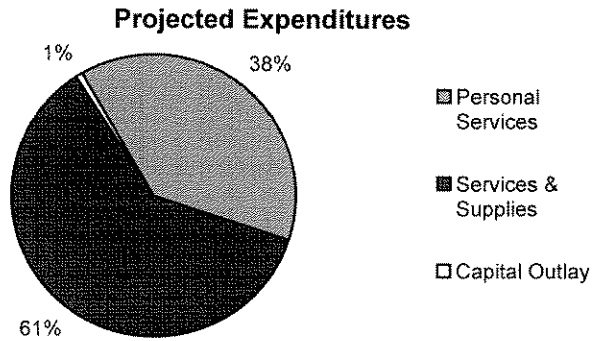
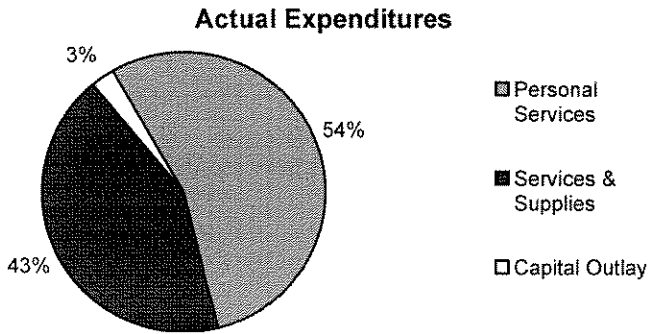
State Government Service Charges – There are two causes for the positive variance in the State Government Service Charges account. First, the agency was inadvertently over-budgeted by \$118,000 in the Legislatively Adopted Budget. That amount has been unexpended and will not be expended. Second, all state agencies were given additional expenditure limitation to cover costs of Pension Obligation Bonds. Agencies were instructed by DAS to direct the budgeted dollars into the State Government Service Charges account. However, actual expenditures for the bonds are recorded in the Personal Services category. This is an issue that is not unique to PERS and is corrected in the 2005-07 Governor's Recommended Budget.

Significant account variances will continue to be identified and discussed in the monthly budget report made to the Board under this heading.

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

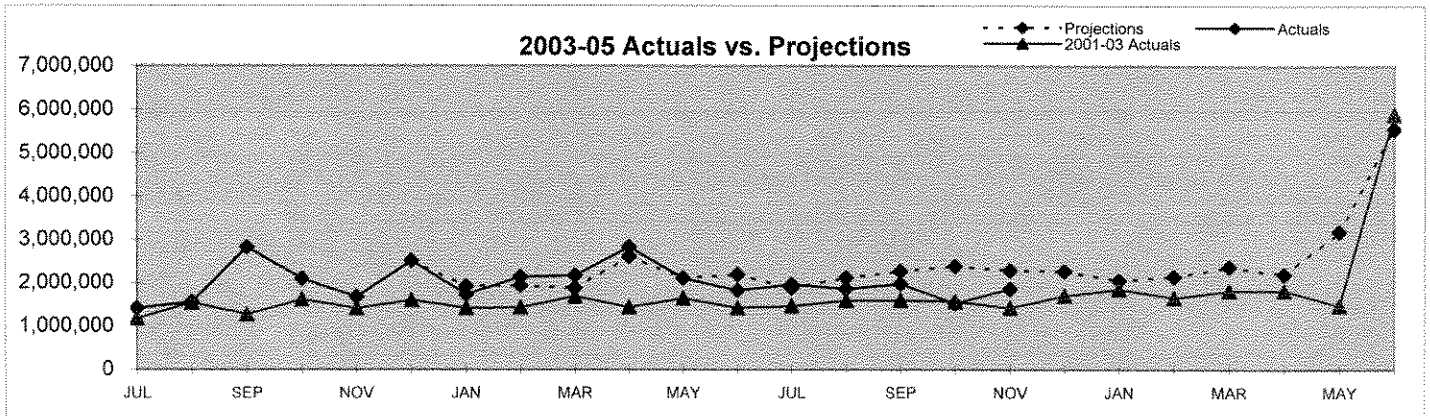
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2003-05 LAB	Variance
Personal Services	18,554,576	7,593,066	26,147,642	32,782,666	6,635,024
Services & Supplies	14,583,865	12,011,123	26,594,988	22,242,381	(4,352,607)
Capital Outlay	919,592	190,691	1,110,282	968,686	(141,596)
Special Payments					
Total	34,058,033	19,794,879	53,852,912	55,993,733	2,140,821



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	861,921	1,057,490	195,569	1,091,446	1,084,724
Services & Supplies	997,127	1,160,021	162,894	857,874	1,715,875
Capital Outlay		75,000	75,000	54,094	27,242
Special Payments					
Total	1,859,048	2,292,511	433,463	2,003,414	2,827,840



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					
Total					

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

	1st	2nd	3rd	4th	5th	6th	7th	8th	ACTUAL EXPEND. TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.	03-05 LAB BUDGET	VARIANCE
	QTR	QTR	QTR	QTR	QTR	QTR	QTR							
Personal Services														
Salaries & Wages	2,264,380	2,242,259	2,331,581	2,111,846	2,198,765	1,821,043	2,103,650	2,212,984	12,299,875	4,966,643		17,286,518	23,463,108	6,176,590
Temporary Appointments	48,684	39,226	31,980	60,125	62,544	34,077	62,763	62,763	255,714	146,447		402,161	142,417	(259,744)
Overtime	60,190	95,131	137,735	89,225	54,015	53,402	53,442	53,442	454,204	124,698		578,902	353,978	(224,924)
O/Class, Leadwork, Sp. Qual	8,254	15,565	21,115	22,038	20,922	17,499	19,671	19,671	99,856	45,899		145,755	157,382	11,627
OPE	680,231	916,481	937,669	966,339	1,094,410	859,994	967,591	1,012,591	5,444,926	2,289,379		7,734,305	9,534,991	1,800,686
Unscheduled P.S.													(869,210)	(869,210)
Total Personal Services	3,361,739	3,309,682	3,460,099	3,249,572	3,430,657	2,767,316	3,207,117	3,361,461	18,554,576	7,593,066		26,147,642	32,782,666	6,635,024
			<i>actual</i>				<i>estimated</i>							
Services & Supplies														
Instate Travel	14,168	14,862	12,717	21,299	15,760	17,402	21,300	28,400	89,228	56,800		146,028	126,634	(19,394)
Out-of-state Travel	568	205	94					2,000	867	2,000		2,867	23,549	20,682
Office Expenses	102,207	218,537	235,723	126,922	100,365	125,665	217,482	184,922	847,900	463,922		1,311,823	1,803,988	492,175
Dues & Subscriptions	5,801	15,006	3,326	4,867	4,896	7,826	6,690	10,118	39,495	19,038		58,532	45,394	(13,138)
Publicity/Publications	9,098	9,971	28,418	12,690	25,574	12,512	20,500	166,807	88,263	197,307		285,571	324,975	39,404
Telecommunications	26,567	64,495	51,413	99,762	60,635	46,422	75,304	82,147	331,312	175,631		506,944	650,656	143,714
Data Processing	592,626	334,904	328,478	215,851	405,252	240,104	228,900	1,151,007	2,040,926	1,456,207		3,497,132	3,521,385	24,253
Emp. Recruit./Devel.	18,309	43,398	13,426	16,359	13,723	17,937	31,063	118,607	112,652	160,170		272,822	280,048	7,226
Professional Services	20,585	27,678	17,520	18,187	20,879	10,549	8,750	17,119	110,247	28,819		139,066	55,354	(83,712)
Dispute Res. Svc.	1,447	6,271	4,276	4,142	1,401	5,191	9,000	15,809	24,528	27,809		52,337	68,508	16,171
Attorney General	7,593	219,220	91,416	115,707	68,304	69,944	72,000	96,000	542,184	192,000		734,184	703,007	(31,177)
St. Gov. Svc. Chg.	313,914	121,792	64,506	29,556	246,232	107,770	46,577	88,588	859,722	151,214		1,020,936	1,854,293	833,357
Intra-Agency Charges														
Other S & S	1,101	3,515	2,428	933,804	1,576	8,565	3,000	6,000	949,888	10,000		959,888	1,005,500	45,612
Facility Rental	13,626	40,749	70,026	57,735	58,033	54,825	60,987	87,100	274,564	168,416		443,080	581,708	138,628
Fuels/Utilities	15,299	24,368	16,506	21,446	22,705	14,844	18,039	27,234	109,155	51,286		160,441	111,578	(48,863)
Facility Maint.	77,082	70,406	38,466	76,710	74,444	56,455	67,800	113,620	379,963	204,020		583,982	777,338	193,356
Other COP Costs		174		811	377	333			1,496			1,496	1,501	5
Expendable Property	19,583	306,195	110,879	46,527	13,608	28,064	90,000	90,000	494,855	210,000		704,855	935,711	230,856
Unscheduled S & S													(2,396,750)	(2,396,750)
Total Services & Supplies	2,919,556	2,806,743	2,443,043	3,290,561	2,380,708	2,885,623	3,369,066	7,399,669	14,583,865	12,011,123		26,594,988	22,242,361	(4,352,627)
Capital Outlay														
Office Furn./Fixture														
Telecomm. Equip.			36,205	27,305				190,691	64,010	190,691		254,701	30,145	30,145
Technical Equipment													519,981	265,280
Data Proc.-Software					(5,720)	(4,162)							57,626	57,626
Data Proc.-Hardware													150,000	150,000
Building & Structure													210,934	(644,648)
Total Capital Outlay	404,499	187,968	141,658	225,147	(5,720)	(4,162)		190,691	855,882	190,691		1,110,282	968,686	(141,596)
Special Payments														
Total Special Payments														
Total Expenditures	5,785,794	6,274,394	6,045,000	6,765,301	5,805,643	6,568,776	6,576,183	10,951,821	34,068,033	19,794,379		53,862,912	55,993,733	2,140,821

Percent of 2003-05 LAB Expended: 60.82%
 Percent of Biennium Expended: 70.83%



Oregon

Theodore R. Kulongoski, Governor

January 19, 2005

Public Employees Retirement System

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MEETING	1-25-05
DATE	
AGENDA	A.2.d.
ITEM	HB2020 and IAP Update

TO: Members of the PERS Board

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

SUBJECT: Update of HB2020 Employer Reporting Business Management Plan

Attached to this memorandum is an updated version of the HB2020 Employer Reporting Business Management Plan guiding the agency's process of clearing and posting employer wage and contribution reports for 2004. The updated plan includes: wage and contribution reporting statistics and graphs; a communication plan for employers, members and stakeholders on the status and results of the annuals reconciliation and IAP account processes; an organization matrix outlining the plan execution assignments and responsibilities; and a project timeline chart.

Current Status

Based on the latest information from the Employer Production Report as of January 18, 2005:

- | | |
|--|---------------|
| • Number of reports due for 2004 | 12,788 |
| • Number of reports outstanding for 2004 | 346 |
| • Number of reports fully posted at 100% | 10,195 |
| • Number of member records received for 2004 | 2,866,632 |
| • Number of member records not posted for 2004 | 55,083 |
| • Amount of member contributions not posted for 2004 | \$3,161,467 |
| • Amount of member contributions posted for 2004 | \$379,689,139 |

Oregon Public Employees Retirement System
HB2020 Employer Reporting Business Management Plan

January 19, 2005

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1 Problem Statement

In August 2003, the Oregon legislative assembly put into effect the Oregon Public Service Retirement Plan (OPSRP). The new retirement plan not only changed the fundamental structure of the existing plan (PERS Chapter 238) but also created new data collection and reporting requirements for the agency and member employers. Some of the key changes to the requirements for plan data are: eligibility requirements, payroll cycle reporting and subject earnings. These changes created significant challenges for the agency's existing systems and processes and ultimately led to the implementation of a new pension administration system at the agency.

During the fall of 2003, the agency selected a new pension administration system called jClarety and installed the basic elements of the employer data reporting components of the system by January 2004. With the implementation of these components came several significant changes in the agency's interaction with member employers. First, member employers are now required to submit payroll, contribution and demographic data to the agency on a payroll basis rather than on a yearly basis. Since there are over 860 member employers reporting on a least a monthly basis (creating over 12,000 reports per year as compared to about 860 in previous years), the agency's existing systems, processes and procedures were quickly determined to be inadequate to handle the increased workload of monthly data reconciliations versus the previous yearly data reconciliation. Second, employers and agency staff are required to use a new, web-based reporting tool to submit data. While this tool will soon grow into a very effective means to submit and collect member data, it is still being customized and optimized for agency use at this time. The lack of complete functionality in the tool has created a number of inefficiencies in the data collection process as member employers and agency staff learn both the plan requirements and the tool's capabilities. Third, since the new OPSRP's Individual Account Program (IAP) component applies to members of the old plan (PERS Chapter 238) and the new plan, the new jClarety system needs to be tightly integrated with the existing Retirement Information Management System (RIMS) used to administer the chapter 238 plan. This integration is still under development and will be strengthened in the coming months.

The overall result of these changes and issues has led to an ongoing, significant backlog of unposted and suspended employer data reports. The effect of these unposted and suspended reports is threefold: 1) they delay the creation of IAP accounts at the third party administrator; 2) they prevent the agency from performing its annual reconciliation of member accounts on a timely basis; and 3) they negatively impact the agency's ability to produce annual member statements.

The annual reconciliation is the beginning and end of a cycle of collecting active member data. The agency reconciles the prior year's activities so that it can start with a "clean slate" in the current year. At this time, agency staff are working to reconcile 2004 member and employer data. The employer wage and contribution reports provide the core data utilized throughout the annuals program.

Almost everything about the calendar year 2004 year-end reconciliation will be different from what agency staff have known in the past. In addition to reconciling employer reported data and salary for member Tier One and Tier Two accounts, reconciling judge member and unit purchase contributions and balancing employer reserves, agency staff also need to synchronize data between RIMS, jClarety, and CitiStreet (the third-party administrator for IAP).

There are two major components to manage for overall success on the project: business operations and system support. These two components, while distinct, are interdependent. The business processes must be defined so that staff know what system solutions are available and staff need to know the technical issues facing them so they can build operational processes and procedures.

This business plan outlines the process the agency will follow to complete the 2004 annual reconciliation process successfully. It also details data to be reconciled; procedures being reviewed and revised; staff and employer training; project timelines; employer, member and stakeholder communications and points of contact within the agency.

2 Plan Approach

The approach for the data cleanup of employer reporting will concentrate on two categories of work. The first priority is wage and contribution reports that have a direct effect on the IAP and the second priority is the cleanup of demographic data specific to member accounts which are required for member annual statements. The plan engages all of the internal

and external staff and resources necessary to ensure success of the plan including: Member and Employer Relations; Customer Service; Software Engineering; Project Management and contractors.

2.1 Success Criteria

The plan will be successful if the three possible 2004 annual statements reflect the correct data and dollars for members and all employer accounts are reconciled by March 15, 2005. The annual statements include:

- PERS' Chapter 238 plan (defined benefit)
- Oregon Public Service Retirement Plan (defined benefit)
- Individual Account Program (IAP) (defined contribution)

The overall project plan will be reviewed weekly at the agency's Project Steering Committee to ensure progress and reflect any internal/external changes that affect the various project component end dates and timelines.

2.2 Roles and Responsibilities

This plan has been defined as a formal project within the agency and will be treated as a high-priority project until completed. The following section outlines the roles and responsibilities for the key players involved in the project. (See Appendix A for a project organization chart.)

Customer Service Division

The Customer Service Division (CSD) sections that are involved in this plan include Membership and Employer Relations (MERS), Publications and Communications (PCS) and Customer Service Center (CSC).

MERS staff engaged in data cleanup include:

- A Core Data Clean-up (CDC) Team made up of a total of eight staff. They will report daily to Kirstin Carlson, who will oversee the CDC. She will report to Yvette Elledge, Annuals project manager.
 - The daily work effort will include:
 - Work the unposted employer records that have a financial impact to a member's account (i.e., IAP).
 - Work the first level of identified data clean up issues-i.e., incorrect SSNs reported
 - Analyze categories of data problems and develop methods and procedures to clear suspended records in bulk
 - Determine timeframes/days associated with cleanup categories and report on progress
- Daily Operations Teams assigned to ongoing work (phones, eligibility research, separation processing, backlog) will provide feedback through Clear Quest (Yvonne Anello) as to the employer interactions and level one assistance and include escalated CDC activity-in place

PCS staff engaged in the plan include:

- A PCS staff member, Radford Bean, will record and write the procedures developed through the CDC team-reports to Kirstin Carlson and MERS manager – December 27, 2004 start date
- A PCS staff member, Mark Vanderzanden, will develop the workflow, create a decision tree and document all processes. The work will be reviewed by Kirstin Carlson and Yvette Elledge for approval – December 27, 2004 start date
- Gayle Lansky, MERS, will lead the communication plan for both internal and external groups (prepare semi-monthly communications for employers and provide daily/weekly information to the MERS staff based on previous CDC progress. Kirstin to gather daily results and provide to Gayle). (See Appendix B for the communications plan.)

CSC staff engaged in the plan include:

- Darrel Jabin, Carol Thornburn, Kathleen Klar, Elaine King from CSC will support the daily employer teams working on separations. They will report daily to Yvonne Anello as to progress.

Project Management Office

The Project Management Office (PMO) has established this project as a formal project within the agency and will apply and follow project management standards and best practices as defined by the Project Management Institute (PMI). The objective of PMO involvement is to ensure that the project plan is successful through:

- Ensuring adequate resources are made available for the project.
- Reviewing project plans, schedules, and business requirements.
- Identifying, tracking, and reporting on issues and risks.
- Reviewing project goals and deliverables with project sponsors.
- Creating project status reports to be reviewed at the weekly Project Steering Committee meeting.
- Ensuring that the plan is monitored for any necessary changes that impact the success of the plan.

PMO staff engaged in the plan include:

- Eric Sokol – Software Engineering Section Manager
- Mike Steensma – PMO Coordinator
- Stephanie Bellwood – Annuals Program Manager
- Alma Kramer – RIMS Modifications/Deliverables
- Jim Schilmoeller – jClarety Modifications/Deliverables
- Kathy Taylor – Business Processes
- John Kostakos, Covansys Project Manager

Covansys Resources

Due to the facts that jClarety is a new system at the agency, that the data relationships among jClarety and RIMS are complex and that this year's reconciliation effort is different and more complicated than any previous year, agency staff have requested that our jClarety integration vendor and business partner, Covansys, assign additional analytical resources to the annuals project. These resources will bring much needed jClarety expertise to the project. The main focus of the three Covansys consultants that have been assigned to the project is to develop ways to clear multiple blocks of suspended records more efficiently than now possible. The Covansys consultants will analyze the agency's data cleanup efforts as well as the existing technology and make recommendations and implement solutions for more efficient processing.

The Covansys consultants will also train PERS staff in the use of jClarety for clearing suspended records and in identifying data dependencies that are preventing records from posting. In addition, they will assist agency staff in developing employer training so that employers can become self-sufficient in the data cleanup effort.

There have been three additional Covansys resources assigned to these activities:

- Eric Albertson
- Joe Ramsey
- Kishori Aluri

2.3 Plan Activities

Major activities and responsible parties to support the plan include the following (See Appendix C for a detailed activity list and timelines):

Organizational structure/training

- Assign section managers to specific core group activities - Marsha Bacon/Gloria English.
 - Publication Communication Section (PCS) staff identified and report to Kirstin Carlson.
 - Assign staff to specific responsibilities with core data cleanup responsibilities - Kirstin Carlson.
 - Identify an additional core group of staff, vendors, and managers to organize/focus on data cleanup work – Yvette Elledge.
- Authorize necessary overtime – Marsha Bacon/Paul Cleary (approved December 16, 2004).

- Training of additional staff joining the Annuals project - Kirstin Carlson and Mary Waldron.
- Produce specific reports for work by the core team-focus on getting to the 85% or better level-Howard Brandell/MERS Manager/Covansys.
- Utilize Covansys staff to provide additional analysis of methodology and approach-i.e., identify critical process issues or technology to address basic or root problem – Kirstin Carlson/John Kostakos, Covansys.

Plan Communications/Status Reporting

- Communicate the elements of the plan effectively to employers and internal staff - Gayle Lansky (See Appendix B for the Communications Plan) .
- Implement project metrics to provide accurate status of the project – Stephanie Bellwood/Howard Brandell/John Kostakos, Covansys. (See Appendix D for metrics that will be used to track this project.)
- Report progress to Steering Committee - Marsha Bacon.

Ongoing Operations

- Continue to support the benefit retirement processing through SEP posting/corrections-plan and training in place by December 30, 2004 - Marsha Bacon/MERS Manager.

System programming changes

- Ensure each Customer Service Report (CSR) is linked to an appropriate Change Request (CR) in Clear Quest - Kirstin Carlson/Alma Kramer.
- Utilize Covansys staff to assist with the data cleanup/needed queries/CR evaluation and completion – Kirstin Carlson/John Kostakos, Covansys.
- Prioritize jClarety system change requests for data cleanup that would produce quantifiable results - Kirstin Carlson/John Kostakos - 1300 hours of work has been estimated.
- Understand the impact of change requests on the HB2020 tracks and the RIMS conversion plan – Steve Rodeman/Business Enterprise Team.

2.4 Assumptions

- Additional assistance from Covansys staff will be made available to help with analysis and data clean up work within the Core Data Cleanup Team.
- The metric reporting tool will be in place prior to additional staff, including Covansys, applying training.
- Additional MERS staff in place for training by December 27, 2004-Gloria English
- Change requests have expected impact on data cleanup work.
- Contract issues related to change in Track 4 budget will not become a roadblock to add Covansys staff.

2.5 Risks

Agency risks of not completing the data cleanup include:

- Annuals will not close in time allowed.
- Member IAP accounts will be inaccurate.
- Negative perception of PERS' ability to process work.
- Inaccurate member IAP information will cause increased phone calls from members.
- Retirement processing will be adversely affected.
- Impact on HB 2020 implementation – possible schedule delay for Track 3 (Benefit Payments).

Resource risks of plan:

- Turnover of key staff would have negative impact on the project.
- Training must be in place and continuous.
- Employers do not have the time to cleanup their own data errors related to suspended/missing records in time to close the annuals process.

Programming/technology risks

- Change Requests and system modifications (RIMS and/or jClarety) do not have the impact on data cleanup as requested.
- System modifications cannot be completed in time for the annual closing cycle.

Contract risks

- None at this time.

2.6 Current Status

The current status of the data cleanup effort can be categorized into two types of activities. First, employers need to submit member contribution and demographic data to PERS through the jClarety system. These employer reports contain information for all of their employees who may be members of either the OPSRP or PERS Chapter 238 plan. Until these reports are received, the agency cannot begin the reconciliation/posting process.

Agency staff have developed two metrics that will be used to track progress on outstanding employer reports. On page D-2 is a graph that shows the total count of missing wage and contribution reports. The agency has assigned staff to work with employers to get this information into the system and will track this number on a daily basis. As of January 18, there are 346 missing reports. This represents significant progress from 1/3/2005 which showed 496 missing reports. The second metric being used to track missing reports is shown on page D-3. This table lists the top 20 employers that have the greatest impact on the project due to missing reports and serves to help prioritize the data cleanup team's work efforts.

The second type of activity involved in the data cleanup work effort is clearing suspended member records. Suspended records arise when an error occurs during the validation stage while processing an employer report. These errors can be demographic in nature (e.g., name mismatches, SSN discrepancies, etc.) or financial in nature (e.g., incorrect salary, contribution calculation discrepancies, etc.). Clearing these suspended records is critical to creating annual statements, reconciling member accounts and establishing member IAP accounts. Agency staff have created four metrics to track progress on clearing these records.

The first metric used to track suspended records appears on page D-4. As of January 18, staff have received a total of 2,866,632 member data records from employers. Of this total, 98% have posted properly into the system and approximately 2% are not posted (suspended). The data cleanup team reviews these unposted records, categorizes them and develops strategies to clear them efficiently.

The second metric used to track suspended records is shown in the table on page D-5. This table shows the top 20 employers ranked by the total number of suspended records. This table allows the cleanup team to prioritize its work effort to maximize its efficiency in clearing these records.

The third metric on page D-6 shows a status of member accounts. As of January 18, the number of members whose accounts were correctly posted at the 100% level was 162,584 (over 94% of the total). The number of members who were not posted at 100% (due to suspended records) was 9,613 (just under 6% of the total).

The final metric used to track suspended records appears on page D-7. This chart tracks the total number of dollars associated with the records that have been received. As of January 16, the agency received member records that totaled \$382,850,606. Of this total, \$379,689,139 (> 99%) was posted at 100% and \$3,161,467 (<1%) was not yet posted. Staff further break these numbers down by employer in order to prioritize work effort and focus on activities that ensure maximum gain in posted dollars.

These metrics show a steady improvement in all areas over the previous several weeks. This is a result of the added focus placed on this project as well as a more analytical approach to problem resolution. Staff anticipate that each week will show significant improvement in all of these metrics until such time as the outstanding issues are mostly comprised of individual data errors as opposed to systematic problems.

3 Summary

This management plan outlines a coordinated effort at the agency to help ensure that all member accounts are posted at 100% accuracy as soon as possible. However, staff realizes that, based on past experience and due to extraneous conditions and individual member and employer circumstances, it may not be possible to fully achieve 100% posting. There are some activities that are not fully under the control of agency staff (e.g., employers not sending reports).

The teams that have been assembled to carry out this plan are comprised of dedicated staff and are being led by some of the agency's most qualified managers. Enhancements made in staffing, managing and measuring the project have already shown dramatic improvements over the past month. The decision to add formal project management practices to the project will ensure that internal communications occur frequently, resources demands are met, risks are mitigated and any issues that arise will be resolved promptly.

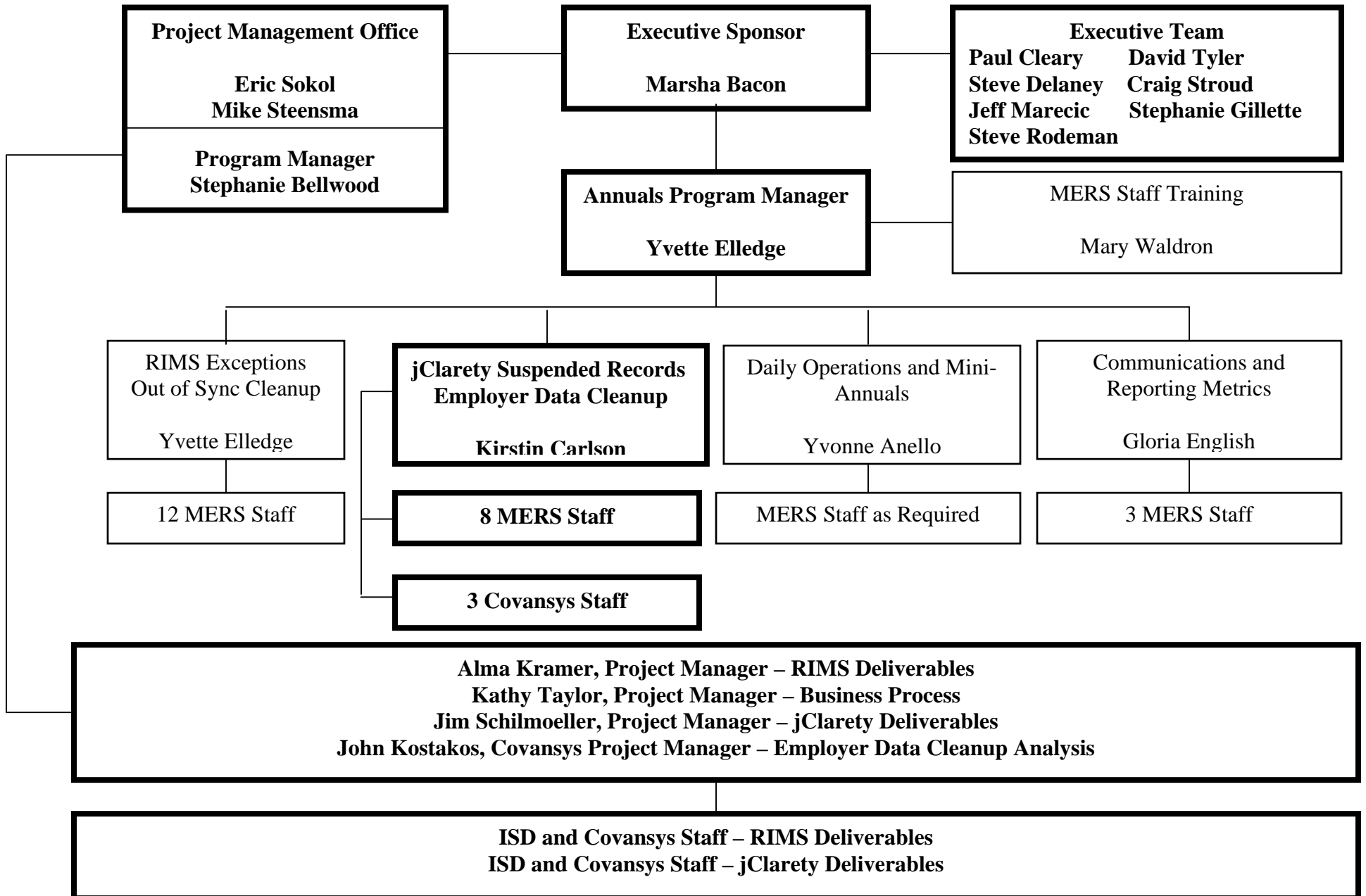
Staff is confident that the added focus on the annuals reconciliation project will be successful and will meet the target dates outlined within this document. It is expected that continuing positive results will be seen on a daily basis. Staff will continue to provide updates at all PERS Board meetings and through other communications.

APPENDIX A
Annuals Process Organization Chart

APPENDIX A

Annuals Process Organization Chart

Note: **Bold** = HB2020
Data Cleanup Project



APPENDIX B
Annuals Process Communications Plan

APPENDIX B

Annuals Process Communications Plan Summary

Annual Reconciliation, Annual Statements, and IAP PINs communications with Anticipated Timelines

Annual Reconciliation: Completed by March 15, 2005 (process to reconcile wage and contribution report).

Annual Statements mailing:

Chapter 238 Plan – May 2-6

OPSRP Pension Program – May 2-6

IAP – May 9-13 (tentative)

IAP Welcome Letter and PINs: Mail welcome letter to members beginning April 15, 2005; follow up PINs mail May 9-13, 2005

APPENDIX B

Annuals Process Communications Plan Timelines

Weekly	Create weekly Employer Announcements with pertinent information regarding the Annual Reconciliation until the process is complete; discuss progress, across-the-board fixes, deadlines, etc. (until reconciliation is complete).
January 24	Inform Employers of training sessions for error correction to be held at PERS HQ by email; post information on Employer website.
January 28	Post February 1 issue of active member <i>Perspectives</i> newsletter on website with article about delay of mailing IAP welcome letter and PINs. Remind Employers of training sessions for error correction to be held at PERS HQ by email.
February 1	Active member issue of <i>Perspectives</i> distributed with article about delay of mailing IAP welcome letter and PINs.
April 1	Email employers and stakeholders in advance of IAP welcome letter and subsequent PIN letter with timelines for those events.
April 1&15	Include IAP welcome letter and PIN mailing information in Employer Announcement.
April 29	Post to website the active member edition of <i>Perspectives</i> with information regarding the Annual Statements plan and timelines to distribute the 2004 PERS Chapter 238, OPSRP Pension Program, and IAP annual statements.
May 2-6	Active member edition of <i>Perspectives</i> will have information regarding the Annual Statements plan and timelines to distribute the 2004 PERS Chapter 238, OPSRP Pension Program, and IAP annual statements. Send a welcome letter to active members with information about the IAP and advance notice that the PINs will be sent to member addresses on file with PERS. Mail Chapter 238 and Pension Program Annual Statements to members
May 15	Send PIN numbers to IAP participants for online account access.
May 9-13	Mail IAP Annual Statements to members.

APPENDIX B

Annuals Process Communications Plan Details

Medium	Perspectives Newsletter	Email/ Regular Mail	Web Site	Employer Announcements	Telephone Contact
Topic					
Annual Reconciliation					
Employers	NA	<p>Email weekly Employer Announcements with pertinent information until annuals process is complete (see Web site and Employer Announcements columns).</p> <p>Send weekly messages to employers.</p> <p>Inform Employers of training sessions for error correction to be held at PERS HQ other sites <i>January 24.</i></p>	<p>Post Employer Announcements weekly.</p> <p>Post emailed information.</p> <p>Inform Employers of training sessions for error correction to be held at PERS HQ/other sites, <i>January 24.</i></p>	<p>Weekly Employer Announcements with pertinent information until the annual reconciliation is complete; discuss progress, across-the-board fixes, deadlines, etc. <i>January 18, 25 February 4, 11, 18, 25 March 4, 11</i></p> <p>Inform Employers of training sessions for error correction to be held at PERS HQ <i>January 24, Feb TBD</i></p> <p>Remind Employers of training sessions for error correction to be held at PERS HQ and as sites become available.</p>	<p>Contact Employers by telephone to discuss problem resolution and provide assistance. (Kirstin Carlson)</p>
Members	NA	NA	NA	NA	NA
Stakeholders	NA	NA	NA	NA	NA

APPENDIX B

Annuals Process Communications Plan Details

Annual Statements	Perspectives Newsletter	Email/ Regular Mail	Web Site	Employer Announcements	Telephone Contact
Employers	May 1, 2005 active member edition of <i>Perspectives</i> will have information regarding the Annual Statements plan and timelines to distribute the 2004 PERS Chapter 238, OPSRP Pension Program, and IAP annual statements. <i>May 1. David Crosley</i>	Send email info to employers in advance of each of the three member statements (2004 PERS Chapter 238, OPSRP Pension Program, and IAP) being sent as a reminder with timelines and process information. <i>April 15. Lansky/Crosley</i>	Post anticipated timeline for Annual Statement mailings. March 1. Post the May 1, 2005 <i>Perspectives</i> article regarding the plan and timelines for the Annual Statements. <i>April 29. Crosley</i>	Update employers with Annual Statement timelines and information in timely Employer Announcement. <i>March 11.</i>	NA
Members	May 1, 2005 active member edition of <i>Perspectives</i> will have information regarding the Annual Statements plan and timelines to distribute the 2004 PERS Chapter 238, OPSRP Pension Program, and IAP Annual Statements. <i>May 1.</i>	Mail Chapter 238 (<i>May 2-6</i>), OPSRP Pension Program (<i>May 2-6</i>), and IAP (<i>May 9-13</i>) Annual Statements to members.	Post the May 1, 2005 <i>Perspectives</i> article regarding the plan and timelines for the Annual Statements. <i>April 29. DCrosley</i> Post anticipated timeline for Annual Statement mailings. <i>April 15.</i>	NA	Customer Service scripting on annual statements Jan Feb Mar
Stakeholders	NA	Send email info to stakeholders in advance of each of the three member statements (2004 PERS Chapter 238, OPSRP Pension Program, and IAP) being sent as a reminder with timelines and process information. <i>April 15-25.</i>	NA	NA	NA

APPENDIX B

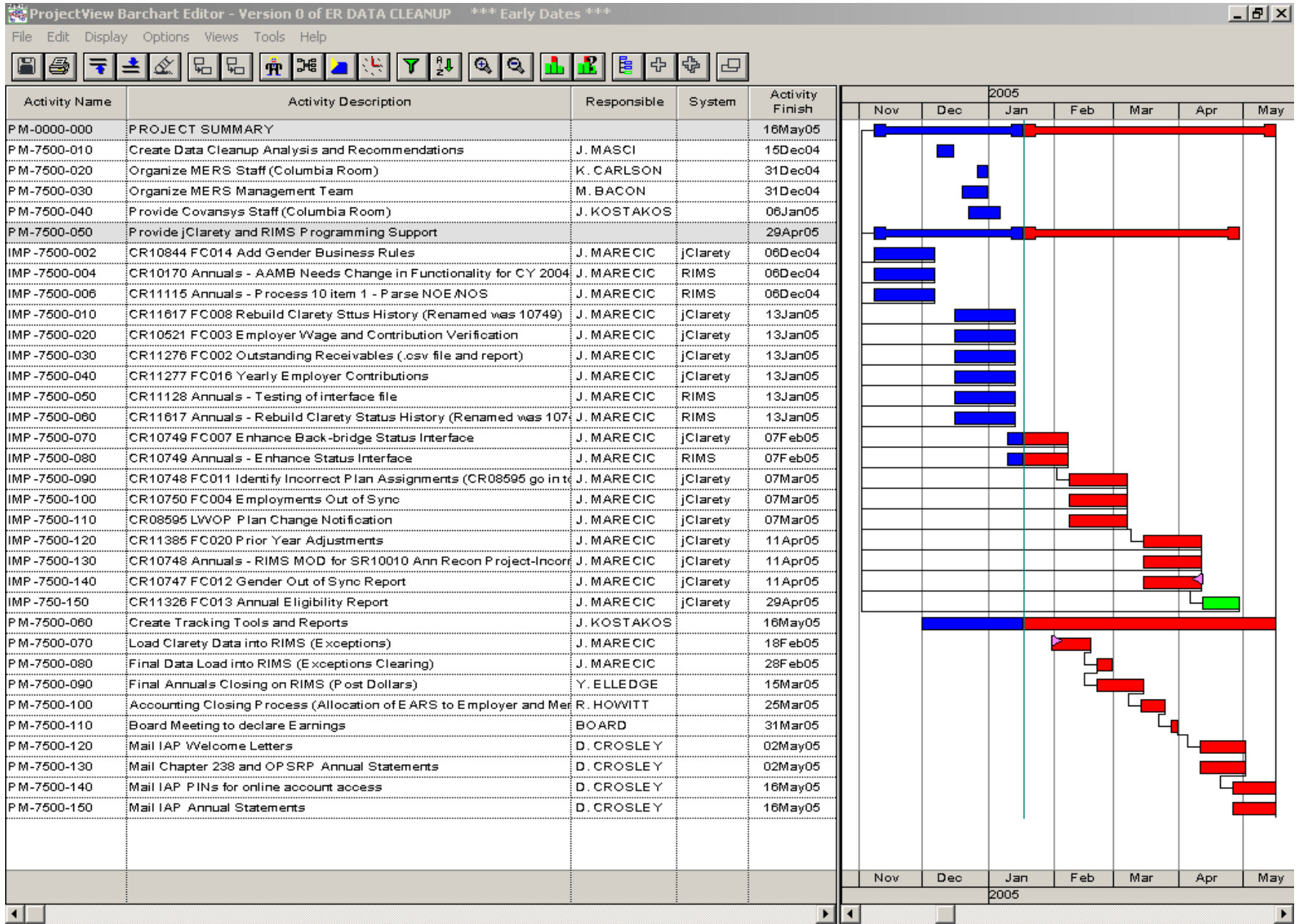
Annuals Process Communications Plan Details

IAP PINs/Online Access	Perspectives Newsletter	Email/ Regular Mail	Web Site	Employer Announcements	Telephone Contact
Employers	<p>The February 1, 2005 active edition has an article discussing the IAP PIN delay. <i>Feb 1.</i></p> <p>The May 1, 2005 active edition will have information regarding the IAP account and PIN mailing for online account access. <i>May 1. David Crosley</i></p>	<p>Email employers in advance of IAP welcome letter and subsequent PIN letter with timelines for those events. <i>April 1.</i></p> <p><i>Gayle Lansky</i></p>	<p>Post the February 1, 2005 active edition has an article discussing the IAP PIN delay. <i>January 28.</i></p> <p>Post the May 1, 2005 Perspectives article regarding the IAP account and PIN mailing for online account access. <i>April 29.</i></p>	<p>Include IAP welcome letter and PIN mailing information in timely Employer Announcement. <i>April 1 and 15.</i></p>	<p>Employer Act Teams scripting on IAP Jan., Feb., Mar. Gloria English</p>
Members	<p>The February 1, 2005 active edition has an article discussing the IAP PIN delay. <i>Feb 1.</i></p> <p>The May 1, 2005 active edition will have information regarding the IAP account and PIN mailing for online account access. <i>May 1.</i></p>	<p>A welcome letter will be sent to active members with information about the IAP and advance notice that the PINs will be sent to member addresses on file with PERS. Letter <i>May 2</i>; PINs <i>May 15.</i></p>	<p>Post the February 1, 2005 active edition has an article discussing the IAP PIN delay. <i>January 28.</i></p> <p>Post the May 1, 2005 Perspectives article regarding the IAP account and PIN mailing for online account access. <i>April 29.</i></p>	<p>NA</p>	<p>Customer Service Scripting on IAP Jan.Feb,Mar. Jim Hall</p>
Stakeholders	<p>NA</p>	<p>Email stakeholders in advance of IAP welcome letter and subsequent PIN letter with timelines for those events. <i>April 1.</i></p>	<p>NA</p>	<p>NA</p>	<p>NA</p>

Note: Perspectives is published quarterly (February 1, May 1, August 1, November 1).

Appendix C
Employer Data Cleanup Project
Gantt Chart

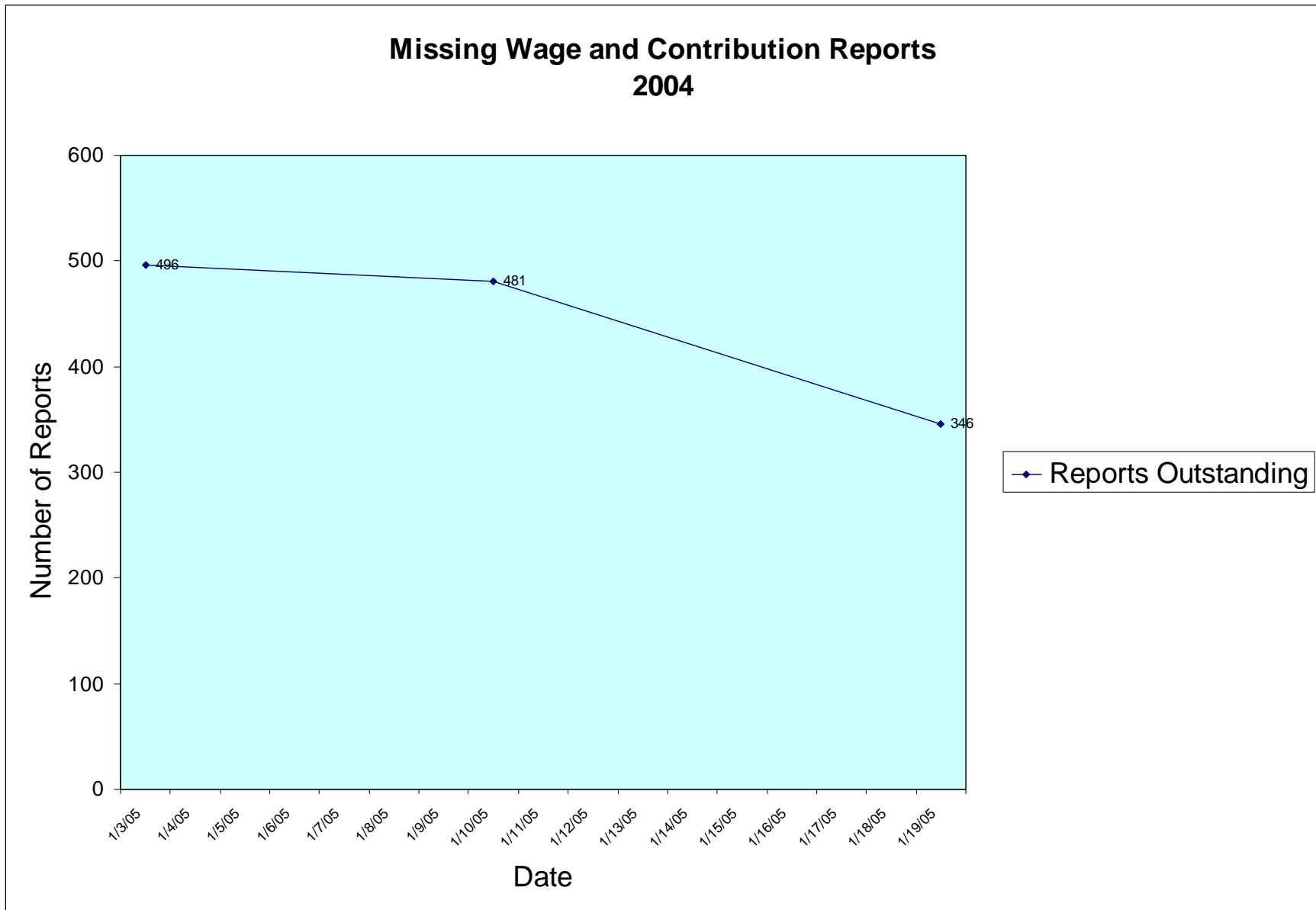
Appendix C Employer Data Cleanup Project Gantt Chart



APPENDIX D
Employer Reporting Statistics

APPENDIX D

Employer Reporting Statistics



APPENDIX D

Employer Reporting Statistics

'Top 20' Employers with Highest Number of Reports / Estimated Records Outstanding

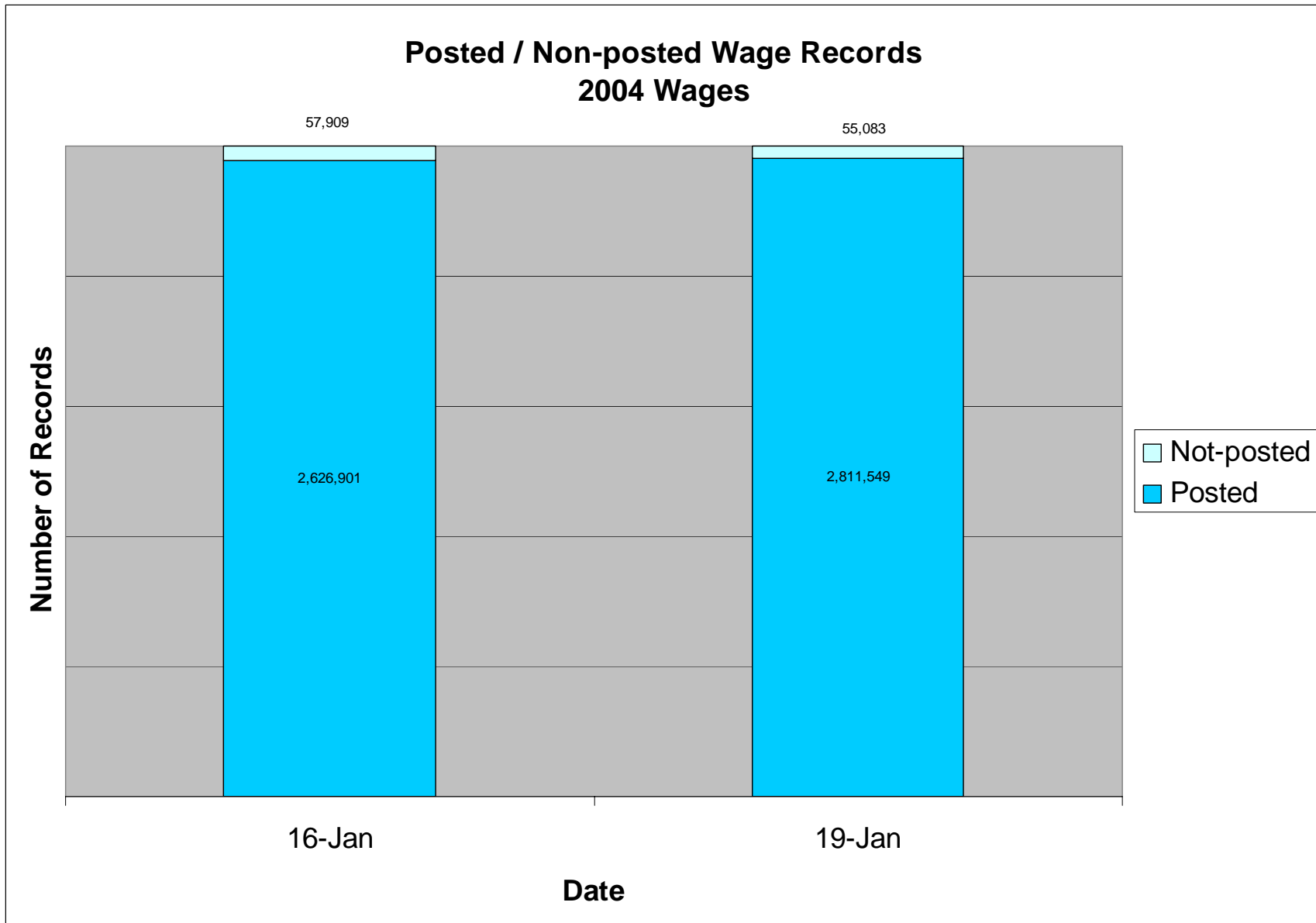
ID	Name	Employees	Rpt Freq	# Rpts Due	# Rpts Outstanding	Nbr Unposted W&C Records	Estimated Number of Outstanding W&C Records
2910	LINN-BENTON COMMUNITY COLLEGE	1485	SMON	24	5	36	7,425
2001	CLACKAMAS COUNTY	2237	BIWK	26	3	346	6,711
2042	JOSEPHINE COUNTY	832	MNLY	12	7	42	5,824
3510	LANE CNTY SCH DIST #52	1081	MNLY	12	3	3,019	3,243
3039	BENTON CNTY SCH DIST #509J	1253	MNLY	11	2	3,244	2,506
3454	JOSEPHINE CNTY SCH DIST #7	824	MNLY	12	3	3,642	2,472
3456	KLAMATH CNTY SCH DIST CU	965	MNLY	12	2	1,290	1,930
3241	COOS CNTY SCH DIST #8	174	MNLY	12	9	14	1,566
4223	UMATILLA MORROW ESD	510	MNLY	12	3	1,652	1,530
2009	MARION COUNTY	1450	BIWK	26	1	8	1,450
3043	BENTON CNTY SCH DIST #17J	284	MNLY	12	5	1,009	1,420
2908	CLACKAMAS COMMUNITY COLLEGE	1369	MNLY	12	1	256	1,369
2118	ONTARIO, CITY OF	193	MNLY	12	6	233	1,158
3809	MORROW CNTY SCH DIST	363	MNLY	12	3	1,355	1,089
3865	POLK CNTY SCH DIST #21	67	SMON	24	16	229	1,072
4342	N SANTIAM SCH DIST #29J	457	MNLY	12	2	195	914
4135	YAMHILL CNTY SCH DIST #29JT	825	MNLY	12	1	983	825
2021	BAKER COUNTY	155	SMON	24	5	863	775
2512	PORTLAND, PORT OF	735	BIWK	26	1	5	735
2288	TUALATIN, CITY OF	136	BIWK	26	5	7	680

Note:

Employers are ranked by multiplying the number of Employees by the number of Reports Outstanding to derive the Estimated Number of Outstanding W&C Records

APPENDIX D

Employer Reporting Statistics



APPENDIX D

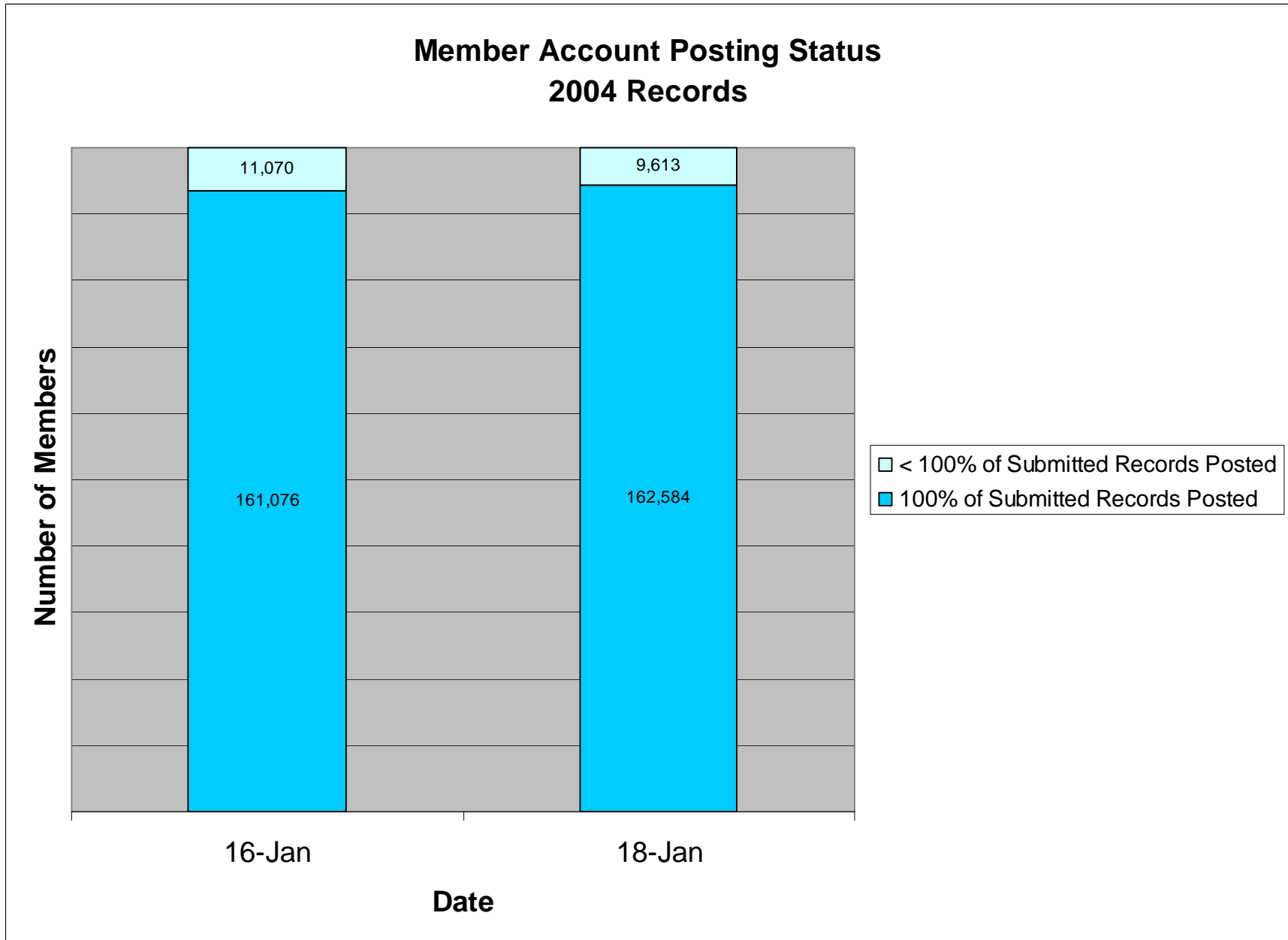
Employer Reporting Statistics

'Top 20' Employers with Highest Number of Unposted Records

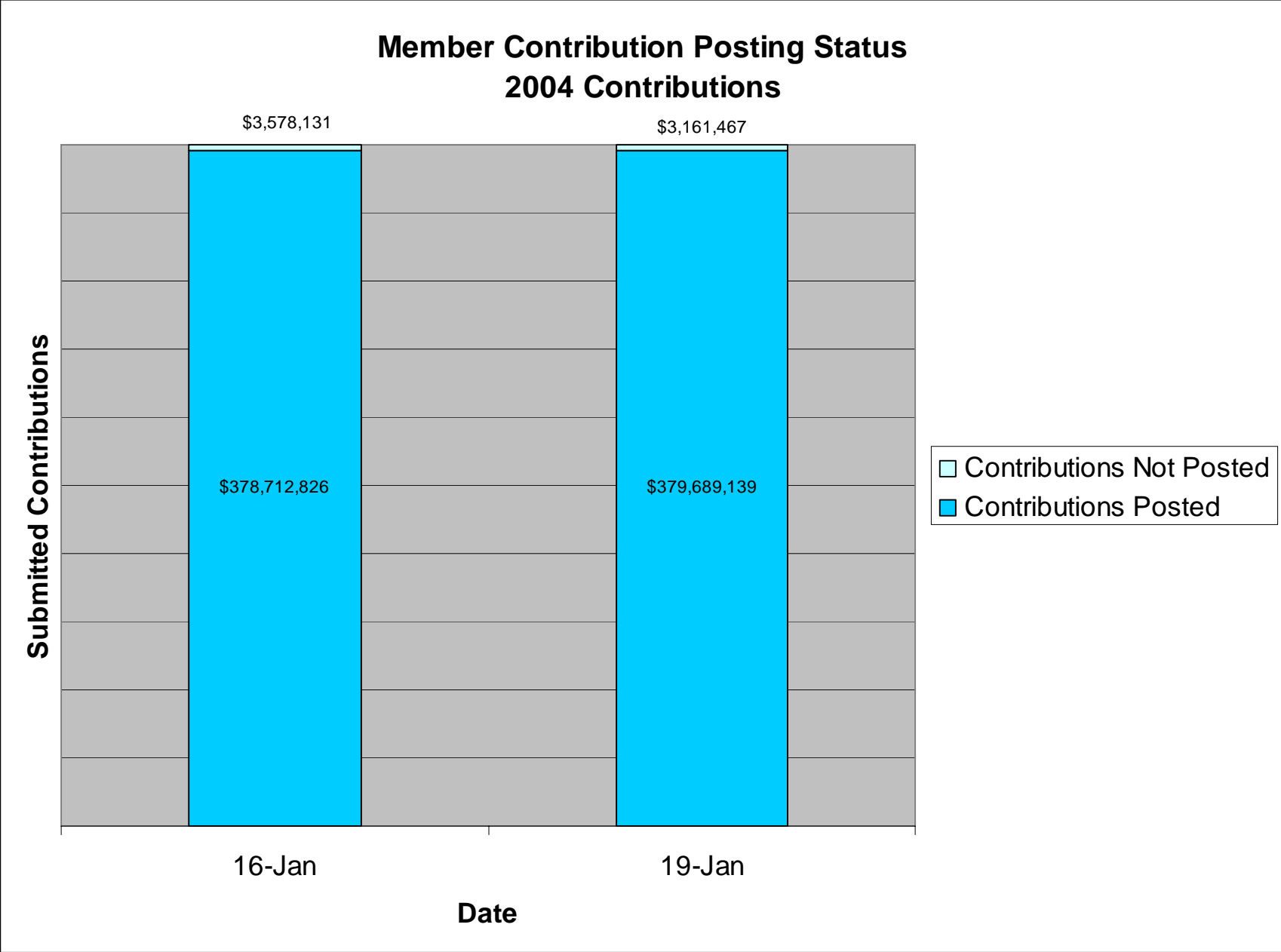
ID	Name	Employees	Rpt Freq	# Rpts Due	# Rpts Outstanding	Nbr Unposted W&C Records	Estimated Number of Outstanding W&C Records
3735	MARION CNTY SCH DIST #24J	5698	MNLY	12	0	4,080	-
3818	MULTNOMAH CNTY SCH DIST #1	6273	MNLY	12	0	4,038	-
1252	OREGON STATE UNIVERSITY - OUS	5042	MNLY	12	0	3,758	-
3454	JOSEPHINE CNTY SCH DIST #7	824	MNLY	12	3	3,642	2,472
3039	BENTON CNTY SCH DIST #509J	1253	MNLY	11	2	3,244	2,506
2880	OR HEALTH AND SCIENCES UNIVERSITY	6196	BIWK	26	0	3,028	-
3510	LANE CNTY SCH DIST #52	1081	MNLY	12	3	3,019	3,243
1253	PORTLAND STATE UNIVERSITY - OUS	3212	MNLY	12	0	2,399	-
1254	UNIVERSITY OF OREGON - OUS	4870	MNLY	12	0	2,102	-
4223	UMATILLA MORROW ESD	510	MNLY	12	3	1,652	1,530
1246	HUMAN SERVICES, DEPARTMENT OF	9272	MNLY	12	0	1,627	-
4341	HILLSBORO SCHOOL DISTRICT #1J	2850	MNLY	12	0	1,477	-
1050	DEPARTMENT OF CORRECTIONS	3870	MNLY	12	0	1,372	-
3809	MORROW CNTY SCH DIST	363	MNLY	12	3	1,355	1,089
3456	KLAMATH CNTY SCH DIST CU	965	MNLY	12	2	1,290	1,930
2008	LANE COUNTY	2041	BIWK	26	0	1,288	-
3043	BENTON CNTY SCH DIST #17J	284	MNLY	12	5	1,009	1,420
4135	YAMHILL CNTY SCH DIST #29JT	825	MNLY	12	1	983	825
1029	FISH & WILDLIFE, OREGON DEPT OF	1091	MNLY	12	0	884	-
2021	BAKER COUNTY	155	SMON	24	5	863	775

APPENDIX D

Employer Reporting Statistics



APPENDIX D Employer Reporting Statistics





Oregon

Theodore R. Kulongoski, Governor

January 11, 2005

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR

Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

MEETING	1-25-05
DATE	
AGENDA	C.1.
ITEM	Six-Month Waiting Period

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

FROM: Steven Patrick Rodeman, Administrator, PPLAG

SUBJECT: Notice of Rulemaking for OAR 459-010-0035, *Six-Month Waiting Period*

OVERVIEW

- **Action:** None. This is notice that staff began rulemaking on 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 Issues:**
 - 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

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.

LEGAL REVIEW

These proposed rules will be submitted to legal counsel for review prior to the Board meeting, and any comments or changes incorporated before the rule is presented again for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

The comment period ends on February 28, 2005 at 5:00 p.m.

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 to the PERS Board. |
| February 1, 2005 | <i>Oregon Bulletin</i> publishes the Notice of Rulemaking Hearing. |
| February 22, 2005 | Rulemaking hearing held at PERS headquarters in Tigard. |
| February 28, 2005 | Public comment period ends. |
| March 18, 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.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING	1-25-05
DATE	
AGENDA	C.1.
ITEM	Six-Month Waiting Period

CHAPTER 459
DIVISION 010 – MEMBERSHIP

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, except for PERS holidays.**

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.]*

1 [(4)] (3) In the event an employee is on a qualified leave of absence under OAR
2 459-010-0010, the period of absence shall not constitute an interruption of service under
3 Section (1) of this rule. The six-month waiting period shall be extended by the length of
4 the qualified leave of absence.

5 Stat. Auth.: ORS 238.650

6 Stats. Implemented: ORS 238.015, [238A.025](#)



Oregon

Theodore R. Kulongoski, Governor

January 11, 2005

MEETING	1-25-05
DATE	
AGENDA	C.2.
ITEM	Equal to or Better Than (ETOB)

Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

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

FROM: Steven Patrick Rodeman, Administrator, PPLAG

SUBJECT: First Reading of Division 30 Rules “Equal to or Better Than” (ETOB)
Related to Local Public Employer Retirement Plans for Police Officers
and Firefighters

OAR 459-030-0000, *Definitions* (Repeal)
OAR 459-030-0001, *Petition of Public Employer for Exemption of Police
Officers and Firefighters from Participation in the System* (Repeal)
OAR 459-030-0011, *Reexamination of Exemption* (Amend)
OAR 459-030-0025, *Standards for Review of Police Officers and
Firefighters Retirement Plans* (Amend)
OAR 459-030-0030, *Board Action on Petition and Review of Order*
(Amend)

OVERVIEW

- **Action:** None. This is the first reading of these rules.
- **Reason:** House Bill 3020 amended ORS 237.620 to require biennial ETOB testing of retirement plans administered by public employers of police officers and firefighters. These rule changes are also intended to address issues created by the addition of OPSRP.
- **Policy Issues:**
 1. Should ETOB plans be compared with PERS Chapter 238, OPSRP, or some combination of the two?
 2. Should the administrative rules mitigate negative impacts on individual employees joining OPSRP once their employers lose their ETOB exemption?
 3. How should employers who fail the ETOB test join PERS and what should the effective date be?
 4. Should PERS consider the use of an alternative testing methodology for ETOB testing if it is less costly to employers and more time efficient than the old testing approach?
 5. Should PERS consider additional factors other than the statutorily required two-year period that can trigger an ETOB review?

BACKGROUND

ORS 237.620 provides that all public employers of police officers and firefighters must participate in PERS with respect to those employees. However, ORS 237.620(4) exempts a public employer from this requirement if it provides an alternative retirement plan that is “equal to or better than” PERS’ retirement benefits. A 2003 legislative change to the statute added the requirement that the Public Employees Retirement Board shall test ETOB employers every two years to determine whether the public employer complies with the “equal to or better than” requirements.

PERS has conducted four comprehensive ETOB reviews, in 1973, 1979, 1981 and 1990. The 1990 review was performed by Milliman and included 20 ETOB public employers. Only the City of Portland’s plan was found to be ETOB and approved for an exemption. Of the remaining employers, three joined PERS and the remaining 16 amended their plans and were granted an exemption after Milliman retested their plans. Since 1990, six of the exempt employers have either joined PERS or dissolved. Additionally, in 1991, the Board granted an ETOB exemption to the City of Woodburn for its police officers; Woodburn has since brought its police officers into PERS. The ten remaining exempt public employers are: the cities of Forest Grove, Portland, Seaside, Springfield and The Dalles; the counties of Morrow, Tillamook, Union and Wheeler; and Mid-Columbia Fire and Rescue.

An advisory committee comprised of ETOB employers and member stakeholders and representatives was convened on these rules to review the policy issues presented. The committee members reached consensus around sharing of submissions on ETOB issues so all members may review and respond to comments.

SUMMARY OF RULES AND POLICY ISSUES

The proposed rule modifications would clarify the testing process for ETOB employers. The rules raise five policy issues for the Board to consider.

- 1. Should ETOB plans be compared with PERS Chapter 238, OPSRP, or some combination of the two?*

The 2003 Oregon Legislature made substantial changes to ORS Chapter 238 and created a new retirement plan for new and returning employees. Police officers and firefighters who participate in their employers’ ETOB plans are not members of PERS. Based on the recent legislative changes, it would appear that these employees are no longer eligible for PERS Chapter 238 program membership and, if their plan fails, they must instead go into OPSRP, which would then be the appropriate plan for an ETOB comparison. Some stakeholders believe the comparison should be to what the individual member would receive if they had been in PERS their entire career. They point out that result is closer to what the statute intends in comparing ETOB provisions. This, however, may not be a viable approach because current statutes may not allow that result to occur.

Staff will explore with legal counsel whether there is some statutory structure under which employees from failed plans could receive prior PERS Chapter 238 and/or OPSRP credit for service performed previously. If legal counsel advises that a member from a

failed plan could come into PERS Chapter 238 or OPSRP retroactively, staff will reconsider the rule's approach.

2. *Should the administrative rules mitigate negative impacts on individual employees joining OPSRP once their employers lose their ETOB exemption?*

Some employees who are required to go from an ETOB employer's plan into OPSRP may receive less overall benefits, especially for some long-term employees. Past practice of PERS has been to conduct a plan-to-plan review rather than compare effects on individual employees. There is no provision in the proposed rules to allow testing or mitigation for negative impacts on individuals because stakeholders support that testing should occur at the plan level and without consideration for individual circumstances.

3. *How should employers who fail the ETOB test join PERS and what should the effective date be?*

As discussed in relation to Issue #1, legal counsel is reviewing the options for having members join the PERS Chapter 238 and OPSRP plans retroactively, from which staff will derive the policy options. Unless and until other options emerge, the rule provides that employees from failing plans will join OPSRP as of January 1 following a public employer's plan failing the ETOB test.

4. *Should PERS consider the use of an alternative testing methodology for ETOB testing if it is less costly to employers and more time efficient than the old testing approach?*

Milliman reports that the 1990 ETOB testing was complicated, expensive and time-consuming. Mark Johnson has proposed an alternative testing methodology that is more efficient and less costly, using hypothetical data sets rather than historical data sets. Some stakeholders wanted a choice between the use of hypothetical and historical data sets, but Mark Johnson thought that such an option would be too complicated. The proposed rules reflect the hypothetical data set methodology because it is the most efficient and least costly method. An alternative version of the rule could allow stakeholders a choice by incorporating language allowing "public employers to provide justification for the use of the historical data set methodology and such use would be at the sole discretion of the Board." ETOB employers must also be willing to support the additional costs associated with the use of the historical data set.

Stakeholders were unanimous that employers should be afforded an opportunity to amend their plans after testing so they can reclaim their ETOB exemption if they fail. Although it was PERS' prior practice to allow such actions, the statute's language may make such a construct difficult. The proposed rules continue to allow ETOB employers an opportunity to amend their failing plans, but this approach may have to be amended after further review of this issue by legal counsel.

5. *Should PERS consider additional factors other than the statutorily required two-year period that can trigger an ETOB review?*

ETOB employers were last tested in 1990. The ETOB statute now requires testing every two years. The proposed rules do not provide for additional review triggers because

stakeholders agreed that with testing every two years, additional review triggers are unnecessary.

LEGAL REVIEW

The proposed rules were submitted to the Department of Justice (DOJ) for legal review. Any comments or recommended changes will be incorporated before the rules are presented again for adoption. Additionally, DOJ's Keith Kutler has provided a draft response to questions posed by PERS' staff. Staff has distributed Mr. Kutler's comments to the advisory committee members to provide feedback before the opinion is finalized.

PUBLIC COMMENT AND HEARING TESTIMONY

PERS held a public hearing for these rules on December 28, 2005. Steve Manton, representing the city of Portland, emphasized support for OAR 459-030-0025, sections (2), (3) and (6), as written. Ardis Belknap, representing the city of Springfield, appeared to ask if PERS' staff needed any clarification on the letter that Everett Moreland sent to PERS on the city's behalf. PERS' staff had no questions for Ms. Belknap.

PERS staff has also received written comments from Everette Moreland, counsel for the city of Springfield, Greg Hartman, counsel for the Portland Police Association, the Portland Fire Fighters and the Oregon State Fire Fighters Council, and Craig Schwinck representing Tillamook County. Staff's practice with material related to this issue has been to share submissions with the other members of the advisory committee so all members have the same opportunity to review and respond to comments. The ETOB Advisory Committee will consider these letters, any other public comments received and Mr. Kutler's comments at its January 14, 2005 meeting.

To allow the ETOB Advisory Committee and other members of the public to review and provide comment on subsequent revised drafts of the proposed rules, the public comment deadline has been extended to February 18, 2005. The comment period will end during the Board meeting when the Chair calls for an end to the public's deliberations on this question.

IMPACT

Mandatory: Yes, the current rules need to be amended to comply with new legislation.

Impact: Provides clarification about the testing process for public employers with retirement plans that are exempt from ORS Chapter 238 and 238A.

Cost: There are no costs because ORS 237.620 already requires ETOB employers to bear the costs associated with testing their ETOB status.

RULEMAKING TIMELINE

- | | |
|-------------------|---|
| November 2004 | Notice of Rulemaking to the PERS Board. |
| November 15, 2004 | Staff begins the rulemaking process. Deadline to file Notice of Rulemaking with the Secretary of State. |

- December 1, 2004 *Oregon Bulletin* published the Notice and the public comment period began.
- December 28, 2004 Rulemaking hearing held at PERS headquarters in Tigard.
- January 14, 2005 ETOB Advisory Committee Meeting.
- January 25, 2005 First reading of the proposed rules.
- February 18, 2005 Public comment deadline. Rules are presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The Board may:

1. Take no action at this time.
2. Direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATION

Staff recommends the Board take no action at this time.

NEXT STEPS

This is the first reading of the rule. PERS staff will return with these rules to request adoption by the Board at its meeting on February 18, 2005.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING DATE	1-25-05
AGENDA ITEM	C.2. Equal to or Better Than (ETOB)

CHAPTER 459

DIVISION 030 - LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR POLICE OFFICERS AND FIRE FIGHTERS

REPEAL OF RULE RELATING TO DEFINITIONS

OAD 459-030-0000 is Repealed:

- 1 **[“Definitions**
- 2 **As used in this division:**
- 3 **459-030-0000 (1)** *“Fire Fighter” means persons employed by a city, county or*
- 4 *district whose duties involve fire fighting, but does not include volunteer fire fighters;*
- 5 (2) *“Police Officer” includes police chiefs and policemen and policewomen of a*
- 6 *city who are classified as police officers by the council or other governing body of the*
- 7 *city; sheriffs and those deputy sheriffs whose duties, as classified by the county governing*
- 8 *body, are the regular duties of police officers; county adult parole and probation officers,*
- 9 *as defined in ORS 181.610, who are classified by the county governing body as police*
- 10 *officers pursuant to ORS 237.610 and ORS 237.620; corrections officers as defined in*
- 11 *ORS 181.610(2); and employees of districts whose duties, as classified by the governing*
- 12 *body of the district, are the regular duties of police officers; but “police officer” does not*
- 13 *include volunteer or reserve police officers, or persons considered by the respective*
- 14 *governing bodies to be civil deputies or clerical personnel.*
- 15 (3) *“Public Employer” means any city, county or district that employs police*
- 16 *officers or fire fighters*
- 17 (4) *“Valuation Date” means the date set by the Board as of which the retirement*
- 18 *benefits under the public employer’s retirement plan and under the PERS retirement plan*
- 19 *shall be compared.]*

Stat. Auth: ORS 238.650

Stats. Implemented:

Hist.: PERS 1-1989, f. & cert. ef. 12-4-89

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING DATE	1-25-05
AGENDA ITEM	C.2. Equal to or Better Than (ETOB)

CHAPTER 459

DIVISION 030 - LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR
POLICE OFFICERS AND FIRE FIGHTERS

REPEAL OF RULE RELATING TO PETITION OF PUBLIC EMPLOYER FOR
EXEMPTION OF POLICE OFFICES AND FIRE FIGHTERS FROM
PARTICIPATION IN THE SYSTEM

OAR 459-030-0001 is Repealed:

- 1 **[“Petition of Public Employer for Exemption of Police Officers and Fire Fighters**
- 2 **From Participation in the System**
- 3 **459-030-0001** *If a public employer provides retirement benefits to its police*
- 4 *officers and fire fighters which are equal to or better than the benefits which would be*
- 5 *provided to them under the PERS, the public employer may petition the Board for*
- 6 *exemption from participation of such employees.]*

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 237.620

Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING DATE	1-25-05
AGENDA ITEM	C.2. ETOB

CHAPTER 459

DIVISION 030 –LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR POLICE OFFICERS AND [FIRE FIGHTERS]FIREFIIGHTERS

RULE MODIFICATION RELATING TO PETITION AND “EQUAL TO OR BETTER THAN” EXEMPTION

OAR 459-030-0011 is Amended as Follows:

1 “Equal To or Better Than” Exemption

2 **459-030-0011** (1) *[Any exemption granted under this division shall continue only*
3 *so long as the retirement benefits are not increased under PERS and are not decreased*
4 *under the public employer’s plan.] **If a public employer provides retirement benefits***
5 ***to its police officers and firefighters that are equal to or better than the benefits***
6 ***which would be provided to them under the Oregon Public Service Retirement Plan,***
7 ***the public employer may petition the Board for exemption from participation of***
8 ***such employees. Such petition will be reviewed under the requirements and***
9 ***timelines of this division.***

10 (2) *[Whenever legislation increasing PERS retirement benefits is adopted, the*
11 *Board shall set a valuation date and notify each exempt public employer of the valuation*
12 *date and the deadline for filing a new petition for continued exemption. If a public*
13 *employer fails to meet the deadline, then the public employer’s exemptions shall expire*
14 *and the public employer shall become a participant in PERS with respect to its police*
15 *officers and fire fighters retroactive to the valuation date.] **The Board will review any***
16 ***exemption granted under this division every two years to determine whether the***
17 ***exempt public employer is complying with the requirements of this division.***

1 *[(3) Whenever a change decreasing the public employer's retirement benefits is*
2 *adopted, the public employer shall file with the Board a new petition for exemption. If the*
3 *public employer fails to file a new petition within 60 days of adoption (or the date the*
4 *change in retirement benefits takes effect, if later) then the exemption shall expire and the*
5 *public employer shall become a participant in PERS with respect to its police officers*
6 *and fire fighters to that date.]*

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 237.620

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING DATE	1-25-05
AGENDA ITEM	C.2. ETOB

CHAPTER 459

DIVISION 030 - LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR POLICE OFFICERS AND ~~[FIRE FIGHTERS]~~FIREFIGHTERS

RULE MODIFICATION RELATING TO STANDARDS FOR REVIEW OF POLICE OFFICERS AND FIREFIGHTERS RETIREMENT PLANS

OAR 459-030-0025 is Amended as Follows:

- 1 **“Standards for Review of Police Officers and ~~[Fire Fighters]~~Firefighters**
- 2 **Retirement Plans**
- 3 **459-030-0025** (1) A determination whether a public employer provides retirement
- 4 benefits to its police officers and ~~[fire fighters]~~firefighters which are equal to or better
- 5 than the benefits which would be provide to them under ~~[PERS]~~ the Oregon Public
- 6 Service Retirement Plan (OPSRP). ~~[shall]~~will be made as of the valuation date. The
- 7 “valuation date” is the date set by the Board as of which the retirement benefits
- 8 under the public employer’s retirement plan and under the OPSRP retirement plan
- 9 shall be compared.
- 10 (2) The Board ~~[shall]~~will consider the aggregate total actuarial present value of all
- 11 retirement benefits accrued since July 1, 1973 and projected to be accrued after the
- 12 valuation date by the group of police officers and ~~[fire fighters]~~firefighters employed on
- 13 the valuation date by the public employer. The projected benefits will compare the
- 14 total value of benefits that would be accrued if the police officers and firefighters
- 15 became members of OPSRP or remained in the plan being evaluated.
- 16 (a) The Board ~~[shall]~~will not require that every retirement benefit for each
- 17 individual employee be equal to or better than the particular benefit he or she would
- 18 receive under ~~[PERS]~~ OPSRP.

1 (b) The Board [*shall*]**will**, however, require that the public employer’s retirement
2 plan or plans provide at least eighty percent (80%) of the actuarial present value of
3 projected retirement benefits in each of the major categories of benefits available under
4 [*PERS*] **OPSRP**, namely: A service retirement; a disability retirement; a death benefit;
5 and vesting.

6 ([2]3) **In conducting an actuarial review of a public employer’s retirement**
7 **plan for its police officers and firefighters, the actuary retained by the Board will**
8 **develop a hypothetical data set representing a demographic cross-section of police**
9 **officers and firefighters who are subject to this division to determine whether the**
10 **retirement benefits provided under the plan are equal to or better than the benefits**
11 **which would be provided under OPSRP.**

12 ([2]4) The Board [*shall*]**will** conduct its review based on its current actuarial
13 assumptions for police officers and [*fire fighters*]**firefighters** of public employers in
14 [*PERS*] **OPSRP**.

15 ([3]5) The Board [*shall*] **will** consider the cost of the benefits to be provided and
16 the proportion of the cost being paid by the public employer and the participating police
17 officers and [*fire fighters*]**firefighters**. The Board [*shall*]**will** consider whether the
18 benefits to be provided by the employer are funded, and the adequacy of funding.
19 Whether the benefits are provided by contract, trust or insurance, or a combination
20 thereof shall have no effect on the decision to grant or deny the petition.

21 ([4]6) In considering a public employer’s retirement plan provisions the Board
22 [*shall*]**will** not value portability of pension credits, tax advantages, **Social Security**

1 **benefits or participation,** and any worker’s compensation component of a public
2 employer’s plan as determined by the employer.

3 *[(5) In valuing PERS benefits the Board shall consider the actuarial present value*
4 *of future PERS ad hoc benefit increases. A public employer shall be given the option of*
5 *indicating an intent to match each future PERS ad hoc benefit increase in lieu of*
6 *evaluating PERS benefits with the ad hoc assumption. A public employer who elects this*
7 *option and whose plan benefits are in all other respects equal to or better than PERS*
8 *benefits shall be given an exemption conditioned upon adoption of future PERS ad hoc*
9 *increases. An employer who fails to adopt an ad hoc increase or who fails to provide*
10 *written confirmation of adoption within 60 days of request by PERS shall be required to*
11 *immediately undergo a new valuation utilizing the PERS ad hoc valuation assumption.]*

12 **([6]7)** Additional actuarial assumptions as shall be needed to evaluate public
13 employer plan provisions shall be considered by the Board’s actuary to be consistent with
14 assumptions specified in these rules. Any disputes as to the appropriateness of additional
15 actuarial assumptions shall be resolved by the Board in its sole discretion.

Stat. Auth: ORS 238.650
Stats. Implemented: ORS 237.620

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING DATE	1-25-05
AGENDA ITEM	C.2. Board Action

CHAPTER 459

DIVISION 030 –LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR POLICE OFFICERS AND ~~[FIRE FIGHTERS]~~FIREFIGHTERS

RULE MODIFICATION RELATING TO BOARD ACTION ON PETITON AND REVIEW OF ORDER

OAR 459-030-0030 is Amended as Follows:

1 **Board Action on Petition and Review of Order**

2 **459-030-0030** (1) Upon receipt of the written actuarial review report and
3 recommendations of staff, the Board [*at a public meeting without hearing any testimony*
4 *shall*] **will** issue an order granting or denying the petition for exemption. **Any order**
5 **denying a petition for exemption will not be effective until at least 120 days after**
6 **being issued. During that period, the public employer may amend its plan to comply**
7 **retroactive to the valuation date or file a written request for an extension. Upon**
8 **filing of the request, the public employer shall have an additional 60 days to amend**
9 **its plan. If a public employer submits an amended plan before the order denying the**
10 **exemption becomes effective, the order will be void and the Board will issue another**
11 **order granting or denying the petition based on the amended plan.**

12 (2) [*The order shall be final unless:*

13 (a) *Within 120 days the public employer amends its plan to comply retroactive to*
14 *the valuation date or files a written request for an extension. Upon filing of the request,*
15 *the public employer shall have an addition 60 days to so amend; or*

16 (b)] Within 60 days **of the effective date of any order issued under this rule,**
17 the public employer, the affected public employees, or their labor representative **may**

1 file[s] a petition for rehearing or reconsideration pursuant to OAR 459-001-0010 and
2 459-001-0040.

3 **(3) A public employer who has received an order denying its petition for**
4 **exemption and who has exhausted its remedies under this division will join the**
5 **Oregon Public Service Retirement Plan as of the following January 1.**

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 237.620



Oregon

Theodore R. Kulongoski, Governor

January 11, 2005

MEETING	1-25-05
DATE	
AGENDA	C.3.
ITEM	Chapter 238 Creditable Service

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

TO: Members of the PERS Board
Key Reviewer: Brenda Rocklin (Housekeeping)

FROM: Steven Patrick Rodeman, Administrator, PPLAG

SUBJECT: First Reading of OAR 459-010-0014, *PERS Creditable Service*

OVERVIEW

- **Action:** None. This is the first reading of the rule.
- **Reason:** PERS members receive “creditable service” for “full months and major fractions of a month” under the definition at ORS 238.005(5). No consistent definition for “major fraction of a month” currently exists and interpretation has varied over time with agency administration. This rule clarifies and articulates the standards by which creditable service would be granted to members in the PERS Chapter 238 Plan.
- **Subject:** Determining creditable service under the PERS Chapter 238 Plan.
- **Policy Issue:**
 - Should a “major fraction of a month” be defined in terms of number of hours or days performed in a calendar month?

BACKGROUND

Under ORS Chapter 238, a month of service credit is provided for PERS members who work a major fraction of a month. How much service constitutes a major fraction proves difficult to determine for part-time employees, particularly substitute teachers. Because of the complicated nature of this issue and its impact on membership, this issue was presented to an advisory committee convened to discuss the issues of eligibility and membership.

SUMMARY OF PROPOSED RULE AND POLICY ISSUE

Policy Issue: *Whether a “major fraction of a month” should be defined in terms of number of hours or days performed in a calendar month.*

The advisory committee concurred that the cleanest solution was to divide the 600-hour yearly requirement by the twelve months, which would result in 50 hours of service constituting a major fraction of each month. There was initial concern that 50 hours was too low. With a qualifying position being defined as 600 hours, however, it was explained that it did not make sense to allow an employee who performed 600 hours to be considered a member, but not be entitled to any creditable service. Currently, PERS administers creditable service on a 50 hour a month basis.

Prior to the implementation of the new jClarety system, PERS did not collect hours or days worked on a system-wide basis. Only when creditable service became an issue at the time of retirement did PERS request hourly payroll information from employers. Because creditable service research often involved decades-old information, reconciling accounts was a difficult and time-consuming process.

Although, intuitively, a major fraction of a month seems like it should be measured in days, PERS has always operated on an hourly basis for eligibility and membership. Hourly information is currently being reported by employers for all employees and an hourly measurement more closely fits the 600 hour eligibility standard required in statute.

Using hours rather than days to measure eligibility is also more consistent with other requirements in ORS Chapters 238 and 238A. For instance, ORS Chapter 238A provides retirement credit based on number of hours worked in a calendar year. Additionally, hours are easier to track and would not require a significant change in the way creditable service has been determined in the past.

LEGAL REVIEW

The attached draft of OAR 459-010-0014 was submitted to the Department of Justice for legal review. They had no suggested changes to the proposed rule.

PUBLIC COMMENT AND HEARING TESTIMONY

A public hearing was held on December 28, 2004; no one testified on this rule. The closing date for public comment on this proposed rule is January 28, 2005.

On January 8, 2004, Maria Keltner, on behalf of Local Government Personnel Institute, asked for clarification regarding why section (4) refers to only to (3)(b) instead of simply referring to section (3). The rule has been modified so that section (4) refers to section (3) as a whole. Additionally, Ms. Keltner requested clarification of the provision for granting creditable service to school employees so that it is clear that the provision applies only to school employees. That clarification has been made.

Greg Hartman also submitted comments via a letter dated November 19, 2004. His comments focused primarily on the definition and administration of “qualifying service” as set forth in the upcoming proposed rule OAR 459-010-0003. While that definition does touch on the issue of creditable service, the 50 hour a month standard could be adopted without regard to the definition of qualifying service. Accordingly, staff will respond more fully to Mr. Hartman’s comments and concerns in the OAR 459-010-0003 rulemaking process.

IMPACT

Mandatory: No, but bringing certainty to this process is overdue. Even though no new members will join the PERS Chapter 238 Plan, the agency handles numerous creditable service questions that should be decided under a consistent, reasonable structure.

Impact: Although there is a chance that these rules may result in some members not receiving creditable service for periods of time, it is more likely that adopting these clear,

consistent standards will result in the granting of creditable service to members who did not qualify under prior administrative practices. Adopting these standards will restore predictability and consistency to the eligibility determination process and prevent further determinations based on uncertain or shifting criteria.

Cost:

- ◆ *Members:* There will be no cost to members.
- ◆ *Employers:* There are no intrinsic costs to employers. These standards are not being developed with the thought that membership will increase or decrease, but to provide for the granting of creditable service under a clear, consistent framework.
- ◆ *Administration:* Creditable service reviews will not have to change to follow the established standards since creditable service has been granted under a similar standard for many years.
- ◆ *Fund:* There will be no effect on the Fund.

RULEMAKING TIMELINE

November 19, 2004	Notice of Rulemaking to the PERS Board. Stakeholders and legislators notified and the public comment period began.
December 1, 2004	<i>Oregon Bulletin</i> published the Notice.
December 28, 2004	Rulemaking hearing was held at PERS headquarters in Tigard.
January 25, 2005	First reading of the proposed rule.
January 28, 2005	Public comment period ends at 5:00 PM.
February 18, 2005	Rule is to be presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The Board may:

1. Take no action at this time.
2. Direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATION

Staff recommends the Board take no action at this time.

NEXT STEPS

This is the first reading of the rule. PERS staff will return with these rules to request adoption by the Board at its meeting on February 18, 2005.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD**

MEETING	1-25-05
DATE	
AGENDA	C.3.
ITEM	Chapter 238 Creditable Service

CHAPTER 459

DIVISION 010 - MEMBERSHIP

NEW RULE RELATING TO CREDITABLE SERVICE

459-010-0014 is added as follows:

1 **Creditable Service**

2 (1) For purposes of this rule:

3 (a) “Service credit” has the same meaning as “creditable service” in ORS
4 238.005(5).

5

6 (b) “Major fraction of a month” means a minimum of 50 hours in any calendar
7 month in which an active member is being paid a salary by a participating public
8 employer and contributions are due to the system either by or on behalf of the member.

9 (2) An active member, as defined in ORS 238.005(12)(b), shall accrue one full
10 month of service credit if the employee:

11 (a) Is employed in a qualifying position as defined in OAR Chapter 459; and

12 (b) Works a major fraction of a calendar month.

13 (3) If the active member is a school employee they may instead accrue one half
14 year of service credit if the employee:

15 (a) Is or was employed in a qualifying position or concurrent positions as defined
16 in OAR Chapter 459; and

17 (b) Is employed for all portions of a school year when it is normally in session.

1 (4) Except as provided for under section (3) of this rule, an employee may not
2 accrue more than one full month of service credit for any number of hours worked in a
3 calendar month and no more than one year of service credit for any number of hours
4 worked in a calendar year.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.015
Hist: Pending Adoption



Oregon

Theodore R. Kulongoski, Governor

January 11, 2005

MEETING	1-25-05
DATE	
AGENDA	C.4.
ITEM	Tax Rules

Mailing Address:
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TO: Members of the PERS Board
Key Reviewers: Brenda Rocklin & Tom Grimsley

FROM: Steven Patrick Rodeman, Manager, PPLAG

SUBJECT: First Reading of OAR 459-005-0506 to 0595, *Tax Rules*

OVERVIEW

- **Action:** None. This is the first reading of these rules.
- **Reason:** ORS Chapter 238A directs the PERS Board in several places to adopt rules regarding the application of federal tax laws to that plan. Additionally, law and rule changes in the intervening period from the last update need to be incorporated in these rules as well.
- **Subject:** Enacts federal tax law provisions related to aspects of the PERS retirement plans.
- **Policy Issues:** These updates do not involve new policy issues as they just bring the existing rules into compliance with changes to federal laws or rules. The rules will also apply to the OPSRP programs, applying consistent limits and terms across the entire PERS Plan.

SUMMARY OF RULES

The proposed rule modifications affect a series of rules in the OAR Chapter 459, Division 005, relating to the administration of the PERS Plan. Generally, the modifications are to apply the IRS limitations to the new OPSRP plans from ORS Chapter 238A and update provisions that have been affected by federal law and rule changes. The rules to be modified are summarized briefly below with explanations for the modifications to each rule affected:

OAR 459-005-0506, Plan Compliance with Federal Statutes and Regulations

Summary: Declares intention for this group of rules to comply with IRS requirements and provides definitions for this section of rules.

Modifications: Update statutory references to include the OPSRP programs and other changes. Add clarifying language in (2)(e) and (f) regarding federal tax treatment of the PERS Plan components as defined contribution or defined benefit plans.

OAR 459-005-0525, Ceiling on Compensation for Purposes of Contributions and Benefits

Summary: This rule establishes the maximum amount of a member's salary that can be taken into account for determining contributions (e.g., 6% of salary) or benefits (calculating Final Average Salary), in conformance with IRS Code §401(a)(17).

Modifications: Update statutory references to include OPSRP programs and terminology.

OAR 459-005-0535, Annual Benefit Limitation

Summary: IRS Code §415(b) limits how much a qualified plan can pay in benefits each year. This rule incorporates those limitations. For members who would otherwise receive benefits in excess of these limitations, that extra amount is paid out of the Benefit Equalization Fund, a non-qualified plan.

Modifications: Incorporate OPSRP statutory references and terminology. In section (6), changes the mortality table used for calculating benefit limitations to the table prescribed by the Internal Revenue Code.

OAR 459-005-0545, Annual Addition Limitation

Summary: IRS Code §415(c) limits how much a member can contribute to a qualified plan on an annual basis.

Modifications: In section (2)(a), reference is made to the Internal Revenue Code section method to adjust the annual limitation so it will increase consistently with the IRS' requirements. Otherwise, changes are to incorporate OPSRP references as needed.

OAR 459-005-0560, Required Minimum Distributions, Generally

Summary: IRS Code §401(a)(9) requires that a retirement plan member begin receiving plan distributions if the member has reached age 70½ and separated from employment.

Modifications: Updates references to IRS regulations that became final this past summer. Sections (2)(c), (h), and (4)(b), specify limitations and choices dictated by IRS rules. Note that in section (2)(e), IRS regulations used to prevent a member in RMD from "popping up" to Option 1; the new regulations allow that change, so the rule is changed accordingly.

OAR 459-005-0590, General Provisions and Applicability Date – Direct Rollovers

Summary: Introductory rule about PERS Plan benefits as eligible rollover distributions under IRS Code §401(a)(31).

Modifications: Incorporate OPSRP statutory references.

OAR 459-005-0591, Definitions – Direct Rollovers

Summary: Defines terms used in reference to rollovers from the PERS Plan.

Modifications: In section (4)(d), includes a provision that the rollover must be to a defined contribution plan that accepts the distribution.

OAR 459-005-0595, Limitations – Direct Rollovers

Summary: Places limits on a member's right to roll over distributions from the PERS Plan. The limitations in this OAR conform to those imposed by the IRS code and rule provisions cited.

Modifications: Add section (4) to clarify rollover eligibility for a PERS Plan distribution that is based in part on after-tax employee contributions includible in the member's gross income.

LEGAL REVIEW

These rule modifications were principally drafted by the Ice Miller firm, and as federal tax counsel, they advise their adoption as set forth.

PUBLIC COMMENT AND HEARING TESTIMONY

The comment period ends on Friday, January 28, 2005 at 5:00 PM. To date, PERS has not received comments. A rulemaking hearing is scheduled for Tuesday, January 25.

EFFECTIVE DATE

As these rule modifications should apply to the 2004 tax year, they are presented with an effective date of January 1, 2004, to encompass the entire period of the OPSRP programs' existence and provide uniform coverage during the relevant tax year.

IMPACT

Mandatory: Yes, to comply with OPSRP programs' statutory provisions and incorporate IRS rule changes.

Impact: Moderate. Most of these provisions have already been incorporated in the ORS Chapter 238 program and the OPSRP programs are building these restrictions in place.

Cost: There is no substantial cost to stakeholders or the Fund as a result of the adoption of these rules.

- ♦ *Members.* Members will bear no costs from these rules.
- ♦ *Employers.* Employers will not bear any additional costs from these rules.
- ♦ *Administration.* The ORS Chapter 238 program is already administered with these restrictions. There are incremental costs in applying these restrictions to the OPSRP programs, but they are necessary to ensure the plan's tax qualified status.
- ♦ *Fund.* There is no direct cost to the fund other than the administrative expenses associated with incorporating these provisions into PERS Plan operations.

RULEMAKING TIMELINE

December 10, 2004	Notice of Rulemaking to PERS Board. PERS Board adopts the proposed temporary rule.
December 15, 2004	Staff begins the rulemaking process. Notice of Rulemaking filed with the Secretary of State.
December 15, 2004	Notice mailed to legislators, interested parties and stakeholders. Public comment period begins.
January 1, 2005	Oregon Bulletin to publish the Notice.
January 25, 2005 (AM)	Rulemaking hearing held at PERS headquarters in Tigard.
January 25, 2005 (PM)	First reading of the proposed rules.
January 28, 2005	Public comment period ends at 5:00 PM
February 18, 2005	Rule to be presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The Board may:

1. Take no action at this time.
2. Direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATION

Staff recommends the Board take no action at this time.

NEXT STEPS

This is the first reading of the rule. PERS staff will return with these rules to request adoption by the Board at its meeting on February 18, 2005.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION

MEETING DATE	1-25-05
AGENDA ITEM	C.4. Tax Rules

1 OAR 459-005-0506 is amended as follows:

1 **459-005-0506**

2 **Plan Compliance with Federal Statutes and Regulations**

3 (1) The purpose of administrative rules OAR 459-005-0500 to 459-005-0
4 799 is to assure compliance with applicable federal statutes and regulations for
5 governmental retirement plans qualified under the Internal Revenue Code (IRC) Section
6 401(a), and to implement ORS *[238.630(3)(h)]* **Chapters 238 and 238A** by establishing
7 limits on contributions and benefits under the Public Employees Retirement System
8 (PERS)*[, ORS Chapter 238]*.

9 (2) Definitions in general for OAR 459-005-0500 to 459-005-0799:

10 (a) *["Membership"]* **“Member”** shall have the same meaning as provided in ORS
11 *[238.005(7).]* **238.005(12) with respect to members covered by ORS Chapter 238 and**
12 **as provided in ORS 238A.005(10) with respect to members covered by ORS Chapter**
13 **238A.**

14 (b) "Employment" means service as an employee as defined in OAR *[459-005-*
15 *0001(17).]* **459-005-0001(13).**

16 (c) "Board" shall have the same meaning as provided in *[OAR 459-005-0001(1).]*
17 **ORS 238.005(2).**

18 (d) "PERS" shall have the same meaning as provided in OAR *[459-005-0001(2).]*
19 **459-005-0001(23).**

1 (e) "Defined contribution plan (DC)" means a plan which provides for an individual
2 account for each participant and for benefits based solely on the amount contributed to
3 the participant's account, and any income, expenses, gains and losses, and any forfeitures
4 of accounts of other participants which may be allocated to such participant's account.

5 **For purposes of IRC Section 414(k), the individual account program under ORS**
6 **Chapter 238A shall be treated as a DC plan for the purposes of IRC Sections 72(d)**
7 **and 415.**

8 (f) "Defined benefit plan (DB)" means a plan which is not a defined contribution
9 plan. **For purposes of IRC Section 414(k), the pension programs under ORS**
10 **Chapters 238A and 238 shall be treated as part of a defined benefit plan for**
11 **purposes of IRC Sections 72(d) and 415.**

12 **(3) The provisions of this rule are effective on January 1, 2004.**

13 Stat. Auth.: ORS 238.630(3)(h), ORS 238.305 & ORS 238.650
14 Stats. Implemented: ORS 238

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION

MEETING DATE	1-25-05
AGENDA ITEM	C.4. Tax Rules

1 OAR 459-005-0525 is amended as follows:

1 **459-005-0525**

2 **Ceiling on Compensation for Purposes of Contributions and Benefits**

3 (1) The purpose of this rule is to assure compliance of the Public Employees
4 Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17)
5 relating to the limitation on annual compensation allowable for determining contribution
6 and benefits under ORS *[chapter]* **Chapters 238 and 238A.**

7 (2) Definitions:

8 (a) A "participant" shall mean an active or inactive member of PERS.

9 (b) An "eligible participant" shall mean a person who first becomes a member of
10 PERS before January 1, 1996.

11 (c) A "noneligible participant" shall mean a person who first becomes a member of
12 PERS after December 31, 1995.

13 (d) "Annual compensation" shall mean "salary," as defined in ORS 238.005(20) and
14 238.205~~[,]~~ **with respect to ORS Chapter 238 and in ORS 238A.005(16) with respect**
15 **to Chapter 238A** paid to the member during a calendar year or other 12-month period, as
16 specified in this rule.

17 (e) For the purposes of this rule~~[,]~~ **as it applies to ORS Chapter 238**, an "employer"
18 shall mean a "public employer" as defined in ORS 238.005(17). **For the purposes of this**
19 **rule as it applies to ORS Chapter 238A, an “employer” shall mean a “participating**
20 **public employer” as defined in ORS 238A.005(11).**

1 (3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not
2 apply for purposes of determining the amount of employee or employer contributions that
3 may be paid into PERS, and for purposes of determining benefits due under ORS
4 *[chapter]* **Chapters 238[.] and 238A**. The limit on annual compensation for eligible
5 participants shall be no less than the amount which was allowed to be taken into account
6 for purposes of determining contributions or benefits under former ORS 237.001 to
7 237.315 as in effect on July 1, 1993.

8 (4) For noneligible participants, the annual compensation taken into account for
9 purposes of determining contributions or benefits under ORS *[Chapter]* **Chapters 238**
10 **and 238A** shall be measured on a calendar year basis, and shall not exceed \$200,000 per
11 calendar year beginning in 2002.

12 (a) The limitation on annual compensation will be indexed by cost-of-living
13 adjustments in subsequent years as provided in IRC Section 401(a)(17)(B).

14 (b) A noneligible participant employed by two or more agencies or instrumentalities
15 of a PERS participating employer in a calendar year, whether concurrently or
16 consecutively, shall have all compensation paid by the employer combined for
17 determining the allowable annual compensation under this rule.

18 (c) PERS participating employers shall monitor annual compensation and
19 contributions to assure that reports and remitting are within the limits established by this
20 rule and IRC Section 401(a)(17).

21 (5) For a noneligible participant, Final Average Salary under ORS 238.005(8) **with**
22 **respect to ORS Chapter 238 and under ORS 238A.130 with respect to ORS Chapter**

1 **238A** shall be calculated based on the amount of compensation that is allowed to be taken
2 into account under this rule.

3 (6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as
4 defined in ORS 238.005(8) **with respect to Chapter 238 and as defined in ORS**
5 **238A.130 with respect to Chapter 238A** is used in computing a noneligible participant's
6 retirement benefits, the annual compensation shall be based on compensation paid in a
7 12-month period beginning with the earliest calendar month used in determining the 36
8 months of salary paid. For each 12-month period, annual compensation shall not exceed
9 the amount of compensation that is allowable under this rule for the calendar year in
10 which the 12-month period begins.

11 (7) [*Creditable*] **With respect to ORS Chapter 238, creditable** service, as defined
12 in ORS 238.005(5), shall be given for each month that an active member is paid salary or
13 wages and allowable contributions have been remitted to PERS, or would be remitted but
14 for the annual compensation limit in IRC Section 410(a)(17). **With respect to ORS**
15 **Chapter 238A, retirement credit as determined in ORS 238A.140, shall be given for**
16 **each month that an active member is paid salary or wages and allowable**
17 **contributions have been remitted to PERS, or would be remitted but for the annual**
18 **compensation limit in IRC Section 401(a)(17).**

19 **(8) The provisions of this rule are effective on January 1, 2004.**

20 Stat. Auth.: ORS 238.630, [*&*] ORS 238.650 **and 238A.005(16)(i)**
21 Stats. Implemented: ORS 238

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION

MEETING	1-25-05
DATE	
AGENDA	C.4.
ITEM	Tax Rules

1 OAR 459-005-0535 is amended as follows:

2 **459-005-0535**

3 **Annual Benefit Limitation**

4 (1) Applicable Law. This administrative rule shall be construed consistently with the
5 requirements of the Internal Revenue Code (IRC) Section 415(b) and the Treasury
6 regulations and Internal Revenue Service rulings and other interpretation issued
7 thereunder.

8 (2) Annual Benefit Limitation. The benefits payable to any member for a calendar
9 year, when expressed as an annual benefit, shall not exceed the applicable dollar
10 limitation for that year.

11 (3) Applicable Dollar Limitation. For purposes of this rule, the "applicable dollar
12 limitation" for each calendar year is the limitation in effect under IRC Section
13 415(b)(1)(A), with the adjustment described as follows:

14 (a) Cost-of-Living Adjustments. The limitation under IRC Section 415(b)(1)(A)
15 shall be adjusted for cost of living in accordance with IRC Section 415(d).

16 (b) Reduction for Retirement Before Age 62. Except as otherwise provided in the
17 paragraphs (A), (B), and (C) of this subsection, if the member's benefit begins before the
18 member reaches 62 years of age, the applicable dollar limitation shall be adjusted as
19 provided for in IRC Section 415(b)(2)(C).

20 (A) This reduction shall not apply to any member who has at least 15 years of
creditable service as a full-time employee of a police department or fire department

1 which is organized and operated by the state or a political subdivision of the state to
2 provide police protection, firefighting services, or emergency medical services for any
3 area within the jurisdiction of the state or political subdivision.

4 (B) This reduction shall not apply to disability retirement allowances or death
5 benefits.

6 (C) This reduction shall not apply to any portion of a member's annual benefit that is
7 derived from contributions to purchase service credit, as defined in OAR 459-005-0540,
8 Permissive Service Credit.

9 (c) Reduction for Less than 10 Years of Membership. Except as provided in
10 paragraphs (A) and (B) of this subsection, if the member has less *[that]* **than** 10 years of
11 active membership in PERS, the applicable dollar limitation shall be reduced as provided
12 for under IRC Section 415(b)(5)(A).

13 (A) For the purposes of this section, a member with less than one year of active
14 membership shall be treated as having one year of active membership.

15 (B) The reduction under this section shall not apply to disability retirement
16 allowances or death benefits.

17 (d) Increase for Retirement After Age 65. If the member's benefit begins after the
18 member reaches 65 years of age, the applicable dollar limitation shall be increased as
19 provided for under IRC Section 415(b)(2)(D).

20 (4) Annual Benefit. For purposes of this rule, the "annual benefit" is the benefit
21 payable to a member under ORS *[c]*Chapter 238 **and the pension program under ORS**
22 **Chapter 238A** for a calendar year, excluding any benefit payable under ORS 238.485
23 *[to]* **through** 238.492, and adjusted as described in this section.

1 (a) Excludable Benefits. The annual benefit shall not include the portion of the
2 member's benefit that is attributable to:

3 (A) After-tax member contributions, other than member *[payment]* **payments** to
4 purchase permissive service credit as defined in OAR 459-005-0540, Permissive Service
5 Credit;

6 (B) Rollover contributions, if such contributions are permitted; *[and]*

7 (C) A transfer of assets from another qualified retirement plan*[.]*; **and**

8 (D) Purchases of permissive service credit, as defined in OAR 459-005-0540,
9 Permissive Service Credit, if all of the member's payments to purchase permissive service
10 credit are treated as annual additions for purposes of OAR 459-005-0545, Annual
11 Addition Limitation*[.]*, **in the year purchased.**

12 (b) Adjustment to Straight Life Annuity. The member's benefit shall be adjusted to
13 an actuarially equivalent straight life annuity beginning at the same age. For purposes of
14 this adjustment, the following values are not taken into account:

15 (A) The value of a qualified spouse joint and survivor annuity to the extent that the
16 value exceeds the sum of*[:]* the value of a straight life annuity beginning on the same
17 day, and the value of any post-retirement death benefits that would be payable even if the
18 annuity was not in the form of a joint survivor annuity.

19 (B) The value of benefits that are not directly related to retirement benefits, such as
20 pre-retirement disability benefits and post-retirement medical benefits.

21 (C) The value of post-retirement cost of living increases, to the extent they do not
22 exceed the increase provided under IRC Section 415(d) and Treasury Regulation Section
23 1.415-5.

1 (5) Interest Rates. The following interest rates shall apply for purposes of adjusting
2 the applicable dollar limitation under section (3) of this rule and the annual benefit under
3 section (4) of this rule.

4 (a) For purposes of reducing the applicable dollar limitation for retirement before 62
5 years of age under subsection (3)(b) of this rule, the interest rate shall be the greater of
6 five percent or PERS' assumed earnings rate.

7 (b) For purposes of determining the portion of a member's benefits attributable to
8 after-tax member contributions under paragraph (4)(a)(A) of this rule, the interest rate
9 shall be the greater of 5 percent or the PERS' assumed earnings rate.

10 (c) For purposes of adjusting the member's annual benefits under section (4) of this
11 rule (other than the adjustment for after-tax member contributions), the interest rate shall
12 be the greater of five percent or PERS' assumed earnings rate.

13 (d) For purposes of increasing the applicable dollar limitation for retirement after 65
14 years of age under subsection (3)(d) of this rule, the interest rate shall be the lesser of five
15 percent or PERS' assumed earnings rate.

16 (6) Mortality Table. For purposes of adjusting the applicable dollar limitation and
17 annual benefit under sections (3) and (4) of this rule, the mortality table used shall be[:]

18 **the table prescribed pursuant to the Internal Revenue Code.**

19 *[(a) Before January 1, 2000, the table adopted by the board for calculating*
20 *actuarially equivalent forms of benefits.*

21 *(b) Effective January 1, 2000, the table prescribed by the Internal Revenue Service.*

1 *(7) Retroactive Application. Except as provided below, the provisions of this rule*
2 *shall be applied retroactively to January 1, 1987. The amendments adopted in 2002 shall*
3 *be effective as of January 1, 2002.]*

4 **(7) The provisions of this rule are effective on January 1, 2004.**

5 Stat. Auth.: ORS 238.630, [**&**] ORS 238.650 **and 238A.125**

6 Stats. Implemented: ORS 238.005 - ORS 238.715

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION

MEETING DATE	1-25-05
AGENDA ITEM	C.4. Tax Rules

1 OAR 459-005-0545 is amended as follows:

2 **459-005-0545**

3 **Annual Addition Limitation**

4 (1) Applicable Law. This administrative rule shall be construed consistently with
5 the requirements of the Internal Revenue Code (IRC) Section 415(c) and the Treasury
6 regulations and Internal Revenue Service rulings and other interpretations issued
7 thereunder.

8 (2) Annual Addition Limitation. Except as otherwise provided in this rule, no
9 member's annual additions to PERS for any calendar year (after 2001) shall exceed the
10 lesser of the following amounts:

11 (a) \$40,000 (as adjusted *[by the Internal Revenue Service for cost of living]; or*
12 **under IRC Section 415(d); or**

13 (b) One hundred percent of the member's compensation for the calendar year (as
14 defined in IRC Section 415(c)(3)).

15 (3) Annual Additions. For purposes of this rule, the **term** "annual additions" *[have]*
16 **has** the same meaning as under IRC Section 415(c)(2).

17 (4) Permissive Service Credit. The following special rules shall apply with respect to
18 purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive
19 Service Credit:

20 (a) If a member's after-tax contributions to purchase permissive service credit are
included in the member's annual additions under section (3) of this rule, the member shall

1 not be treated as exceeding the 100 percent of compensation limitation under subsection
2 (2)(b) of this rule solely because of the inclusion of such contributions.

3 (b) With respect to any eligible participant, the annual addition limitation in section
4 (2) of this rule shall not be applied to reduce the amount of permissive service credit to an
5 amount less than the amount that could be purchased under the terms of the plan as in
6 effect on August 5, 1995. As used in this subsection, the term "eligible participant"
7 includes any individual who *[is or will become]* **became** an active member before
8 January 1, 2000.

9 (5) Purchase of Service in the Armed Forces Under ORS *[238.156.]* **238.156 or**
10 **238A.150**. If a member makes a payment to PERS to purchase retirement credit for
11 service in the Armed Forces pursuant to ORS 238.156(3)(c)*[.]* **or ORS 238A.150**, the
12 following special rules shall apply for purposes of applying the annual addition limitation
13 in section (2) of this rule:

14 (a) The payment shall be treated as an annual addition for the calendar year to which
15 it relates;

16 (b) The payment shall not be treated as an annual addition for the calendar year in
17 which it is made; and

18 (c) The member shall be treated as having received the following amount of
19 compensation for the period of service in the Armed Forces to which the payment relates:

20 (A) The amount of compensation the member would have received from a
21 participating employer had the member not been in the Armed Forces; or

22 (B) If the amount in paragraph (A) of this subsection is not reasonably certain, the
23 member's average compensation from the participating employer during the 12-month

1 period immediately preceding the period of service in the Armed Forces (or, if shorter,
2 the period of employment immediately preceding the period of service in the Armed
3 Forces).

4 *[(6) Retroactive Application. Except as otherwise provided in this rule, the*
5 *provisions of this rule shall be applied retroactively to January 1, 1987.]*

6 **(6) The provisions of this rule are effective on January 1, 2004.**

7 Stat. Auth.: ORS 238.630, *[&]* ORS 238.650 **and 238A.370**
8 Stats. Implemented: ORS 238.005 - ORS 238.715

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION

MEETING DATE	1-25-05
AGENDA ITEM	C.4. Tax Rules

1 OAR 459-005-0590 is amended as follows:

1 **459-005-0590**

2 **General Provisions and Applicability Date -- Direct Rollovers**

3 (1) OAR 459-005-0590 to 459-005-0599 apply to direct rollover distributions made
4 on or after January 1, 1993.

5 (2) Notwithstanding any provision to the contrary in ORS *[chapter]* **Chapters** 238
6 **or 238A** or any administrative rule of the Public Employees Retirement Board other than
7 OAR 459-005-0590 to 459-005-0599, a distributee may elect, in accordance with OAR
8 459-005-0599, to have any portion of an eligible rollover distribution paid directly to an
9 eligible retirement plan specified by the distributee in a direct rollover.

10 (3) The direct rollover rule OAR 459-005-0590 to 459-005-0599 shall be interpreted
11 and administered in accordance with Code Section 401(a)(31) and any applicable
12 regulations and administrative rulings thereunder.*[""]*

13 **(4) The provisions of this rule are effective on January 1, 2004.**

14 Stat. Auth.: ORS 238.650, **238A.430**
15 Stats. Implemented: ORS 238.005 - ORS 238.715

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION

MEETING	1-25-05
DATE	
AGENDA	C.4.
ITEM	Tax Rules

1 OAR 459-005-0591 is amended as follows:

2 **459-005-0591**

3 **Definitions -- Direct Rollovers**

4 As used in OAR 459-005-0590 to 459-005-0599 the following words and phrases
5 shall have the following meanings:

6 (1) "Code" means the Internal Revenue Code of 1986, as amended.

7 (2) A "direct rollover" means the payment of an eligible rollover distribution by
8 PERS to an eligible retirement plan specified by the distributee.

9 (3) A "distributee" includes a PERS member, the surviving spouse of a deceased
10 PERS member, and the current or former spouse of a PERS member who is the alternate
11 payee under a domestic relations order that satisfies the requirements of ORS 238.465
12 and the rules adopted thereunder.

13 (4) An "eligible retirement plan" means any one of the following:

14 (a) An individual retirement account or annuity described in Code Section 408(a) or

15 (b), but shall not include a Roth IRA as described in Code Section 408A;

16 (b) An annuity plan described in Code Section 403(a) that accepts the distributee's
17 eligible rollover distribution;

18 (c) A qualified trust described in Code Section 401(a)*[, but only if it is a defined
contribution plan]* that accepts the distributee's eligible rollover distribution;

1 (d) An eligible deferred compensation plan described in Code Section 457(b) which
2 is maintained by an eligible employer described in Code Section 457(e)(1)(A)[;] **and**
3 **accepts the distributee's eligible rollover distribution.**

4 (e) An annuity contract described in Code Section 403(b) that accepts the
5 distributee's eligible rollover distribution.

6 (5) An "eligible rollover distribution" means any distribution of all or any portion of
7 a distributee's PERS benefit, except that an eligible rollover distribution shall not include:

8 (a) Any distribution that is one of a series of substantially equal periodic payment
9 made no less frequently than annually for the life (or life expectancy) of the distributee or
10 the joint lives (or life expectancies) of the distributee and the distributee's designated
11 beneficiary, or for a specified period of ten years or more;

12 (b) Any distribution to the extent that it is a required or minimum distribution under
13 Code Section 401(a)(9).

14 (6) A "recipient plan" means an eligible retirement plan that is designated by a
15 distributee to receive a direct rollover.

16 *[(7) The provisions of this rule shall be applicable as of the calendar year beginning*
17 *January 1, 2002.]*

18 **(7) The provisions of this rule are effective on January 1, 2004.**

19 Stat. Auth.: ORS 238.650
20 Stats. Implemented: ORS 238.005 - ORS 238.715
21

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION

MEETING DATE	1-25-05
AGENDA ITEM	C.4. Tax Rules

1 OAR 459-005-0595 is amended as follows:

1 **459-005-0595**

2 **Limitations -- Direct Rollovers**

3 Notwithstanding any provision to the contrary in OAR 459-005-0590 to 459-005-
4 0599, a distributee's right to elect a direct rollover is subject to the following limitations:

5 (1) A distributee may elect to have an eligible rollover distribution paid in a direct
6 rollover to only one eligible retirement plan.

7 (2) A distributee may elect a direct rollover only when his or her eligible rollover
8 distribution(s) during a calendar year is reasonably expected to total \$200 or more.

9 (3) A distributee may elect to have part of an eligible rollover distribution be paid
10 directly to the distributee, and to have part of the distribution paid as a direct rollover
11 only if the member elects to have at least \$500 transferred to the eligible retirement plan.

12 **(4) The provisions of (1) apply to any portion of a distribution, including after-**
13 **tax employee contributions that are not includible in gross income. Any portion of a**
14 **distribution that consists of after-tax employee contributions that are not includible**
15 **in gross income may be transferred only to an individual retirement account or**
16 **annuity described in Code Section 408(a) or (b), or to a qualified defined**
17 **contribution plan that agrees to separately account for the amounts transferred,**
18 **including separate accounting for the pre-tax and post-tax amounts. The amount**
19 **transferred shall be treated as consisting first of the portion of the distribution that**
20 **is includible in gross income, determined without regard to Code Section 402(c)(1).**

1 **(5) The provisions of this rule are effective on January 1, 2004.**

2 Stat. Auth.: ORS 238.650

3 Stats. Implemented: ORS 238.005 - ORS 238.715

4



Oregon

Theodore R. Kulongoski, Governor

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MEETING	1-25-05
DATE	
AGENDA	D.1.
ITEM	Mid-Year Earnings

January 14, 2005

TO: Members of the PERS Board
FROM: Dale S. Orr, Actuarial Analysis Coordinator
SUBJECT: 2005 Mid-Year Earnings Crediting

EXECUTIVE SUMMARY

At its January 9, 2004 meeting, the PERS Board directed staff to credit zero earnings to the Tier One Regular Accounts of those members retiring or withdrawing during calendar year 2004. The Board took this action in conformance with ORS 238.255 (2) which prevents the Board from crediting any earnings to Tier One member Regular Accounts as long as a balance remains in the Tier One Deficit Reserve. With the conclusion of the 2004 calendar year, we now know that earnings will be sufficient to zero out the Deficit Reserve, giving the PERS Board the option to begin crediting latest-year-to-date earnings to the Regular Accounts of those Tier One members retiring or withdrawing during calendar year 2005.

BACKGROUND

Zero Crediting to Tier One Member Regular Accounts

ORS 238.255 (2) states, in part, "...the board may not credit any earnings to the regular accounts of...(Tier One members, alternate payees, etc.)...in any year in which there is a deficit in the reserve account..." This statute gives clear direction to the Board that as long as any balance remains in the Tier One Deficit Reserve, it is prohibited from crediting earnings to Tier One member Regular Accounts, including those members who are retiring, withdrawing or otherwise eligible for any other mid-year distribution.

Funding of the Tier One Deficit Reserve

As of December 31, 2004, the Tier One Deficit Reserve had a negative balance of -\$255.6 million. The negative balance in the Deficit Reserve can only be eliminated from earnings that would otherwise be credited to Tier One member Regular Accounts.

Prospective v. Retroactive Mid-Year Crediting

It is now known that earnings became sufficient to eliminate the Deficit Reserve during calendar year 2004. As such, questions have been raised regarding the possibility of retroactive crediting some or all Tier One member Regular Accounts which had a 2004 mid-year distribution such as a retirement or withdrawal.

Historically, the PERS Board has not retroactively credited earnings to retired or withdrawn members. Reasons for maintaining such a policy are as follows:

- The Board must adhere to the statutory requirement for reporting earnings to the Legislature 30 days prior to crediting of those earnings (ORS 238.670(5)). To eliminate the Deficit Reserve retroactively back to a point-in-time prior to year-end crediting to allow crediting for Tier One mid-year distributions, may be a violation of this statute.
- The amount of available earnings for any particularly year cannot be determined until the close of that year. The PERS Fund's value fluctuates during the year. The only time at which the Board can be certain it has enough earnings to eliminate the Deficit Reserve is when final calendar year-end numbers are established.
- Historically, transactions subject to mid-year crediting are final. The agency makes no provision for revising these transactions after the fact. As a result, a retroactive crediting would result in significant operational issues and additional backlogs such as the recalculation of member retirements and refunds.
- Reserve accounts must be considered in total when crediting earnings. There are several statutory requirements regarding the crediting of reserves, including member accounts, that drive a once-a-year or calendar year crediting. Mid-year crediting rules are exceptions based on assumptions so that member transactions (e.g., retirements, withdrawals) can be closed during the year without waiting for year-end numbers.

STAFF RECOMMENDATION

Staff recommends that the Board direct staff to calculate the latest-year-to-date factor, for Tier One Regular Accounts of those members, beneficiaries and alternate payees who retire, withdraw, or take other types of disbursements during 2005, assuming that the Board will credit sufficient 2004 earnings to eliminate the Deficit Reserve as of December 31, 2004. As a practical matter, this will result in retired members receiving estimated payments, which will be converted to actual based on the Board's final earnings crediting decision. The implementation of this recommendation will require the Board to take two actions as follows:

SUGGESTED MOTIONS

To prioritize the elimination of the Tier One Deficit Reserve:

"I move that staff be directed to calculate an estimated latest-year-to-date factor for year-end 2004 and 2005 for Tier One member Regular Accounts as if the Tier One Deficit Reserve was eliminated as of December 31, 2004. This motion is being made to reflect the Board's intent to eliminate the Tier One Deficit Reserve with the first available Tier One member Regular Account earnings when the 2004 earnings crediting is finalized."

To allow the prospective crediting of mid-year 2005 earnings to Regular Accounts of those members who withdraw or begin receiving a retirement benefit during 2005:

"I move that staff be directed to calculate estimated payments, using the estimated latest-year-to-date factor, for the Tier One Regular Accounts of those members who retire, withdraw or take another type of disbursement during 2005. When the Board makes its final 2004 earnings crediting decision, staff is to adjust these payments for any difference between the estimated latest-year-to-date factor and the resulting actual latest-year-to-date factor."



Oregon

Theodore R. Kulongoski, Governor

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January 18, 2005

MEETING	1-25-05
DATE	
AGENDA	D.2.
ITEM	2003 Actuarial Valuation and July 2005 Employer Rates

TO: Members of the PERS Board

FROM: Dale S. Orr, Actuarial Analysis Coordinator

SUBJECT: 2003 Valuation Results and July 2005 Employer Rates

EXECUTIVE SUMMARY

On January 25, 2005, Mark Johnson, Milliman Consultants and Actuaries, will provide the final 2003 Valuation results and related changes to employer contribution rates. Due to the asset smoothing of 2000 – 2002 investment losses, most employers are facing significant rate increases. As such, the Board requested that the actuary also provide a series of rate phase-in options for its consideration. The actuary's presentation will be forwarded to the PERS Board prior to the meeting on January 25.

Upon Board approval of a rate phase-in methodology, the actuary will report the final employer contribution rates at its following meeting, scheduled for February 18, 2005. Contribution rate change and financial reporting information will be then prepared and sent to the employers soon thereafter. Employer rates are scheduled to change July 1, 2005.

RELATED INFORMATION

Rate Change Survey of Other Public Pension Systems

At its December 10, 2004 meeting, the PERS Board requested staff to research the following regarding public pension systems:

1. How frequently are public pension system valuations being conducted (and employer rates changed); and
2. Whether a phase-in of employer rate increases is a practice used by other public pension systems.

Frequency of Valuations (Change of Rates)

Data from two nationwide surveys was used to evaluate these questions. The first, which covered the frequency of valuations, was conducted by the Government Finance Officers Association. The second was conducted by the research office of the National Association of State Retirement Administrators (NASRA) and provided information on when pension systems changed employer rates.

It was found that 82% of the 26 large public pension systems (>150,000 members) sampled, conducted an annual valuation, with the remaining large systems using a biennial cycle. It was also found that, unless otherwise directed by statute or by some other “fixed” methodology, pension systems set rates every time a valuation is conducted. The data from the NASRA survey was open to interpretation so exact percentages were difficult to calculate, but a general trend was clearly established from the comments and narratives provided. The predominance of annual valuations and related annual rate setting also likely reflects the predominance of annual legislative sessions and budget cycles in many states.

Use of Phase-In Methodology

Through discussions with Mercer, Milliman and the research office of NASRA, it was found that a multiple year or multiple biennia phase-in of employer rate increases, when exempt from statutory requirement, is a methodology used by other public pension systems. Although seldom or never done on an ongoing, year in – year out basis, at least six large public pension systems have or are considering a multiple step phase-in of the extraordinary rate increases caused by the record 2000-2002 bear market investment losses.

I will be available on January 25th to answer any questions regarding the surveys and the rate setting process. If you have any questions in the interim, please call me at (503) 603-7704.



Oregon

Theodore R. Kulongoski, Governor

January 11, 2005

MEETING DATE	1-25-05
AGENDA ITEM	D.3.a. Optional and Alternative Retirement Plans

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TO: Members of the PERS Board
Key Reviewer: Thomas Grimsley

FROM: Steven Patrick Rodeman, Administrator, PPLAG

SUBJECT: Adoption of Division 5 Rules Related to Optional and Alternative Retirement Plans

OAR 459-005-0310, *Date of Participation and Transfer of Employee Funds to an Optional Retirement Plan – OSSHE* (Amend)

OAR 459-005-0350, *Membership Status of Persons in Concurrent Employment Eligible to Participate in an Optional or Alternative Retirement Plan* (Amend)

OAR 459-005-0370, *Date of Participation and Transfer of Employee Funds to an Alternative Retirement Plan – OHSU* (Amend)

OVERVIEW

- **Action:** Adopt amendments to OAR 459-005-0310, 459-005-0350 and 459-005-0370.
- **Reason:** House Bill 2020, the legislation that established the Oregon Public Service Retirement Plan (OPSRP), amended ORS 243.800 and 353.250 to incorporate references to OPSRP. ORS 243.800 sets forth the provisions for an Optional Retirement Plan for employees of the Oregon University System. ORS 353.250 sets forth the provisions for an Alternative Retirement Plan for employees of the Oregon Health and Science University. These rules deal with coordination between the PERS plans and these other retirement programs, so these rule changes are intended to address issues created by the addition of OPSRP.
- **Subject:** Standards for determining eligibility and the administration of transfers to the Optional and Alternative Retirement plans under ORS 243.800 and 353.250 for members of the OPSRP Pension and Individual Account Programs.
- **Policy Issue:**
 - Should the Board amend these rules to include provisions for OPSRP?

SUMMARY OF RULES, POLICY ISSUES AND MODIFICATIONS TO RULES SINCE NOTICE

ORS 243.800 and 353.250 were amended in the last legislative session to include members of the OPSRP as eligible employees for participation in the Optional or Alternative Retirement Plans. The proposed rule modifications would clarify that the process for transferring into the Optional or Alternative Retirement plans applies to members of the OPSRP Pension and Individual Account Programs as well.

Staff has some recommended modifications to these rules since they were last presented. Those substantive changes are reflected by bolding and underlining additions and bracketing and italicizing deletions.

459-005-0310, Date of Participation and Transfer of Employee Funds to the Oregon University System – OUS.

Summary: Sets forth the process for notifying PERS of an OUS employee's election to participate in an optional retirement plan and the request to transfer the member's account(s).

Modifications since notice: Clarified effective date of election; provided time frame for notification to PERS; clarified definitions used in rule.

459-005-0350, Membership Status of Persons in Concurrent Employment Eligible to Participate in an Optional or Alternative Retirement Plan.

Summary: Clarifies the membership and eligibility status of OUS employees who are concurrently employed by the OUS and a PERS or OPSRP participating employer.

Modifications since notice: No substantive changes.

459-005-0370, Date of Participation and Transfer of Employee Funds to an Alternative Retirement Plan -- OHSU.

Summary: Sets forth the process for notifying PERS of an Oregon Health and Science University (OHSU) employee's election to participate in an optional retirement plan and the request to transfer the member's account(s).

Modifications since notice: Clarified effective date of election; clarified definitions used in rule.

LEGAL REVIEW

As the substance of these rules affect the Optional and Alternative Retirement Plans more directly than OPSRP, staff submitted the rules to the Department of Justice for review. They had no substantive comments or changes.

PUBLIC COMMENT AND HEARING TESTIMONY

A public hearing was held on November 23, 2004. Gordon Allen of Oregon Health and Science University and Denise Yunker of the Oregon University System testified.

Mr. Allen requested housekeeping changes to the proposed rule amendments, including correcting the name of Oregon Health and Science University. Mr. Allen also asked whether employees who had elected to participate in an alternative retirement plan (ARP) could delay an election to transfer their PERS or OPSRP accounts to a later date. The current version of OAR 459-005-0370(2)(b) does not allow such a delay, and no one commented that those provisions should be changed.

Ms. Yunker requested housekeeping changes to the proposed rule amendments, including changing references to the State System of Higher Education to the current name of Oregon University System (OUS). She also asked that the rule clarify that OUS would send the notification of an election to PERS within 30 days of the election and that if a

request for an account balance was made that the request would be forwarded as well. Both of these requests have been incorporated into the proposed rule changes.

Ms. Yunker also expressed her concern over the time frame for a transfer to occur and expanded upon her comments via an e-mail asking for further clarification. She wrote:

“This is to follow up on the question I raised about interest crediting for PERS/OPSRP members who elect to transfer their IAP account balance(s) to the OUS Optional Retirement Plan at the time of their elections to that plan.

It appears that the question is already addressed in OAR 459-080-0200 IAP Account Adjustments for Earnings and Losses, which states the accounts are adjusted to reflect any earnings, losses, and admin[i]strative expenses through the end of the month in which the request for withdrawal is received. With this, the additional question I raised at the rules hearing November 23 is unnecessary for inclusion in OAR 459-005-0310.

Thank you for considering comments on integrating the ORP with PERS/OPSRP. Denise Yunker”

Currently, OAR 459-080-0200 provides that the account will be frozen at the end of the month in which the withdrawal request is received. However, discussions with Citistreet, the third party administrator, have revealed that the distribution of accounts from the IAP may take longer than previously understood. The proposed rules are drafted to reflect the actual distribution process for IAP accounts. Because of the change in circumstances, OAR 459-080-0200 may also need to be amended to reflect the actual distribution process. Accordingly, Ms. Yunker’s concerns regarding the timing of transfers from the IAP to the ORP will be solicited as part of that rulemaking process.

The closing date for public comment on this proposed rule was December 20, 2004.

IMPACT

Mandatory: No.

Impact: None. Provides clarification about the process for participation in either the Optional or Alternative Retirement Plans.

Cost: None.

RULEMAKING TIMELINE

- | | |
|-------------------|---|
| October 12, 2004 | Notice of Rulemaking to the PERS Board. |
| October 15, 2004 | Staff began the rulemaking process. Notice of Rulemaking filed with the Secretary of State. |
| October 18, 2004 | Notice mailed to legislators, interested parties and stakeholders. Public comment period began. |
| November 1, 2004 | <i>Oregon Bulletin</i> published the Notice. |
| November 23, 2004 | Rulemaking hearing held at PERS headquarters in Tigard. |

- December 10, 2004 First reading of the proposed rule.
- December 20, 2004 Public comment period ended at 5:00 PM
- January 25, 2005 Rule is presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The Board may:

1. Make a motion to “adopt the permanent rule modifications to OAR 459-005-0310, 459-005-0350, and 459-005-0370, as presented, to be effective upon filing.”
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:** These rules deal with coordination between the PERS plans and the Optional (ORP) and Alternative Retirement (ARP) plans and reflect recent changes to the administration of the ORP and ARP plans under ORS 243.800 and 353.250.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if they determine that a change is warranted.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING DATE	1-25-05
AGENDA ITEM	D.3.a. Optional and Alternative Retirement Plans

CHAPTER 459

DIVISION 005 – ADMINISTRATION

1 OAR 459-005-0310 is amended as follows:

2 **459-005-0310**

3 **Date of Participation and Transfer of Employee Funds to [an *Optional Retirement***
4 ***Plan – OSSHE*] the Oregon University System - OUS**

5 (1) The effective date of an election by an administrative or academic employee
6 of the Oregon [State] **University** System [of Higher Education] (OUS[*SHE*]) to
7 participate in an [*o*]Optional [*r*]Retirement [*p*]Plan authorized under ORS 243.[775]800
8 [*shall be*] **is the first of the month following the employee’s election to participate in**
9 **the Optional Retirement Plan.** [*on or after the date of the notification by OSSHE to the*
10 *Public Employes' Retirement System (PERS) of an employee's election.*]

11 **(a) Unless otherwise agreed upon, notice of the effective date of an election to**
12 **participate in the Optional Retirement Plan will be provided to PERS by the OUS**
13 **within 30 days of the election date.**

14 **(b) If the employee is a member of PERS or the Oregon Public Service**
15 **Retirement Plan (OPSRP) Pension Program or Individual Account Program (IAP),**
16 **and is eligible to transfer their PERS or OPSRP accounts to the Optional**
17 **Retirement Plan, the OUS will forward a copy of that election at the time of the**
18 **notification required in subsection (a) of this section.**

19 (2) The date of transfer **will be:** [*of a member's PERS accounts to an optional*
retirement plan shall be the first working day of the calendar month following the date of

1 the notification by OSSHE to PERS of the employee's election to participate in an
2 optional retirement plan authorized under ORS 243.775.]

3 (a) For a member's PERS member account, variable account, or OPSRP Pension
4 account, the first working day of the calendar month following the date of the notification
5 by OUS to PERS of the employee's election to participate in an Optional Retirement Plan
6 authorized under ORS 243.800.

7 (b) For a member's OPSRP IAP account, the actual date of distribution.

8 (3) For purposes of sections (1) and (2) of this rule, the date of notification shall
9 be the date on which PERS headquarters receives the written notification of the election
10 to participate in an [o]Optional [r]Retirement [p]Plan under ORS 243.[775]800.

11 (4) For the purposes of this rule[, "member's PERS account" means]:

12 (a) **"PERS member account" means [T] the member's [individual] regular**
13 account in the fund as defined in ORS 238.250; and

14 (b) **"PERS variable account" means [T] the member's account in the Variable**
15 Annuity Account in the Fund as defined in ORS 238.260.

16 (c) **"OPSRP pension account" means the member's benefit eligible for**
17 **withdrawal under the provisions of ORS 238A.120; and**

18 (d) **"IAP account" means the member's account(s), to the extent the member**
19 **is vested, as set forth under ORS 238A.350.**

20

Stat. Auth: ORS 238.650, **238A.450**
Stats. Implemented: ORS 243.[775]800

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459

MEETING DATE AGENDA ITEM	1-25-05 D.3.a. Optional and Alternative Retirement Plans
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DIVISION 005 – ADMINISTRATION

1 OAR 459-005-0350 is amended as follows:

2 **459-005-0350**

3 **Membership Status of Persons in Concurrent Employment Eligible to Participate in**
4 **an Optional or Alternative Retirement Plan**

5 (1) For the purpose of this rule, concurrent employment means employment with
6 two or more different employers participating in the Public Employees' Retirement System
7 (PERS) at the same time.

8 (2) If a person employed by the [State] Oregon University System[*of Higher*
9 *Education*] or by the Oregon Health and Science[*s*] University is concurrently employed
10 by another PERS or OPSRP participating employer, eligibility for PERS or OPSRP membership shall be based on the following:

11 (a) If the person elects to participate in an [*o*]Optional [*r*]Retirement [*p*]Plan
12 offered by the [State] Oregon University System[*of Higher Education*] under ORS
13 243.[775]800, or an alternative retirement plan offered by the Oregon Health and
14 Science[*s*]University under ORS 353.250[(3)], and is concurrentlyly employeded[*ment*] with
15 [*all*] other PERS or OPSRP participating employers [*normally requires less than 600*
16 *hours in a year*]in a non-qualifying position(s) as defined in OAR Chapter 459, the
17 person:

1 (A) Shall not be eligible to establish membership in PERS **or OPSRP** as an
2 employee of the [State] **Oregon University** System[*of Higher Education*] or the Oregon
3 Health **and** Science[*s*]University, and

4 (B) Shall not be eligible to establish membership in PERS **or OPSRP** as an
5 employee of the other concurrent PERS employer or employers.

6 (b) If the person elects to participate in an [*o*]**Optional** [*r*]**Retirement** [*p*]**Plan**
7 offered by the [State] **Oregon University** System[*of Higher Education*] under ORS
8 243.[775]**800**, or an alternative retirement plan offered by the Oregon Health **and**
9 Science[*s*]University under ORS 353.250[*(3)*], and **is** concurrently employed[*ment*] with
10 [*all*] other PERS **or OPSRP** participating employers [*normally requires 600 hours or*
11 *more in a year,*] **in a qualifying position(s) as defined in OAR Chapter 459**, the
12 person:

13 (A) Shall not be eligible to establish membership in PERS **or OPSRP** as an
14 employee of the [State] **Oregon University** System[*of Higher Education*] or the Oregon
15 Health **and** Science[*s*]University; and

16 (B) Shall establish membership in [*PERS*] **OPSRP** as an employee of the other
17 concurrent PERS **or OPSRP** employer or employers.

18 (3) A member of PERS **or OPSRP** who is concurrently employed and establishes
19 PERS **or OPSRP** membership under the provisions of paragraph (2)(b)(B) of this rule
20 shall not be eligible to have the member's account transferred to an [*o*]**Optional** or an
21 alternative [*r*]**Retirement** [*p*]**Plan** as described in ORS 243.[775]**800**(6) and (7).

22 [*(4) For purposes of this rule, an employee who is eligible for PERS membership*
23 *shall be eligible for:*

1 (a) Tier One benefits if the person establishes membership in PERS before
2 January 1, 1996, as described in ORS 238.430(2).

3 (b) Tier Two benefits if the person establishes membership in PERS on or after
4 January 1, 1996, as described in ORS 238. 430(2).]

Stat. Auth: ORS 238.650, **238A.450**

Stats. Implemented: **ORS 238A.100, ORS 238A.300**, ORS 243.[775]**800** & ORS
353.250[(3)]

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459

MEETING DATE	1-25-05
AGENDA ITEM	D.3.a. Optional and Alternative Retirement Plans

DIVISION 005 – ADMINISTRATION

1 OAR 459-005-0370 is amended as follows:

2 **459-005-0370**

3 **Date of Participation and Transfer of Employee Funds to an Alternative Retirement**
4 **Plan -- OHSU**

5 (1) For the purposes of this rule[, *member accounts are defined as*]:

6 **(a) [a] "[member's] PERS account" means the member's [individual] regular**
7 **account in the Fund as defined in ORS 238.250, and the member's account in the**
8 **Variable Annuity Account in the Fund as defined in ORS 238.260[.];**

9 **(b) "OPSRP pension account" means the member's benefit eligible for**
10 **withdrawal under the provisions of ORS 238A.120; and**

11 **(c) "IAP account" means the member's account(s), to the extent the member**
12 **is vested, as set forth under ORS 238A.350.**

13 (2) If an employee elects to participate in an alternative retirement plan authorized
14 under ORS 353.250:

15 (a) Unless otherwise agreed upon, the effective date of an election to participate in
16 an alternative retirement plan shall be certified by **Oregon Health and Science**
17 **University (OHSU)** to PERS within [*thirty (30)*] **30** days of that effective date.

18 (b) If the employee is a member of PERS, and is eligible for and elects to transfer
the balance of the member's **PERS, OPSRP Pension, or IAP** accounts [*in PERS*] to the

1 alternative retirement plan, OHSU shall forward a copy of that election together with the
2 certification required in subsection (a) of this section.

3 (c) In the event an eligible employee is disabled or deceased and an election to
4 participate in an alternative retirement plan has not been signed by the employee, the
5 employee shall be deemed to be an active member of PERS, if all other conditions of
6 ORS 238.015 are met.

7 (3) In accordance with ORS [238.015(11)]**238A.100 and 238A.300**:

8 (a) An employee who is serving a six-month waiting period [as described in ORS
9 238.015] shall establish active membership [in PERS] in accordance with ORS
10 [238.015] **238A.100 and 238A.300** unless PERS receives notification of an election to
11 participate in an alternative retirement plan prior to the completion of that six-month
12 waiting period.

13 (b) Notwithstanding subsection (a) of this section, if PERS receives a notification
14 of an election to participate in an alternative retirement plan, active membership in PERS
15 **or OPSRP** shall cease as of the effective date of the election.

16 (4) A PERS **or OPSRP** member electing to participate in an alternative retirement
17 plan, authorized under ORS 353.250, and who is not concurrently an active member of
18 PERS **or OPSRP** with another PERS **or OPSRP** participating employer, may petition
19 PERS to have the member's **PERS, OPSRP Pension, or IAP** accounts [in PERS]
20 transferred directly to an alternative retirement plan.

21 (a) A transfer of a member's account as provided in this section shall be
22 transferred directly to the alternative retirement plan by PERS and shall not be made
23 available to the employee while remaining in the employ of OHSU.

1 (b) A transfer of a member's PERS OPSRP Pension, or IAP accounts as
2 provided in subsection (a) of this section shall not include any reserves of any PERS-
3 participating employer.

4 (5) A PERS or OPSRP member electing to participate in an alternative retirement
5 plan who has not separated from service in any position at OHSU shall be not be eligible
6 to withdraw the member's accounts [in PERS], except as provided in section (4) of this
7 rule.

8 (6) A transfer of a member's PERS, OPSRP Pension, or IAP accounts to an
9 alternative retirement plan established under provisions of ORS 353.250 shall be in
10 compliance with all applicable Internal Revenue Code provisions and related Treasury
11 regulation governing qualified pension plans. The transfer may occur only if the
12 alternative retirement plan:

13 (a) Is a qualified plan under the Internal Revenue Code;

14 (b) Is capable of accepting funds transferred under provisions of section (4) of this
15 rule without the transfer being treated as a taxable event under the Internal Revenue
16 Code; and

17 (c) Is willing to accept those transfers.

18 (7) The date of distribution of a member's PERS or OPSRP Pension accounts to
19 an alternative retirement plan, authorized under ORS 353.250, as provided for in section
20 (4) of this rule shall be the later of:

21 (a) The first of the calendar month following the date of receipt by PERS of a
22 copy of the election if such copy is received by PERS on or before the fifteenth of a
23 calendar month; or

1 (b) The first of the second calendar month following the date of receipt by PERS
2 of a copy of the election if such copy is received on or after the [sixteenth] **16th** of a
3 calendar month.

4 **(8) The date of distribution of a member's OPSRP IAP account(s) to an**
5 **alternative retirement plan, authorized under ORS 353.250, as provided for in**
6 **section (4) of this rule will be the date of the actual distribution.**

Stat. Auth.: ORS 238.650, **238A.450**

Stats. Implemented: ORS 238.015, ORS 353.250[(3)], **ORS 238A.100, and ORS**
238A.300



Oregon

Theodore R. Kulongoski, Governor

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MEETING	1-25-05
DATE	
AGENDA	D.3.b.
ITEM	Rollovers by Legislators

January 11, 2005

TO: Members of the PERS Board
Key Reviewer: Tom Grimsley

FROM: Steven Patrick Rodeman, Administrator, PPLAG

SUBJECT: Adoption of OAR 459-005-0591, *Definitions – Direct Rollovers*

OVERVIEW

- **Action:** Adopt OAR 459-005-0591.
- **Reason:** Legislators who elect to participate in OPSRP under the provisions of ORS 237.650(3), or in the state deferred compensation plan (OSGP) under ORS 238.655(2), may roll the amount in their ORS Chapter 238 regular member accounts into either the OPSRP Individual Account Program (IAP) or into the OSGP, depending on their election. These provisions require new administrative rules to clarify and implement these statutory options.
- **Subject:** Defines the IAP and the OSGP as “eligible retirement plans” for the purposes of rollovers as allowed under ORS 237.650(3) and 237.655(2).
- **Policy Issue:**
 - Should the rollover of a legislator’s PERS member account be directed to their IAP employee account or should separate rollover accounts be established?

BACKGROUND

ORS 237.650, enacted as part of House Bill 2020, provides that legislators must elect, within 30 days of taking office, to participate in the OPSRP Pension and IAP Programs, or in the OSGP, or neither. If a legislator fails to make an election, they will default to membership in the OSGP.

If a legislator elects to participate in the OSGP, ORS 237.655(2) allows the legislator to roll over their PERS Chapter 238 regular account. Similarly, ORS 237.650(3) provides for a rollover of the legislator’s PERS Chapter 238 regular account if they elect to participate in the OPSRP IAP.

As new legislators will be taking office when the legislative session starts on January 10, 2005, staff is recommending this rule amendment to clarify the election process for PERS Chapter 238 member account rollovers into the OPSRP IAP and the OSGP.

Note that since this rule was noticed for rulemaking, the PERS Board adopted a temporary version of this same rule at its December 2004 meeting to incorporate federal tax law and rule updates. Procedurally, the Board is now considering further amendment to that temporary rule, so the version attached to this memo reflects changes that adopting these modifications would make to the temporary rule.

SUMMARY OF PROPOSED RULE AND POLICY ISSUES

Currently, OAR 459-005-0591 provides the definitions for the direct rollover provisions contained in OAR 459-005-0590 to 459-005-0599. The proposed amendments would add the OSGP and the IAP as “eligible retirement plans” for the purposes of rollovers out of a legislator’s PERS Chapter 238 regular member account.

Policy Issue: *Should a rollover under the provisions of ORS 237.650(3) go into the legislator member’s individual employee account maintained for the member under the IAP or should the agency establish rollover accounts?*

ORS 238A.350 provides for the creation of three accounts in the IAP: the employee account, an optional employer account, and a rollover account. The Board is directed to establish rollover accounts “if the board accepts rollover contributions...” (emphasis added). The provisions allowing legislators to roll over their PERS Chapter 238 regular accounts do not provide any discretion to accepting those rollovers, directing that the rollover go into “the individual account maintained for the member under the individual account program.” Unless and until the Board decides to establish rollover accounts, however, the only IAP accounts maintained for members are the employee accounts.

Moreover, because the legislators’ rollovers are not offered as an alternative to distribution of the regular accounts, they may not qualify as true “eligible rollover distributions” under Internal Revenue Code §402(c)(4). The rollover account contemplated by ORS 238A.350(4) appears to be intended for rollovers of such alternative distributions.

At its December meeting, Board Member Grimsley asked for more information about the option of moving legislator’s Chapter 238 regular accounts into IAP rollover accounts instead of legislator’s IAP employee accounts, and offering this option to other PERS members.

Staff recommended putting legislator’s Chapter 238 regular accounts into IAP employee accounts because the PERS Board had not yet directed staff to establish IAP rollover accounts. Legislators were coming into session in January 2005 and needed a “home” for these funds should they choose to exercise that right. Not only were IAP rollover accounts not authorized, but staff believes those should be maintained for true “eligible rollover distributions,” as defined by the IRS, not for what amount to intra-plan transfers like these legislator elections.

If the Board wants staff to explore establishing rollover accounts, note first that our IAP third party administrator contract does not cover them, so an amendment would have to be negotiated and executed before the agency could offer this option. Second, even if the Board were to establish rollover accounts, other PERS members would not be able to transfer their regular accounts into the IAP without statutory authorization. ORS Chapter 238 does not otherwise provide members with this authority (members can only receive a distribution when they withdraw or retire).

LEGAL REVIEW

This proposed rule was submitted to Richard Gilbert of Orrick, Herrington for his review. His comments and recommended changes have been incorporated into this memo and the attached version of the rule modifications.

PUBLIC COMMENT AND HEARING TESTIMONY

The comment period ended on Monday, December 20, 2004 and PERS received no public comment. PERS held a public hearing for this rule on November 23, 2004 and no one testified or provided comment on this rule.

IMPACT

Mandatory: No.

Impact: None. Provides clarification about the process to follow for legislator account rollovers under ORS 237.650 and .655.

Cost:

- ♦ *Members:* Administrative fees will be assessed for each account. Directing rollovers into the already established IAP employee account will result in a charge of only one set of fees; establishing new rollover accounts to receive these funds would require charging an additional set of account fees.
- ♦ *Employers:* There is no cost to employers. Administrative fees are assessed to each IAP account.
- ♦ *Administration:* There will be little or no administrative costs associated with the amendment of this rule.
- ♦ *Fund:* The proposed rule modifications appear to have no impact on the Fund.

RULEMAKING TIMELINE

October 12, 2004	Notice of Rulemaking to the PERS Board.
October 15, 2004	Staff began the rulemaking process. Notice of Rulemaking filed with the Secretary of State.
October 18, 2004	Notice mailed to legislators, interested parties and stakeholders. Public comment period began.
November 1, 2004	<i>Oregon Bulletin</i> published the Notice.
November 23, 2004	Rulemaking hearing held at PERS headquarters in Tigard.
December 10, 2004	First reading of the proposed rule.
December 20, 2004	Public comment period ended at 5:00 PM
January 25, 2005	Rule is presented to the PERS Board for adoption.

BOARD OPTIONS

1. Make a motion to “adopt the proposed rule modifications to OAR 459-005-0591 as presented.”
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 needs to be changed to clarify the statutory provisions of OPSRP.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if they determine that a change is warranted.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING DATE	1-25-05
AGENDA ITEM	D.3.b. Rollovers by Legislators

CHAPTER 459

DIVISION 005 - ADMINISTRATION

OAR 459-005-0591 is amended as follows:

1 **459-005-0591**

2

3 **Definitions -- Direct Rollovers**

4 As used in OAR 459-005-0590 to 459-005-0599 the following words and phrases
5 shall have the following meanings:

6 (1) "Code" means the Internal Revenue Code of 1986, as amended.

7 (2) A "direct rollover" means the payment of an eligible rollover distribution by
8 PERS to an eligible retirement plan specified by the distributee.

9 (3) A "distributee" includes a PERS member, the surviving spouse of a deceased
10 PERS member, and the current or former spouse of a PERS member who is the alternate
11 payee under a domestic relations order that satisfies the requirements of ORS 238.465
12 and the rules adopted thereunder.

13 (4) An "eligible retirement plan" means any one of the following:

14 (a) An individual retirement account or annuity described in Code Section 408(a) or
15 (b), but shall not include a Roth IRA as described in Code Section 408A;

16 (b) An annuity plan described in Code Section 403(a) that accepts the distributee's
17 eligible rollover distribution;

18 (c) A qualified trust described in Code Section 401(a) that accepts the distributee's
19 eligible rollover distribution;

1 (d) An eligible deferred compensation plan described in Code Section 457(b) which is
2 maintained by an eligible employer described in Code Section 457(e)(1)(A) and accepts
3 the distributee's eligible rollover distribution.

4 (e) An annuity contract described in Code Section 403(b) that accepts the distributee's
5 eligible rollover distribution.

6 **(f) Solely for purposes of receiving rollovers described in ORS 237.650(3), the**
7 **individual employee account maintained for a member under the Individual**
8 **Account Program as set forth under ORS 238A.350(2); and**

9 **(g) Solely for purposes of receiving rollovers described in ORS 237.655(2), the**
10 **state deferred compensation program.**

11 (5) An "eligible rollover distribution" means any distribution of all or any portion of a
12 distributee's PERS benefit, except that an eligible rollover distribution shall not include:

13 (a) Any distribution that is one of a series of substantially equal periodic payment
14 made no less frequently than annually for the life (or life expectancy) of the distributee or
15 the joint lives (or **joint** life expectancies) of the distributee and the distributee's
16 designated beneficiary, or for a specified period of ten years or more; **or**

17 (b) Any distribution to the extent that it is a required or minimum distribution under
18 Code Section 401(a)(9).

19 (6) A "recipient plan" means an eligible retirement plan that is designated by a
20 distributee to receive a direct rollover.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.005 - ORS 238.715, **ORS 237.650(3) and ORS**
23 **237.655(2)**



Oregon

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MEETING DATE	1-25-05
AGENDA ITEM	D.3.c. Employer Participation

January 11, 2005

TO: Members of the PERS Board
Key Reviewer: Tom Grimsley

FROM: Steven Patrick Rodeman, Administrator, PPLAG

SUBJECT: Adoption of OAR 459-070-0050, *Participation of Public Employers*

OVERVIEW

- **Action:** Adopt OAR 459-070-0050.
- **Reason:** OPSRP allows new employers to begin participating in the PERS system. This rule outlines the process for new employers to begin providing OPSRP credit and contributions and to continue providing coverage for PERS Chapter 238 program members they may hire.
- **Policy Issue:**
 - Under what circumstances should PERS require new public employers to enter the system?

BACKGROUND

Periodically, PERS receives inquiries from public employers about providing PERS retirement plan coverage to their employees. These inquiries can come from existing employers who are considering switching retirement plan coverage to PERS, or from newly formed public employers (like special districts or public corporations) that want to offer PERS coverage.

ORS 238A.070 provide some guidance and limitations on certain issues related to public employers participating in OPSRP. This rule elaborates on those areas and also discusses providing coverage under the PERS Chapter 238 Program for employees who were already covered under that program but coming to work for the newly participating employer.

SUMMARY OF RULE AND POLICY ISSUES

OAR 459-070-0050 is a new rule that would address the issues arising from a new employer beginning participation in OPSRP and/or the PERS Chapter 238 Program.

Policy Issue: *Under what circumstances should PERS require new public employers to enter the system?*

Section (1) provides that this rule applies to any public employer that does not already provide OPSRP or PERS Chapter 238 Program benefits and limits those benefits only to service performed on or after the employer's participation becomes effective, echoing a restriction from the statute on prior service.

A newly participating employer must provide an application to participate. Section (2) specifies the minimum application contents, such as proof that the employer's governing board decided to participate; a designated contact person; whether the employer will provide coverage for one or more designated groups of employees or for all employees; and which plans the employer will participate in (OPSRP Pension Program, the OPSRP IAP, or both, and PERS Chapter 238

Program for qualifying employees). Section (3) provides that if the employer elects to participate in the PERS Chapter 238 Program for qualifying employees, and the employer also elects to participate in the State and Local Government Rate Pool (SLGRP) for those employees, the employer shall provide PERS with a resolution electing to participate in the SLGRP before the parties sign the coverage agreement.

Section (4) provides that PERS will prepare a coverage agreement based on the application and that coverage will not commence before all parties, including the PERS Board, execute that agreement. Section (5) details some information PERS may require, including establishing qualification as a public employer. Section (6) goes on to reiterate no credit is available for prior coverage, except for very limited circumstances for PERS Chapter 238 Program employees if the coverage agreement allows. Section (7) clarifies status of employees when their participation begins, particularly for PERS Chapter 238 members in the OPSRP IAP.

LEGAL REVIEW

This proposed rule was submitted to Richard Gilbert of Orrick, Herrington for legal review. His recommended changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

The comment period ended on Monday, December 20, 2004. PERS held a public hearing for this rule on November 23, 2004 and no one testified or provided comment on this rule.

In a written comment dated December 13, 2004, Greg Hartman pointed out that this rule and OAR 459-080-0050 could be interpreted to preclude retroactive contributions if an employer does not submit their agreement to PERS in a timely manner. Mr. Hartman urges some flexibility to allow an employer to fulfill their commitments even if they don't submit their paperwork in a timely manner.

This rule sets out an employer's requirements to participate in any PERS plan. That participation should be coordinated so all its elements (contributions, reports, records) are executable when necessary. While the rule as written does not necessarily preclude retroactivity, staff does not believe that adding language to support that practice would be a good policy decision. Especially as to employers joining a new plan or new segments of a plan, staff would not want the rule to imply or state that "after the fact" arrangements are preferable. Allowing an employer to provide plan coverage retroactively has created administrative challenges and sets up backlogs almost from the inception of an employer's participation.

Those cautions having been stated, if the due diligence and efforts of all parties were not able to result in an employer being added to the system before their participation went "live," staff would of course endeavor to remedy that situation within its system's limitations. Depending on the time lag involved, employers would need to submit wage and contribution reports for all the prior periods and complications would arise as to intervening earnings, losses, or costs that should have been credited or incurred. For these reasons, staff does not support amending the rule to explicitly provide a mechanism for employers to retroactively join any of the PERS plans.

IMPACT

Mandatory: No.

Impact: Provides clarity to employers about the process to follow to commence participation in the PERS retirement plans.

Cost: None

RULEMAKING TIMELINE

October 12, 2004	Notice of Rulemaking to the PERS Board.
October 15, 2004	Staff began the rulemaking process. Notice of Rulemaking filed with the Secretary of State.
October 18, 2004	Notice mailed to legislators, interested parties and stakeholders. Public comment period began.
November 1, 2004	<i>Oregon Bulletin</i> published the Notice.
November 23, 2004	Rulemaking hearing held at PERS headquarters in Tigard.
December 10, 2004	First reading of the proposed rule.
December 20, 2004	Public comment period ended at 5:00 PM
January 25, 2005	Rule is presented to the PERS Board for adoption.

BOARD OPTIONS

1. Make a motion to “adopt the permanent rule modifications to OAR 459-070-0050 as presented.”
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 needs to be changed to clarify processes for employers to begin participating in any PERS retirement program.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if they determine that a change is warranted.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING DATE	1-25-05
AGENDA ITEM	D.3.c. Employer Participation

CHAPTER 459

DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

OAR 459-070-0050 is added as follows:

1 **459-070-0050**

2

3 **Participation of Public Employers**

4 (1) Any public employer that does not already provide benefits under the Oregon
5 Public Service Retirement Plan (“OPSRP”) may apply to participate in the OPSRP
6 Pension Program, the OPSRP IAP, or both, only for service by eligible employees
7 performed on or after the date the employer’s participation becomes effective.

8 (2) The application to participate in either or both OPSRP programs must contain,
9 at a minimum, the following information:

10 (a) A true copy of the resolution, motion or other official action by which the
11 employer’s governing board or equivalent decided to apply to participate;

12 (b) A designated person or position authorized to represent the employer on PERS
13 matters;

14 (c) Whether the employer will participate for one or more designated groups of
15 employees or for all employees. If the employer already provides coverage for some but
16 not all employees, the application must designate which additional group(s) will be added
17 to the program or programs;

18 (d) Whether the employer will offer the OPSRP Pension Program, the OPSRP
19 IAP, or both;

1 (e) Whether the employer will offer the PERS Chapter 238 plan to qualifying
2 employees that it currently employs or may hire in the future;

3 (f) If the employer elects to participate in the PERS Chapter 238 plan for
4 qualifying employees, whether the employer will provide the unused sick leave benefit
5 for those employees; and

6 (g) The date on which the employer proposes to commence coverage under the
7 specified program or programs.

8 (3) If the employer elects to participate in the PERS Chapter 238 plan for
9 qualifying employees, and the employer also elects to participate in the State and Local
10 Government Rate Pool (“SLGRP”) for those employees, the employer shall provide
11 PERS with a resolution electing to participate in the SLGRP before the coverage
12 agreement is signed by the parties.

13 (4) Upon receipt of the properly completed application, PERS will prepare a
14 coverage agreement, which will be forwarded to the person designated by the employer
15 under (2)(b) above. In no event will coverage commence before the agreement has been
16 executed on behalf of the employer’s governing body (or equivalent), the PERS
17 Executive Director, and the PERS Board.

18 (5) The employer will provide any and all information requested by PERS to
19 ensure that the employer is eligible to participate, including whatever information PERS
20 deems necessary to determine that the employer qualifies as a public employer. Factors to
21 be addressed in that determination include but are not limited to:

1 (a) If the employer is a public corporation, whether a governmental entity retains
2 essential control over the employer's activities, with delegated powers for administration
3 or discharge of public duties;

4 (b) Whether a state or local governmental body controls management of the
5 employer;

6 (c) If the employer is a public corporation, whether it generates profits for private
7 investors or stockholders;

8 (d) Where the employer derives its funding for operations;

9 (e) Whether the employer performs a governmental function; and

10 (f) Any information deemed necessary to determine that the employer's coverage
11 will not adversely affect PERS' status as a qualified governmental retirement plan under
12 the Internal Revenue Code.

13 (6) Unless the coverage agreement specifically provides otherwise, no retirement
14 or service credit will be provided under OPSRP or the PERS Chapter 238 plan for the
15 service performed with that employer prior to the employer becoming a participating
16 employer, including service towards the member's six-month waiting period.

17 (7) An employee who is employed in a qualifying position with a newly
18 participating employer and who had previously established membership in the PERS
19 system as of August 29, 2003, shall be an active member of the applicable OPSRP or
20 PERS Chapter 238 program(s) as of the coverage agreement effective date, to the extent
21 eligible under OAR 459-075-0010 and 459-080-0010.

22 Stat. Auth: ORS 238A.450
23 Stats. Implemented: ORS 238A.070



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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MEETING	1-25-05
DATE	
AGENDA	D.3.d.
ITEM	Employer IAP Contributions

January 11, 2005

TO: Members of the PERS Board
Key Reviewer: Tom Grimsley

FROM: Steven Patrick Rodeman, Administrator, PPLAG

SUBJECT: Adoption of OAR 459-080-0050, *IAP Employer Account Contributions*

OVERVIEW

- **Action:** Adopt OAR 459-080-0050.
- **Reason:** The OPSRP Individual Account Program (“IAP”) includes an option for participating employers to contribute an additional one to six percent of salary to an employer account for some or all of its employees. This rule outlines the process for employers to begin contributions to those accounts if they so choose.
- **Policy Issues:**
 1. Should PERS require that employers submit an approved agreement before allowing contributions to commence?
 2. Employers are allowed to agree only to make these optional contributions for “specific groups of employees.” Should the rule further define what types of groups the employer could establish?
 3. How should earnings, losses, and fees on ineligible or erroneous contributions be treated?

SUMMARY OF RULE AND POLICY ISSUES

The OPSRP IAP statutes (ORS 238A.340) provide an optional account where employers can contribute from one to six percent of an employee’s salary. This optional account is provided by employer agreement, which may be established by policy or collective bargaining. The proposed rule covers specific issues related to the establishment and maintenance of these accounts.

Policy Issues:

1. *Should PERS require that employers submit an agreement before allowing contributions to commence?*

Employer accounts are established pursuant to a written agreement. While PERS is not a party to that agreement, that document should contain the information PERS will need to administer the accounts, such as the commencement date and the percentage of salary to be contributed. Section (1) of the draft rule requires employers to provide this agreement to PERS before they can start making contributions.

The existence of an agreement is a clear condition precedent in the statute to making these optional contributions. If contributions are made without a submitted agreement,

PERS won't know whether the contributions were made erroneously or intentionally, and cannot process them accordingly.

Staff reports that the jClarety system will be programmed to “turn” this functionality “on” or “off” so the computer will flag employers reporting these types of contributions without an established agreement, making administration of this rule feasible.

2. *Employers are allowed to agree only to make these optional contributions for “specific groups of employees.” Should the rule further define what types of groups the employer can establish?*

The statute contains no guidance on whether or how employers can distinguish which groups may receive these optional contributions. Any attempt by PERS to impose parameters would involve speculation on our part of what would be appropriate groupings for employers, and we have no practical way to know that. Also, establishing parameters implies that PERS will verify which employees fall within them, another administrative burden we don't necessarily need to assume. Section (2) of the draft rule clarifies that employers will establish the groups and PERS will process the contributions received so long as the person receiving contributions is an IAP member. The rule language has been modified from the original proposal to clarify that maintaining lists of covered groups is the sole responsibility of the employer, and PERS will rely on the employer's records to make such determinations.

3. *How should earnings, losses, and fees on ineligible or erroneous contributions be treated?*

Employers who elect to make these contributions may need to have some of them returned for two reasons: (1) the employee is not or fails to become or remain an IAP member (which we'll term “ineligible contributions.”) or (2) the employer makes the contributions for an employee who is not within the group(s) they identified to receive them (which we'll term “erroneous contributions”).

Section (3) of the draft rule deals with ineligible contributions consistently with regular IAP contributions. Employees may ultimately fail to become eligible IAP members because they don't complete their 600 hours in a calendar year. Contributions made before that determination is final are returned under OAR 459-080-0150(5).

Section (4) of the draft rule addresses erroneous contributions. Employers can err by making employer contributions for people that were not supposed to receive them. Staff recommends that employers should not be shielded from the consequence of their error by guaranteeing a return of 100% of the contribution amount, which would leave PERS to absorb investment losses or fees. The draft rule places the consequence of the employer's error on their shoulders. As these are the employer's funds (remember, these are optional contributions), only the employer will risk losing from their error; the member won't suffer a consequence as they were not entitled to the contributions to begin with.

Section (5) was added to this version of the rule to clarify that whether a contribution is erroneous (made to someone not in the group or not made to someone who was in the group) will be based on the employer's records. PERS will rely on the employer's wage

and contribution reports, and discrepancies should be resolved between the employee and employer, who would then submit an amended report as appropriate.

LEGAL REVIEW

This proposed rule was submitted to Richard Gilbert of Orrick, Herrington for legal review. His recommended changes are incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

The comment period ends on Monday, December 20, 2004 and PERS received one public comment. PERS held a public hearing for this rule on November 23, 2004 and no one testified or provided comment on this rule.

In a written comment dated December 13, 2004, Greg Hartman pointed out that this rule and OAR 459-070-0050 could be interpreted to preclude retroactive contributions if an employer does not submit their agreement to PERS in a timely manner. Mr. Hartman urges some flexibility to allow an employer to fulfill their commitments even if they don't submit their paperwork in a timely manner.

The rule was principally intended to preclude employers from making contributions until the employer sufficiently notified PERS that they want to begin making them. An employer that wants to effectuate retroactive contributions would either need to submit revised wage and contribution reports for the prior periods or include lump-sum contributions in the current period to cover the previous salary. PERS could accommodate either method once the employer's functionality to make these contributions is "turned on." Note that these contributions will not begin to incur earnings or losses until the dollars and associated data are transferred to PERS, as per OAR 459-080-0200.

IMPACT

Mandatory: Yes. The statute provides employers this option and the agency should be prepared to process them when they begin to occur.

Impact: Provides clarity to employers about the process to follow to commence employer account contributions. Establishes expectations on earnings or losses on the contributions made for ineligible employees.

Costs: None

RULEMAKING TIMELINE

October 12, 2004	Notice of Rulemaking to the PERS Board.
October 15, 2004	Staff begins the rulemaking process. Notice of Rulemaking filed with the Secretary of State.
October 18, 2004	Notice mailed to legislators, interested parties and stakeholders. Public comment period begins.
November 1, 2004	<i>Oregon Bulletin</i> published the Notice.
November 23, 2004	Rulemaking hearing held at PERS headquarters in Tigard.
December 10, 2004	First reading of the proposed rule.
December 20, 2004	Public comment period ended at 5:00 PM
January 25, 2005	Rule is presented to the PERS Board for adoption, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

1. Make a motion to “adopt the permanent rule modifications to OAR 459-080-0050 as presented.”
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 needs to be changed to clarify statutory provisions of OPSRP.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if they determine that a change is warranted.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD

MEETING	1-25-05
DATE	
AGENDA	D.3.d.
ITEM	Employer IAP Contributions

CHAPTER 459
DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM

OADR 459-080-0050 is added as follows:

1 **459-080-0050**

2 **IAP Employer Account Contributions**

3 (1) Employers shall not begin employer contributions under ORS 238A.340 to the
4 employer account of a member under the OPSRP Individual Account Program (“IAP”)
5 until the agreement by which those contributions will be made has been provided to
6 PERS. The agreement must, at a minimum, provide the following information:

7 (a) The date those contributions are to commence; and

8 (b) The percentage of salary to be contributed.

9 (2) ORS 238A.340(1) allows participating public employers to agree to provide
10 these employer contributions for specific groups of employees. The employer will be
11 solely responsible for reporting which groups of employees are eligible for the employer
12 contributions, so long as those employees are eligible for membership under ORS
13 238A.300 and OADR 459-080-0010. PERS will rely on the employer’s records to
14 determine whether an employee was in a group that should have received employer
15 contributions.

16 (3) Employer contributions made on behalf of a person who fails to meet the
17 standards for IAP employee contributions under OADR 459-080-0150 will be returned
18 pursuant to section (5) of that rule.

19 (4) Employer contributions made in error for an employee who is not entitled to
20 those contributions under the employer’s agreement will be returned less any fees or

1 losses incurred since the contributions were submitted. Any earnings on these
2 contributions will be credited to the forfeiture account established under OAR 459-080-
3 0150.

4 (5) Whether contributions were erroneous will be based upon the employer's
5 records as reported to PERS.

6 Stat. Auth: ORS 238A.450

7 Stats. Implemented: ORS 238A.340



Oregon

Theodore R. Kulongoski, Governor

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MEETING	1-25-05
DATE	
AGENDA	D.4.
ITEM	Legislative Update

January 18, 2005

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

PERS staff will provide an update regarding current legislative issues at each meeting of the Board through conclusion of the 2005 session.

PERS BILLS

As of January 18, 2005, fifteen bills have been introduced regarding PERS:

Bill Numbers	Basic Concept
SB 28	Clarifies maximum amount of outstanding indebtedness that applies to limited tax bonds issued to finance pension liabilities.
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 Oregon Public Service Retirement Plan 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 disability allowance. Provides that person who was inactive member on August 28, 2003, does not have break in service upon return to employment if person was on leave authorized by law or by employer and both person and employer anticipated that person would return to employment with employer upon completion of period of leave. Declares emergency, effective on passage.
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 Oregon Public Service Retirement Plan by person who leaves public

	<p>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.</p> <p>Declares emergency, effective on passage.</p>
SB 271	<p>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. Modifies calculation of Plan B service retirement allowance. Increases maximum number of years of service using 3.75 multiplier under formula from 16 to 18.</p> <p>Declares emergency, effective on passage.</p>
SB 272	<p>Directs board of governors of Oregon State Bar to establish deadline for filing nominating petitions for positions on board. Prohibits employee of bar from electing to become member of PERS after December 31, 2005. Authorizes bar to provide retirement plan for employees of bar who do not receive benefits from PERS.</p>
SB 302	<p>Limits number of terms to which member of Oregon Investment Council may be appointed. Limits number of years a chairperson may serve. Requires sound recording to be made of every meeting. Requires monthly meetings.</p>
HB 2104	<p>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. Establishes procedures for employees who are members of Oregon Public Service Retirement Plan and who elect to become members of Optional Retirement Plan.</p> <p>Declares emergency, effective on passage.</p>
HB 2189	<p>Provides that salary used to determine benefits of members of PERS includes wages of deceased member paid to spouse or dependent children.</p> <p>Declares emergency, effective on passage.</p>
HB 5059	<p>PERS Budget Bill 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.</p> <p>Declares emergency, effective July 1, 2005.</p>
HB 5060	<p>PERS Fee Bill approves new or increased fees for request of additional benefit estimates adopted by Public Employees Retirement Board.</p>

	Declares emergency, effective July 1, 2005.
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The five PERS Board sponsored bills have been assigned to the Senate Rules committee, chaired by Senator Kate Brown, for hearing. No date has been set for those hearings.

LOBBYING

As the session gets underway, it is also important for PERS Board members to be aware of the need for the agency to track not only its own time when involved in lobbying activities, but the time of individual Board members as well.

Attached is a 1998 letter from the Attorney General that outlines many of the areas covered by state laws pertaining to lobbying. Keith Kutler, Department of Justice, will be prepared to provide some brief comments regarding the issue of lobbying as it impacts PERS Board members at the Board's January 25th meeting.



DEPARTMENT OF JUSTICE

1162 Court Street NE
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Salem, Oregon 97310-0506
Telephone: (503) 378-4400
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August 7, 1998

No. 8259

This opinion is issued in response to questions from Chris Dearth, Legislative Director, Office of the Governor, concerning application of the state lobbying regulations, ORS 171.725 to 171.785, to certain activities by state employees.

FIRST QUESTION PRESENTED

Are any of the following activities by a state employee "lobbying" for purposes of ORS 171.725 to 171.785?

- a. Creating and preparing testimony to be presented at a legislative hearing that takes a position on a legislative measure?^{1/}
- b. Waiting to testify at a legislative hearing in support of or opposition to a legislative measure?
- c. Testifying at a legislative hearing in support of or opposition to a legislative measure?
- d. Discussing a legislative measure with a legislator in the legislator's office, when the discussion includes not only information, but reasons why the agency employee, representing the position of the Governor, thinks it is a good or bad idea?
- e. Developing legislative measures, including holding or attending stakeholder meetings for approval or compromise during the interim, which may or may not result in pre-session or session filing of a legislative measure?

- f. Pre-session work on agency budgets to be presented to the legislature as appropriation bills?
- g. Pre-session meetings with stakeholders discussing the proposed agency budget?
- h. Session testimony stating support of the agency budget?

ANSWER GIVEN

- a. Creating and preparing testimony that takes a position on a legislative measure is not "lobbying."
- b. Waiting to testify at a legislative hearing in support of or opposition to a legislative measure is not "lobbying" so long as the state employee does not engage in any activities that would be "lobbying" during the waiting period.
- c. Testifying at a legislative hearing in support of or opposition to a legislative measure is "lobbying."
- d. Discussing a legislative measure with a legislator in the legislator's office, when the discussion includes not only information, but reasons why the agency employee, representing the position of the Governor, thinks it is a good or bad idea is "lobbying."
- e. The activities of state employees in developing legislative measures are not "lobbying" if those activities are internal to the agency and do not involve communications with others, except for obtaining input to the agency. If agency employees hold or attend stakeholder meetings for approval or compromise during the interim, the employees are "lobbying" to the extent that during such meetings they communicate with legislative officials to attempt to influence sponsorship, voting or other legislative action on the measure, or solicit the stakeholders to do so.
- f. Pre-session work on agency budgets to be presented to the legislature as appropriation bills is not "lobbying" so long as there is no communication with legislative officials to influence or attempt to influence legislative action on the budget or solicitation of others to attempt to influence legislative action on the budget.
- g. State employees' pre-session meetings with stakeholders discussing the proposed agency budget are "lobbying" if the employees solicit the stakeholders to attempt to influence legislative action on the budget, whether or not any of the stakeholders so solicited carried through with any attempt to influence legislative action.
- h. Presentation of the budget to the legislature and testimony in support of that budget by state employees is "lobbying."

SECOND QUESTION PRESENTED

For purposes of the answers to the first question, would it make a difference if:

- a. The individual is registered as a lobbyist?
- b. The activity is performed by agency support staff at the request of the agency's registered lobbyist?
- c. The testimony or activity is invited or requested by a legislator or the legislator's aide?
- d. The testimony or activity is neither in support of or opposition to a legislative measure, but merely provides information?

ANSWER GIVEN

Our answers to the first question would not change merely because the individual is registered as a lobbyist, the activity is performed by agency support staff at the request of the agency's registered lobbyist, or the testimony or activity is invited or requested by a legislator or the legislator's aide. If the testimony or activity described in the first question is neither in support of or opposition to a legislative measure, but merely provides information, the testimony or activity would not be "lobbying."

THIRD QUESTION PRESENTED

If any of the activities identified in the first question are "lobbying," must they be reported? If so, by whom -- the agency staff person performing the activity, the agency's registered lobbyist, the employer?

ANSWER GIVEN

Unless exempt under ORS 171.735 from the reporting requirements, ORS 171.745 requires any state employee who engages in any lobbying activities to report, at regular intervals, all moneys expended by that employee "for the purpose of lobbying." If a state agency employs a lobbyist who was registered or required to register with the Government Standards and Practices Commission (GSPC), ORS 171.750 requires the agency to report annually all moneys expended "for lobbying activities" in behalf of the state agency. See the discussion below for an explanation of how these requirements apply in the situations identified in the first question.

DISCUSSION

I. Lobbying

In 1973, the Oregon Legislative Assembly enacted ORS 171.725 to 171.785, finding that

to preserve and maintain the integrity of the legislative process, it is necessary that the identity, expenditures and activities of certain persons *who engage in efforts to persuade members of the Legislative Assembly* or the executive branch to take specific actions, either by direct communication to such officials or by solicitation of others to engage in such efforts, be publicly and regularly disclosed.

ORS 171.730 (emphasis added). To accomplish this purpose, ORS 171.725 to 171.785 require "lobbyists" to register with the Oregon Government Standards and Practices Commission (GSPC), ORS 171.740, and to file periodic reports detailing their lobbying expenditures, ORS 171.745.

For purposes of these statutes, a "lobbyist" is:

(a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.

(b) Any person not otherwise subject to paragraph (a) of this subsection who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.

(c) *Any public official who lobbies.*

ORS 171.725(8) (emphasis added). Public officials were expressly added to the definition of "lobbyist" in 1975. Or Laws 1975, ch 747. A "public official" is defined as "any member or member-elect of any public agency and any member of the staff or an employee thereof." ORS 171.725(10). A public agency is "a commission, board, agency or other governmental body." ORS 171.725(9).

"Lobbying" is defined as:

influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials.

ORS 171.725(7). "Legislative action" includes the introducing of, or testifying, voting or any other official action on any measure or other matter that may be the subject of action by either house of the Legislative Assembly, or any legislative committee. ORS 171.725(4).²¹

We are asked whether different types of activities by a state employee would be "lobbying" under the above statutes. To answer these questions, we must interpret the statutory definition of "lobbying."

In interpreting a statute, our goal is to discern the intent of the legislature. ORS 174.020; *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). We first look at the text and context of the statute, which includes other provisions of the same statute and related statutes. In so doing, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, such as "words of common usage typically should be given their plain, natural, and ordinary meaning." *Id.* at 611. If the legislative intent is clear from the text and context, the search ends there. Only if the legislative intent is not clear from the text and context of the statute will we look to the legislative history to attempt to discern that intent. *Id.* at 611-612. If, after considering text, context and legislative history, the intent of the legislature remains unclear, we may resort to general maxims of statutory construction to resolve any remaining uncertainty as to the meaning of the statute. *Id.* at 612.

The primary element of "lobbying" is "influencing, or attempting to influence, legislative action." ORS 171.725(7). The terms "influencing" or "attempting to influence" are not defined in the lobbying statutes. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (unabridged 1993) (*hereinafter* WEBSTER'S) defines the verb "influence" as:

1 : to affect or alter the conduct, thought or character of by indirect or intangible means * * * 2 : to have an effect on the condition or development of : determine partially * * * .

Id. at 1160. None of the dictionary definitions of the term "influence" in either its verb or noun sense includes any element that the conduct of influence be limited to advocacy or efforts to persuade. Arguably, providing "neutral" information to legislative officials could be "lobbying" if it influences legislative action, even if the person providing the information takes no position on a particular legislative action. Further insight into whether the legislature intended this very broad interpretation of the term "influence" may be found in the remainder of the statutory definition of "lobbying."

"Lobbying" includes not only "influencing" but also "attempting to influence" legislative action. The term "attempt" means "to make an effort to do, accomplish, solve, or effect." WEBSTER'S, *supra*, at 140. "Attempting to influence legislative action" inherently requires some intent to accomplish or effect a certain result, which strongly suggests that advocating a particular position must be an element not only of the attempt, but also of "influencing." Thus, the legislature may not have intended to include in "lobbying" merely providing neutral information to legislators when the person making that communication takes no position on the legislative action.

At the first level of statutory interpretation, we consider not only the text of the statute, but also its context. ORS 171.730 expresses the legislative purpose for the lobbying statutes, i.e., to regulate "certain persons who engage in efforts to persuade members of the

Legislative Assembly * * * to take specific actions." Relying on this purpose statement, this office previously concluded that the Oregon Council on Crime and Delinquency did not engage in "lobbying" by publishing "information bulletins" on juvenile justice issues because those bulletins did not advocate "either the passage or defeat of any particular bill." Letter of Advice dated April 10, 1979, to Keith A. Stubblefield, Administrator, Law Enforcement Council of Oregon, (OP 4617), at 3.

In light of the purpose statement in ORS 171.730, we believe that it is reasonable to conclude that "lobbying" does not include merely providing information to legislators without taking a position either in support of or opposition to specific legislative action. Because we cannot say that this is the only plausible interpretation of the statute, however, we turn to legislative history. *See State v. Allison*, 143 Or App 241, 251, 923 P2d 1224 (1996),

Before 1973, the Oregon statutes provided minimal regulation of persons who engaged in "lobbying," which was defined as "influencing, or attempting to influence, the passage or defeat of a measure by the Legislative Assembly or the approval or veto thereof by the Governor or attempting to influence other executive branch action, or inaction, regarding passage, defeat or veto of legislation." ORS 171.755(1) (1971). When ORS 171.725 to 171.825 were enacted in 1973, David B. Frohnmayer testified on behalf of Common Cause, at whose request the legislation was introduced, about "deficiencies" in Oregon's existing lobbying law. One of those deficiencies was that "the existing law could exempt informational lobbying which, of course, is one of the major loopholes in the federal lobbying Act." Joint Special Committee on Professional Responsibility (HB 2530), May 7, 1973, tape 7, side 1 at 380. This statement corresponded to item nine in the Statement of Common Cause Oregon Policy Advisory Committee, which further described that "loophole" as follows:

[E]xpenditures and efforts made in attempts to 'inform' as opposed to 'influence' need not be reported. The Oregon law defines lobbying in such a way that it appears to refer exclusively to influence or advocacy situations.

Thus, the proponents of the legislation apparently understood the then-existing definition of "lobbying" in ORS 171.755(1) (1971) (i.e., "influencing, or attempting to influence") to exclude providing neutral information to legislators. Mr. Frohnmayer was asked by the committee co-chairs to provide a definition of "lobbying," as the proposed legislation did not contain one.

On May 14, 1973, Dick Allen, representing the Capitol Club, testified about the lack of a definition of "lobbying" in the bill. Mr. Allen stated that there was an existing definition of "lobbying" in ORS 171.755 (1971),

which we think is pretty good. It seems to take care of the usual and the usually thought of definition and we think it is concise enough to take in most of what most of us think of as lobbying.

Testimony of Dick Allen, Joint Special Committee on Professional Responsibility, House Members (HB 2530), May 14, 1973, tape 9, side 1 at 224. Mr. Frohnmayer then noted that

he felt a separate definition of "lobbying" was unnecessary, but that he had prepared a memorandum for the committee with various definitions of lobbying from other states. In this memorandum, Mr. Frohnmayer recommended that the legislation define lobbying as "influence directed at public decision makers," giving as an example those statutes that include

virtually any *influence* situation in which legislators and other parties are involved. The Wisconsin Act, specific in most respects, typically declares that lobbying is

" . . . the practice of *promoting or opposing* the introduction or enactment of legislation before the legislature, or the legislative committees, or the members thereof."

While other statutes in this group do not always define "lobbying" or "lobbyists" in quite these terms, their applicability is essentially the same. Thus Virginia does not define lobbying, but it defines "legislative counsel and agent" as

" . . . any person employed *to promote or oppose* in any manner the passage by the General Assembly of any legislation."

Memorandum from David B. Frohnmayer to Senator Jack D. Ripper and Representative Robert C. Ingalls, Joint Special Committee on Professional Responsibility, May 14, 1973, at p. 3 (emphasis added). Mr. Frohnmayer then stated that although he had some technical adjustments to suggest, the definition of lobbying provided by Dick Allen, which he described as "the intent to influence the passage or defeat of a measure," was a good starting point. Testimony of David B. Frohnmayer, Joint Special Committee on Professional Responsibility, House Members (HB 2530), May 14, 1973, tape 9, side 1 at 235.

Ultimately, the definition of "lobbying" in the 1973 legislation, codified as ORS 171.725(4), differed from the previous definition in ORS 171.755(1) only by the addition of the language shown below as bold and the deletion of the language in brackets.

"Lobbying" means influencing, or attempting to influence, by **direct communication**, the passage or defeat of [*a measure by the Legislative Assembly*] **legislative action** or the approval or veto thereof by the Governor or attempting to influence other executive branch action, or inaction regarding passage, defeat or veto of legislative action.

Or Laws 1973, ch 802, § 3(4). In effect, the "loophole" identified by Common Cause in the pre-1973 definition of "lobbying" -- that it did not cover efforts to "inform" -- was not fixed by the 1973 legislation. Based on the above history, we believe that, when enacted in 1973, that definition was not intended to include neutral information provided to legislators, but only communications that take a position on the passage or defeat of legislative action.

In 1975, "public officials" were expressly added to the definition of lobbyists. Or Laws 1975, ch 747, § 1. During the debate over whether public officials should be included, the issue of what was considered "lobbying" again came up. John Richardson, Assistant to the Chancellor of Higher Education, suggested that if public officials were included, and the Department of Agriculture then asked an Oregon State University (OSU) professor for assistance in preparing legislation, the OSU professor "would have to register." Testimony of John Richardson, House Elections Committee (HB 2757), April 15, 1975, tape 15, side 1 at 222. Representative Earl Blumenauer responded:

I would differ with you on your interpretation * * * . He may have been contacted because of his expertise to draft legislation, but he's not really up here selling it unless he's really coming up here and testifying and trying to push a particular idea through the legislature. I would think that he still remains an employee of the institution and not really a lobbyist. But when, I think, people from some of these institutions come and they say, "we've got a point of view and we would want to tell you about it -- that affects our budget," I think that's very much the same as any other interest group that's telling their story.

Testimony of Rep. Blumenauer, *id.*, at 224. No one controverted this point of view.

The resulting legislation significantly simplified the definition of "lobbying" to provide merely: "'Lobbying' means influencing, or attempting to influence, legislative action." Or Laws 1975, ch 747, § 1(6). The former references to "direct communication" and to the "passage or defeat" of legislative action were deleted.

That definition remained in the statute until 1987 when a bill was introduced at the request of the Government Ethics Commission to clarify the meaning of the phrase "attempting to influence legislative action," which the Commission felt was ambiguous after the phrase "by direct communication" was deleted from the definition of "lobbying" in 1975. *See Minutes, Senate Judiciary Committee (HB 2171-A), May 26, 1987, Exhibit A.*³¹ There was no discussion of whether or not "influencing" or "attempting to influence" would include providing only neutral information to a legislator. Ultimately, the words shown in bold below were added to the end of the definition:

"Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials.

Or Laws 1987, ch 566, § 1.

Based on the text, context and legislative history of the definition of "lobbying" in ORS 171.725, we conclude that for purposes of ORS 171.725 to 171.785, "lobbying" does not include merely providing information to legislators without taking a position either in support of or opposition to specific legislative action. Taking a position in support of or opposition to specific legislative action includes not only seeking a legislator's vote on the merits of a legislative measure, but also suggesting or seeking sponsorship, testimony, debate or any

other official action on the measure or on any amendment (whether "technical" or otherwise) to the measure, or an appointment, report, or any other matter that may be the subject of action by the legislature or a legislative committee. See ORS 171.725(5).

With this interpretation of "lobbying" in mind, we turn to the specific activities by state employees identified in the first question.

A. Creating and Preparing Testimony for Legislative Hearing

We are first asked whether creating and preparing testimony to be presented at a legislative hearing is "lobbying" if the testimony takes a position on a legislative measure. The relevant portion of the definition of "lobbying" is "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials." ORS 171.725(7).

Creating and preparing the testimony is not by itself a communication "with" a legislative official. Unless the testimony being prepared is actually presented to a legislative official, merely creating and preparing testimony cannot be "lobbying." When such testimony is presented, however, the question becomes whether the acts of creating and preparing the testimony are integral to the testimony and therefore an inseparable part of the "communication" with legislative officials.

The term "communication" can mean either "the act or action of imparting or transmitting" or the "information communicated." WEBSTER'S, *supra*, at 460. We believe that the legislature intended "lobbying" to include only the acts of imparting or transmitting the testimony to legislative officials and not to encompass the acts of creating and preparing the testimony.

"Lobbying" is accomplished through communication "with" legislative officials. Because the acts of creating and preparing testimony often are done by someone other than the person presenting the testimony, those acts are clearly separable from any contact "with" legislative officials. Moreover, the legislative purpose expressed in ORS 171.730 is to regulate the activities of "certain persons who engage in efforts to persuade members of the Legislative Assembly * * * either by *direct communication* to such officials or by solicitation of others to engage in such efforts." (Emphasis added.) Thus, based on its text and context, the definition of "lobbying" appears to be limited to acts of directly communicating with someone, not the acts of preparing the communication.

Because we cannot say that this is the only plausible interpretation, however, we also consider legislative history. One of the bills introduced by the Oregon Government Ethics Commission during the 1987 legislative session would have added "research and preparation of testimony or other materials related to legislative action" to the definition of "lobbying." HB 2169 (1987). This language raised concerns that it would include many people in a law firm or lobbyist's office "who have never met a legislator * * * [but] have been preparing testimony, doing research and putting other materials related to legislative action together * * * much of * * * which will get tossed out, maybe the whole thing will." Testimony of Roger Martin, Capitol Club Ethics Committee, House Committee on State and Federal

Affairs (HB 2169), April 6, 1987, tape 70, side A at 180-200. *See also* Testimony of Representative Rón Cease, *id.* at 232 ("[I]n response to what Roger has said, if you had three or four staff people in your office that were involved in preparing testimony, this presumably would cover those people, and I don't know why that makes any sense at all."). The Ethics Commission already had proposed an amendment to delete that provision regarding research and preparation of testimony, which Betty Reynolds, Executive Director of the Ethics Commission, described as "overly broad." Testimony of Betty Reynolds, *id.* at tape 71, side A at 140, 307. The amendment was passed unanimously (one member excused). Minutes, House Committee on State and Federal Affairs (HB 2169), April 6, 1987, at 7.

We recognize that the legislature's failure to include "research and preparation of testimony" in the definition of "lobbying" is of dubious value in interpreting legislative intent. *See Kola Tepee, Inc. v. Marion County*, 99 Or App 481, 484, 782 P2d 955 (1989), *rev den* 309 Or 441, 789 P2d 5 (1990) ("The defeat of an amendment to existing law, even if it directly concerns a substantive aspect of a law, is of dubious value, if any at all, in determining legislative intent."); *see also Oregon State Emp. Assn. v. Workers' Compensation Dept.*, 51 Or App 55, 624 P2d 1078, *rev den OSEA v. Workers' Compensation Dept.*, 291 Or 9, 631 P2d 340 (1981). But the legislature not only rejected the proposal to include the preparation of testimony in the definition of "lobbying," the legislature instead added language clarifying that "influencing or attempting to influence legislative action" was only "lobbying" when it was done "through oral or written communication with legislative officials." This new language addressed the ambiguity created in 1975 when the phrase "by direct communication" was deleted from the definition of "lobbying," which is what the Ethics Commission sought to accomplish. *See* Minutes, House Committee on State and Federal Affairs (HB 2169), April 6, 1987, Exhibit A at 1. The legislature resolved the ambiguity as to whether research and preparation of testimony was "lobbying" not only by refusing to add those acts to the definition, but also by limiting the influence aspect of "lobbying" to communication "with" legislative officials.

Accordingly, based on text, context and legislative history, we conclude that the legislature intended to exclude from "lobbying" the acts of creating and preparing testimony, whether or not that testimony is actually presented to a legislative committee in support of or opposition to a particular legislative measure.

B. Waiting to Testify at a Public Hearing

We are next asked whether waiting to testify at a legislative hearing in support of or opposition to a legislative measure is "lobbying." Although waiting is often a necessary aspect of communicating with legislative officials, it is not an oral or written communication; nor does it express any position or attempt to affect any particular legislative action. Thus, time spent waiting to testify is not "lobbying," regardless of whether the testimony to be presented is "lobbying," so long as the employee does not engage in any activities that would be considered "lobbying" during the waiting period.

This conclusion is supported by legislative history. In one of the hearings on House Bill 2171 (1987), Senator William Frye, Chairman of the Senate Judiciary Committee, suggested that a lobbyist might sit in the audience of one of the committee meetings for about three days waiting to testify, to which Senator Jan Wyers responded: "That's not lobbying, Mr. Chairman. * * * [i]t's when you're trying to influence legislative action. It's when you're actually talking with somebody trying to -- ." This statement was supported by Betty Reynolds, Executive Director of the Ethics Commission, at whose request the legislation was introduced. Testimony, Senate Judiciary Committee (HB 2171), May 26, 1987, tape 158, side A at 145, 160.

During the time spent waiting to testify before a legislative committee, an individual may do more than just wait. Thus, if a state employee, while waiting to testify, communicates with a legislative official in a manner that influences or attempts to influence any legislative action, that would be "lobbying." "Lobbying" includes not only communication with legislative officials in support of or opposition to legislative action, but also "solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials." ORS 171.725(7). If the employee engages in any of these activities while waiting to testify, that also would be "lobbying."

C. Testimony at a Legislative Hearing

We are also asked whether testifying at a legislative hearing in support of or opposition to a legislative measure is "lobbying." Again, the relevant portion of the definition of "lobbying" is "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials." ORS 171.725(7).

Whether presented orally or in writing, testimony at a legislative hearing is a "communication with legislative officials." Because the testimony in the question posed takes a position in support of or opposition to a legislative measure, it is "lobbying." This would include testimony that proposes, supports or opposes amendments to a bill, no matter how minor or technical, as well as testimony that states support for or opposition to the bill in its entirety.

D. Private Discussions with Individual Legislators

We are next asked about a discussion with a legislator in the legislator's office, when the discussion includes the reasons why the state employee, representing the position of the Governor, thinks that a particular legislative measure is a good or bad idea. The definition of "lobbying" includes any attempt to influence legislative action through oral or written communication with "legislative officials." ORS 171.725(7). Although the term "legislative officials" is in the plural, we do not believe that the legislature intended to exclude from the definition of "lobbying," communications with individual legislators. See ORS 174.110(1) (as used in Oregon statutes, the singular may include the plural and the plural, the singular). Thus, we conclude that any attempt to influence legislative action through oral or written communication with one or more legislators is "lobbying."

Legislative officials include not only legislators, but also "any staff person, assistant or employee." ORS 171.725(6).^{4/} A private meeting with a legislator or staff person to express the position of the Governor on a particular legislative measure falls squarely within the definition of "lobbying." The statute draws no distinction based on the location where the communication with legislative officials takes place. If the meeting includes any communication in support of or opposition to the merits of the measure or suggests sponsorship, testimony, debate or any other official action on the measure or on any amendment (whether "technical" or otherwise) to the measure, then the state employee is "lobbying."

E. Developing Legislative Measures

We are asked about activities to develop legislative measures, including holding or attending stakeholder meetings for approval or compromise during the interim, that may or may not result in legislative bills. "Lobbying" includes three distinct acts: (1) "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials," (2) "solicitation of others to influence or attempt to influence legislative action," and (3) "attempting to obtain the good will of legislative officials." ORS 171.725(7).

We first consider activities by state employees to develop legislative measures that are internal to the agency and do not involve stakeholder meetings or other contacts with persons outside of the agency. An example might be when agency employees prepare a "legislative concept." Because these activities do not involve contact with persons outside of the agency, such activities are not communications "with" legislative officials, nor "solicitation of others," nor attempts to obtain the "good will" of legislative officials. Therefore, activities to develop legislative measures that are internal to the agency are not "lobbying." Even if other persons were to meet with agency employees to provide information or suggestions *to* the agency, those activities would not be "lobbying" so long as the agency employees are not soliciting others to influence or attempt to influence legislative action.

We next consider the participation of state employees in stakeholder meetings held for purposes of obtaining approval or compromise on proposals for legislative measures. If any legislative officials are present during such a meeting, state employees who participate in the meetings would likely be "lobbying." This would be the case if the employees make any oral statements or hand out written materials that encourage the sponsorship or passage of the proposed measure. Even if legislative officials are not present during the stakeholder meeting, "lobbying" may occur if, for instance, the employees request or urge members of the stakeholder group to communicate with legislative staff or interim committees about the group's work for the purpose of having the proposed measure sponsored, supported or passed (or contrary legislation defeated). Such actions by the state employees would be "solicitation of others to influence or attempt to influence legislative action" even if none of the stakeholders so solicited carried through with any attempt to influence legislative action.

In sum, whether or not a legislative measure is actually introduced during the session, the activities of state employees in developing a legislative measure is "lobbying" if the

employees communicate with legislative officials to attempt to influence the sponsorship, voting or other legislative action on the measure, or solicit others to do so.

F. Pre-session Work on Agency Budgets

The next three activities about which we are asked involve the preparation of agency budgets and their presentation to the legislature as appropriations bills. The budget process involves the efforts of many persons in state agencies, coordinating with the Department of Administrative Services and ultimately the Governor to present a state budget to the Legislative Assembly. ORS 291.200 to 291.224. The first step in this process is for the agency to assess the cost of its programs to determine what size of a budget the agency needs to implement and administer those programs.

When state employees prepare the agency budget or assist in the preparation of the budget, they are not "lobbying." "Lobbying" does not occur when there is neither oral or written communication "with" legislative officials nor solicitation of others to communicate with legislative officials in support of the agency budget.

G. Pre-session Discussions with Stakeholders on Proposed Agency Budget

State employees who participate in stakeholder meetings to discuss the agency's proposed budget would likely be "lobbying" if the purpose of the meetings is to engender support for the agency budget and to have that support conveyed to legislative officials or to others who might themselves make a request to legislative officials to support the agency budget. It would be "lobbying" for agency employees, by word or manner, to solicit the stakeholders to attempt to influence legislative action, i.e., approval of the agency budget even if none of the stakeholders so solicited carried through with any attempt to influence legislative action. In contrast, if the purpose of the meeting is to obtain input from stakeholders about what should be included in the agency budget, or to explain what the agency has put in its budget, agency employees who participate in the meeting would not be "lobbying" so long as there was no solicitation of the stakeholders to influence or attempt to influence legislative action. Caution is appropriate, however, because the agency budget ultimately is legislation and the line between providing information about that budget and soliciting others to support that budget may be difficult to ascertain.

H. Session Testimony in Support of Agency Budget

The presentation of the budget to the legislature and testimony in support of that budget by state employees is "lobbying." The presentation is a communication with legislative officials, the sole purpose of which is to influence legislative action, i.e., the adoption of the agency's budget. ORS 171.725(5), (7).

II. Factors Affecting Whether an Activity Is "Lobbying"

The second question asks whether our answers to the first question would be affected by any of several factors. Specifically, we are asked whether it would make any difference to our answers if the individual performing the activity is a registered lobbyist. It would not.

An activity is "lobbying" if it comes within the definition of that term. ORS 171.725(7). Whether or not the individual is a registered lobbyist may affect the duty to report, but it does not alter whether the activity itself is "lobbying."

We are asked whether our answers would differ if the activity is performed by agency support staff at the request of the agency's registered lobbyist. Again, that fact would not be determinative of whether the activity is "lobbying."

We are also asked whether the fact that the testimony or activity is invited or requested by a legislator or legislative aide would affect our answers. It would not. The definition of "lobbying" makes no distinction between meetings or activities initiated by the legislative official or the state employee. If the activity meets the definition of "lobbying," then the state employee is lobbying.

Finally, we are asked whether our answers would differ if the testimony or activity is neither in support of nor opposition to a legislative measure, but merely provided information. As discussed above, at pages 5 to 8, we do not believe that "lobbying" includes merely providing neutral information to legislative officials without taking a position either in support of or opposition to specific legislative action. Therefore, if the employee merely provides information to legislative officials, either in testimony at a legislative hearing or in private discussions, without taking a position in support of or in opposition to a particular legislative measure (or amendments thereto) or other legislative action, the employee would not be "lobbying." Likewise, employee meetings with stakeholders would not be "solicitation of others to influence or attempt to influence legislative action" if the employee did not request the stakeholders to take a position in support of or in opposition to a legislative measure or the proposed agency budget.

III. Reporting Requirements

The next question relates to the reporting requirements. Two different statutes require the filing of reports with the GSPC. ORS 171.745 requires lobbyists to report expenditures by the lobbyist. ORS 171.750 requires employers of lobbyists to file a report of moneys expended for lobbying activities in the employer's behalf. We discuss each of these requirements below.

A. Lobbyist Reporting Requirements

ORS 171.745(1) requires "[a]ny lobbyist who engages in any lobbying activities" to file reports at regular intervals with the GSPC, showing the total amount of "all moneys expended by the lobbyist for the purpose of lobbying." Provided they are not already registered with the GSPC, the following persons are exempt from the lobbyist reporting requirements of ORS 171.745:⁵¹

- (1) News media or their employees or agents * * *
- (2) Any legislative official acting in an official capacity.

(3) Any individual who receives no additional compensation for lobbying and who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, if the individual testifies, registers an appearance in the records of such committees or agencies.

(4) A person who spends not more than 24 hours during any calendar quarter lobbying, excluding travel time, and who does not spend an amount in excess of \$100 lobbying during any calendar quarter excluding the cost of personal travel, meals and lodging. * * *

5) The Governor, Executive Assistant to the Governor, Legal Counsel to the Governor, Secretary of State, Deputy Secretary of State appointed pursuant to ORS 177.040, State Treasurer, Chief Deputy State Treasurer appointed pursuant to ORS 178.060, Attorney General, Deputy Attorney General appointed pursuant to ORS 180.130, Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries and any judge.

ORS 171.735. Thus, any public official who "lobbies" and who is not exempt under ORS 171.735 is subject to the lobbyist reporting requirements of ORS 171.745.

Two of the above exemptions are most relevant to the questions we have been asked. ORS 171.735(3) exempts any individual: (1) who receives no additional compensation for lobbying, (2) whose lobbying activities are limited *solely* to formal appearances to give testimony before public sessions of committees of the Legislative Assembly or public hearings of state agencies, and (3) who registers an appearance in the records of such committees or agencies before which he or she testifies. State employees do not receive additional compensation for their lobbying activities above their regular state salary and, thus, would meet that element. However, the exemption applies only if both of its other elements are also met. Thus, if a state employee speaks privately with a legislator on a single occasion to express reasons why a particular bill is a good or bad idea, asks other persons to support or oppose a legislative measure, or engages in any other lobbying activity than formal, registered appearances at public sessions of legislative committees, the employee would not come within this exemption. In that case, *all* moneys expended by the employee "for the purpose of lobbying" would need to be reported, even those expenditures for prior formal appearances that the employee registered in committee or agency records, unless he or she comes within one of the other exemptions.^{6/}

ORS 171.735(4) exempts any individual who, during any calendar quarter, does not spend more than 24 hours or more than \$100 lobbying, excluding travel, meals and lodging. All of the activities that we identify in response to the first question as "lobbying" would be counted toward this 24-hour or \$100 threshold. Once either the 24-hour or \$100 threshold is exceeded by an employee, the employee must comply with the lobbyist reporting requirements of ORS 171.745. If a state employee meets the exemption in ORS 171.735(3) because he or she only makes formal, registered appearances before legislative committees, however, the employee would be exempt from the lobbyist reporting requirement even if those appearances totaled more than 24 hours or \$100 in expenditures. If the employee does

not meet the exemption in ORS 171.735(3) because the employee does not limit his or her lobbying activities to formal, registered appearances before legislative committees, any such appearances would count toward the 24-hour threshold.^{7/}

If a state employee is not exempt from the lobbyist reporting requirements, the lobbyist's report must show the total amount of all moneys "expended by" that individual "for the purpose of lobbying" in the preceding reporting period.^{8/} ORS 171.745(1)(a). We believe that ORS 171.745 requires the employee to report only those amounts actually paid out by the lobbyist personally. The term "expend" means "to pay out or distribute : spend." WEBSTER'S, *supra*, at 799. Under this definition, a state employee expends only those moneys that he or she pays out; the employee does not "expend" funds when he or she arranges the purchase of goods or services that are billed to the state agency.^{9/} In other words, we believe that the employee must include in the lobbyist's report only his or her out-of-pocket expenses.

These amounts must be reported by general category, including but not limited to (A) food, refreshments and entertainment; (B) printing, postage and telephone; (C) advertising and public relations, education and research;^{10/} and (D) miscellaneous. *Id.* The expenditures required to be reported do not include "amounts expended by the lobbyist for personal living and travel expenses and office overhead, including salaries and wages paid for staff and secretarial assistance, and maintenance expenses."^{11/} ORS 171.745(3).

The lobbyist's report must also show the name of any legislative official to whom or for whose benefit an expenditure of more than \$60 is made on any one occasion "for the purposes of lobbying." ORS 171.745(1)(b).^{12/} The date, name of payee, purpose and amount of that expenditure must also be shown. *Id.*

Further explanation of the lobbyist reporting requirements may be found in the GSPC rules, OAR 199-010-0060 to 199-010-0081.^{13/}

B. Employer Reporting Requirements

ORS 171.750 contains a separate reporting requirement for the employers of lobbyists who were registered or required to register with the GSPC at any time during the preceding calendar year.^{14/} This employer reporting requirement expressly applies to public agencies. The exemptions in ORS 171.735 do not directly apply to the employer reporting requirements. Thus, if an employer has at least one employee who was registered or required to register with the GSPC because he or she did not come within any of the exemptions in ORS 171.735, the employer must file the employer report showing expenditures for all lobbying activities for the preceding calendar year, including those of any exempt lobbyists.

The employer's report must show the "total amount of all moneys expended for lobbying activities in the employer's behalf, excluding living and travel expenses incurred during a session of the Legislative Assembly." ORS 171.750(1)(a). Unlike ORS 171.745(1)(a), which requires a lobbyist to report moneys expended "for the purpose of lobbying," ORS 171.750(1)(a) requires the employer to report moneys expended "for

lobbying activities." Thus, the employer's report needs to include only expenditures for those activities that are "lobbying." ORS 171.750 does not, however, exclude the office overhead directly related to those activities. Thus, the employer's report must include that portion of the salary, benefits and directly related overhead of any employees who engage in "lobbying," but not the salaries, benefits or overhead for support personnel or other persons who may assist the lobbyist but do not themselves engage in any "lobbying" activities.^{15/} Unlike the lobbyist's expenditure report, the employer's report need not list expenditures by category.

The employer's report must also show the name of any legislative official to whom or for whose benefit an expenditure of more than \$60 is made on any one occasion by the employer for "the purpose of lobbying," but not including information previously reported in a lobbyist's report filed in compliance with ORS 171.745. ORS 171.750(1)(b).^{16/} The date, name of payee, purpose and amount of that expenditure must also be shown. *Id.*

C. Examples

To more clearly explain how the principles discussed above would apply to state agency employees in the situations identified in the first question, we discuss several examples below.

Example #1: Employee A presents testimony in support of a legislative measure at a public session of a legislative committee and has registered that appearance in the records of the committee.

Assuming that Employee A does not engage in any other lobbying activities, Employee A would be exempt under ORS 171.735(3) from the lobbyist reporting requirement. If Employee A engages in lobbying activities other than registered, formal testimony, Employee A would need to file the lobbyist's expenditure reports if the total of his or her lobbying activities, including formal committee appearances, exceeds either the 24-hour or the \$100 threshold.

If Employee A is not exempt under ORS 171.735(3) or (4) from the lobbyist reporting requirement, then he or she is also required to register with the GSPC. In that case, the agency that employs this individual must file an employer expenditure report showing the portion of this employee's salary, benefits and overhead attributable to this employee's lobbying activities, as well as all other moneys expended "for lobbying activities" in the agency's behalf. Even if Employee A is exempt from the lobbyist reporting (and registration) requirement, the agency must report expenditures for Employee A's lobbying activities if any other persons employed by the agency were registered or required to register with the GSPC.

Example #2: Employee B creates and prepares the formal testimony presented by Employee A in the above example.

Creating and preparing testimony in support of a legislative measure is not "lobbying," whether or not done at the direction of the lobbyist who presents the testimony. Assuming

that Employee B does not engage in any other activities that would be "lobbying," Employee B does not need to file a lobbyist's expenditure report.

The agency that employs Employee B does not need to report the salary or other expenses attributable to Employee B's creation and preparation of testimony because those expenditures are not "for lobbying activities."

Even if Employee A is required to file a lobbyist's expenditure report, he or she would not need to include in that report the portion of Employee B's salary attributable to Employee B's creation and preparation of the testimony. Although Employee B's activities were "for the purpose of lobbying" by Employee A, the lobbyist's report need not include office overhead or staff salaries.

If Employee B does engage in activities that are "lobbying," he or she would need to file the lobbyist's expenditure reports unless he or she is otherwise exempt under ORS 171.735. If Employee B, or any other person employed by the agency as a lobbyist, is required to register and to file a lobbyist's expenditure report, the agency employer would need to file an employer expenditure report that shows the total amount of all moneys expended "for lobbying activities" in the agency's behalf. This would include the portion of Employee B's salary, benefits and overhead attributable to Employee B's lobbying activities, but not Employee B's creation and preparation of testimony because that is not a "lobbying" activity.

Example #3: Employee C and Employee D each spend approximately 25 hours working together to develop a legislative concept and approximately 10 hours at stakeholder meetings at which they encourage the stakeholders to contact their representatives to support the proposed legislation. In addition, Employee D authorizes an expenditure of \$150 for printing and advertising for the meetings, which will be paid by the agency employer. These are the only activities engaged in by Employees C and D that could be considered "lobbying."

Assuming that Employee C does not engage in other "lobbying" activities, Employee C does not need to file a lobbyist's expenditure report. Because 25 hours of Employee C's activities were internal to the agency and did not entail communicating with legislative officials or stakeholders, they are not "lobbying." The 10 hours that Employee C spent at the stakeholder meetings does not exceed the 24-hour threshold.

Assuming that Employee D does not engage in other "lobbying" activities, Employee D does not need to file a lobbyist's expenditure report. The 10 hours that Employee D spent "lobbying" at stakeholder meetings does not exceed the 24-hour threshold. Although the expenditure of \$150 that Employee D authorized for printing and advertising for the stakeholder meetings exceeds the \$100 expenditure threshold, Employee D did not personally expend or pay out those moneys.

Because neither Employee C nor Employee D is required to register or to file a lobbyist's expenditure report, the agency employer is not required to file an employer expenditure report unless other agency employees are registered or required to register with

the GSPC. If any agency employee is registered or required to register with the GSPC during the calendar year, then the agency employer must file an employer expenditure report that includes the portion of both Employee C's and Employee D's salary, benefits and overhead directly related to the 10 hours that they spent at the stakeholder meetings, as well as the \$150 expenditure authorized by Employee D and all other moneys expended for "lobbying activities" in the agency's behalf. Because the 25 hours that Employee C and Employee D spent in developing the legislative concept is not "lobbying," the agency's expenditures for those activities does not need to be included in the agency's report.

IV. Caveat

This opinion construes statutory provisions that have not been interpreted by the courts or by the GSPC in advisory opinions issued pursuant to ORS 171.776. We recognize that our answers to several of the questions differ from that of the GSPC in its informal advice to lobbyists and in the GSPC rules.

The GSPC has authority to issue and publish opinions on the requirements of ORS 171.725 to 171.785 based on actual or hypothetical circumstances. ORS 171.776(2). Any lobbyist or lobbyist employer may request in writing a determination from the GSPC whether a proposed transaction or action constitutes a violation of ORS 171.725 to 171.785. An advisory opinion issued by the GSPC in response to such a request is considered a formal opinion having precedential effect. ORS 171.776(4). A lobbyist or lobbyist employer who relies on such a formal opinion shall not be liable for violation of the lobbying statutes for any action or transaction carried out in accordance with the GSPC opinion. *Id.* Although we believe that our interpretation of the reporting requirements is correct and would be shared by the GSPC if it were asked to address those questions, an opinion from this office does not guarantee the same protection from liability.



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¹¹ By "creating and preparing" testimony, we understand you to be describing the creative acts of devising the content of the testimony, not the manual acts of typing and formatting a written document.

²¹ ORS 171.725(5) provides in its entirety:

"Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment,

or report, or any matter which may be the subject of action by either house of the Legislative Assembly, or any committee thereof or the approval or veto thereof by the Governor.

^{3/} Two bills introduced at the request of the Oregon Government Ethics Commission, HB 2169 and 2171, would have amended the lobbying statutes. HB 2169, which contained the original "clarifying" language to the definition of "lobbying," was consolidated into HB 2171.

^{4/} "Legislative official" is defined as:

any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

^{5/} These same persons are exempt from the registration requirements in ORS 171.740. ORS 171.735.

^{6/} The employee would also no longer be exempt from the registration requirement in ORS 171.740 unless he or she came within another exemption.

^{7/} It is conceivable, though perhaps unlikely, that a state employee might spend more than 24 hours in formal, registered appearances before legislative committees during a calendar quarter. If such an individual were then to engage in some other lobbying activity (e.g., a 5-minute conversation with a legislator outside the committee room urging the legislator to support an amendment to a bill), the employee would no longer be exempt under ORS 171.735(3) from the reporting requirements. Because this employee had already exceeded the 24-hour limit for exemption under ORS 171.735(4) at the time he or she became no longer exempt under ORS 171.735(3), he or she would now be required to comply with the registration requirements of ORS 171.740 and the lobbyist reporting requirements of ORS 171.745. The employee would need to register with the GSPC within three working days after losing the exemption under ORS 171.735(3). The employee would have to file a report with the GSPC on the next reporting date, showing the total amount of all moneys expended by the employee for the purpose of lobbying "in the preceding reporting period." ORS 171.745(1)(a). The employee must also include in this report any expenditures made to, or for the benefit of, a legislative or executive official. ORS 171.745(1)(b). Although the statute does not specify, we believe that such reportable expenditures are also limited to those in the preceding reporting period.

^{8/} These reports must be filed on January 31 and July 31 of each even-numbered year and on January 31, April 30 and July 31 of each odd-numbered year. ORS 171.745(1).

^{9/} The GSPC rules provide that all expenditures "incurred by a lobbyist or at the lobbyist's direction or instigation for the purpose of lobbying" must be reported, even though the employer pays the bills. OAR 199-010-0075(1). We believe this rule is overly broad in that it requires reporting by the lobbyist of amounts that are not actually "expended by the lobbyist." See ORS 171.745(1)(a).

^{10/} ORS 171.745(1)(a)(C) requires a lobbyist who engages in any lobbying activities to file a statement showing the "total amount of all moneys expended by the lobbyist for the purpose of lobbying," expressly including "research." This provision requires expenditure reporting of research only when it is done "for purposes of lobbying," not research prepared initially for other purposes. To the extent testimony at a legislative hearing incorporates information or research from a report or other document prepared initially for other purposes, the work of researching and preparing the earlier report or document would not be "lobbying" because it was not done for the purpose of

influencing legislative action. In the 1973 hearing on House Bill 2530, one of the senators asked whether lobbying included all research done on the subject of the law merely because it becomes available to a legislator or whether the research had to be done specifically in order to influence legislation. David B. Frohnmayer responded:

I would say the latter conclusion and I would point to the language [of the bill] which says "all amounts received or expended directly or indirectly for lobbying activities." And while something clearly could do double duty, it seems to me that the purpose of that expenditure would not initially have been for the purpose of influencing a given legislator and therefore that would not be reported.

* * * * *

What we're getting at is obviously is the informational literature which is generated for the specific purpose of influencing legislative * * * action. While that's a fine line, I think it's not an impossible one to draw.

Testimony, David B. Frohnmayer, Joint Special Committee on Professional Responsibility (HB 2530), May 7, 1973, tape 7, side 1 at 497.

^{11/} The employee's own salary need not be included in the lobbyist's report because it is not an amount expended by the employee or at his or her direction for the purpose of lobbying. See OAR 199-010-0075(4).

^{12/} ORS 171.745(1)(b) references an expenditure amount of \$25. Beginning July 1, 1979, that dollar amount has been adjusted annually by the GSPC based on the change in the Portland Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics during the preceding 12-month period. See ORS 171.745(2). The current amount of \$60 was effective January 1, 1998.

^{13/} The GSPC rules provide that when a lobbyist is employed by a public agency, the agency must file the lobbyist report rather than the individual who lobbies. OAR 199-010-0050. We find no support in the statutes for this requirement which was deleted from ORS 171.745 in 1987. See Or Laws, 1987, ch 566, § 4.

^{14/} The employer expenditure report must be filed by January 31st of each year. ORS 171.750(1).

^{15/} The GSPC rules require the employer report to include all payments for "overhead, support personnel, and other personal expenses, such as for travel, if they in any way *relate to* lobbying activities," OAR 199-010-0095(1), as well as all expenditures reported in the lobbyist's expenditure reports. OAR 199-010-0095(2) (emphasis added). We believe that these rules are overly broad in that they require reporting of expenditures that are not "for lobbying activities."

^{16/} ORS 171.750(1)(b) references an expenditure amount of \$25. Beginning July 1, 1979, that dollar amount has been adjusted annually by the GSPC based on the change in the Portland Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics during the preceding 12-month period. See ORS 171.750(2). The current amount of \$60 was effective January 1, 1998.