

49. Public Employees Retirement System

Request: Increase the Other Funds expenditure limitation by \$2,071,410 and authorize the establishment of 3 limited duration positions (1.62 FTE) to support recovery of overpaid benefits.

Recommendation: Establish an Other Funds expenditure limitation of \$2,071,410 for the overpayment recovery project and authorize the establishment of 3 limited duration positions (1.62 FTE).

Analysis: Recent court action compels the Public Employees Retirement System (PERS) to resume its legal obligation to collect overpaid retirement benefits. Recovery of these overpayments, which resulted from a determination that the PERS Board credited earnings at an excessive rate in 1999, was suspended pending legal challenges and court decisions. In March 2012 a judgment was entered in the Multnomah County Circuit Court dismissing the *Robinson* case, which was the last procedural hurdle concerning overpayment collections.

The agency is now requesting additional budget authority to support recovery efforts; as this project's status was uncertain, no resources were provided for it in the agency's 2011-13 budget. The estimated workload involves recovering approximately \$164.7 million in overpaid benefits from about 29,000 individuals. At its March 2012 meeting, the PERS Board reviewed staff recommendations on the procedures to follow for collecting overpayments. The proposal is consistent with standard state agency collection processes and tailors repayment options according to a retiree's relationship with the agency. About 70% of the affected benefit recipients currently receive a monthly benefit payment and have an active relationship with PERS.

Elements of the agency's request are as follows:

- Personal services costs totaling \$916,771 Other Funds. This includes 3 limited duration Accounting Technician 3 positions to lead a team of 10 temporary employees that will handle most benefit recipient questions and payment arrangements.
- Services and supplies in the amount of \$1,154,639 Other Funds. About 60% of this cost is associated with automating invoicing and payment processes, while the remainder is for outside collection costs. Some accounts will need to be sent to the Oregon Department of Revenue or private collection agencies for recovery.

While the positions described are limited duration or temporary, some work associated with this project will carry forward into future biennia, as recoveries are expected to occur over at least a six to seven year period; perhaps as long as ten years in some instances. Project progress and associated budget authority will need to be reviewed and approved each budget cycle.

The project is an allowable system administrative cost and will be supported by transfers from the Tier 1 retirement program funds; up-front costs will ultimately be recovered as overpayments are collected and credited to the system.

The Legislative Fiscal Office recommends approval of the request but would establish a new Other Funds expenditure limitation, rather than increasing the agency's existing operational expenditure limitation. Segregating the program's legal spending authority from agency operations should help track this multi-biennia – but finite – project.

Public Employees Retirement System
Analyst: Carbone

Request: Increase Other Funds expenditure limitation by \$2,071,410 and approve three Limited Duration Accounting Technician 3 (1.62 full-time equivalent) positions to recover overpaid benefits from a large population of benefit recipients, in conformance with recent Oregon Supreme Court decisions.

Recommendation: Approve the request.

Discussion: The legislature and the courts determined that earnings for calendar year 1999 should have been credited to Public Employees Retirement System (PERS) members' accounts at the rate of 11.33 percent instead of the 20 percent rate that was originally used. As a result, benefit overpayments have occurred. Efforts by PERS to recover the overpayments were challenged and the recovery efforts were enjoined until the challenges were resolved. Recently, the Oregon Supreme Court decided that PERS' recovery efforts can now continue.

This Emergency Board request is for additional expenditure limitation to cover PERS' administrative costs related to recovering \$164,684,600 from almost 29,000 individuals.

Benefit recipients will have different options to return the overpayment depending on their current relationship with PERS. Those who continue to receive a PERS benefit payment will be presented with three options:

- Repay the amount owed in a single, lump sum payment;
- Do nothing, and PERS will recover the overpayment via a set percentage reduction (most likely 2 to 5 percent) in the recipient's gross monthly benefit; or
- Contact PERS to request that a greater percentage of their monthly benefit be deducted so the overpayment is recovered in less time.

Those recipients who do not currently receive a benefit payment from PERS or whose payment is insufficient to reasonably support recovery through a deduction will have two options:

- Repay the amount owed in a single, lump sum payment; or
- Contact PERS to set up a payment plan to return the overpayment over time.

Those recipients who do not contact PERS will be referred to the Oregon Department of Revenue for collections or, if the recipient is out of state, to a private collection agency as per the state's accounts receivable policies.

The agency's plan for collections includes \$916,771 for personal services costs and \$1,154,639 for services and supplies costs this biennium. Most of the personal services costs will be for temporary employees. These would include eight Revenue Agent 1s for collections activities, an Accounting Technician 2 for processing correspondence and payments, and one staff for data entry activities. Personal service costs would also include three limited duration Accounting Technician 3s to lead the team of temporary employees, as well as to respond to escalations and to monitor the accounts turned over to the Department of Revenue and private collection agencies. Finally, additional limitation would be used to pay overtime costs for existing

Retirement Counselor 2 positions to complete the adjustments and determine overpayments on certain complex accounts.

The services and supplies costs would mainly be for IT professional services to augment current invoicing, payment, and reporting functions. In addition, services and supplies would include fees paid to the Oregon Department of Revenue and to private collection agencies to pursue further recoveries once PERS completes the billing cycle, if the recipient does not comply.

It is likely that this project will affect PERS' administrative budget at some level over the next ten years. However, the bulk of the initial invoicing and set-up will occur over the next 13 months. Next biennium, 2013-15, the agency will probably request limitation to pay collection expenses from paying fees to Department of Revenue and outside collection agencies. In addition PERS will likely ask to continue the Limited Duration positions to work with the outside collectors and respond to escalations or modifications as the population undergoes change due to deaths, and other changed circumstances.

Legal Reference: Increase the Other Funds expenditure limitation established by chapter 495, section 1 (1), Oregon Laws 2011 for the Public Employees Retirement System by \$2,071,410 for the 2011-13 biennium.



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

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April 19, 2012

The Honorable Peter Courtney, Senate President
The Honorable Bruce Hanna, Co-Speaker of the House
The Honorable Arnie Roblan, Co-Speaker of the House
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Public Employees Retirement System (PERS) is requesting that the Emergency Board increase the agency's Other Funds limitation for the 2011-13 biennium by \$2,071,410 and approve position authority for an additional three limited duration positions (1.62 FTE).

Agency Action

The Other Funds limitation increase and limited duration positions are necessary for PERS to recover overpaid benefits from a large population of benefit recipients, in conformance with recent Oregon Supreme Court decisions. The recovery effort was not contemplated in the agency's 2011-13 legislatively approved budget as these court cases had not yet been resolved. Now that the cases are resolved, PERS is seeking this additional limitation to resume recovering a total of approximately \$164,684,600 in overpaid benefits from almost 29,000 individuals (an average of about \$5,700 per benefit recipient).

These efforts complete the process of correcting the accounts and benefits that were erroneously credited with 20% earnings for calendar year 1999. This legislature and the courts have determined that the PERS Board exceeded its authority when it credited earnings at that rate, and instead should have credited accounts with earnings at the rate of 11.33%.

Once that determination was upheld by the Oregon Supreme Court (in two decisions from 2005, the *Strunk* and *City of Eugene* cases), the agency undertook to correct the accounts and benefits of affected persons. The first Strunk/Eugene project involved adjusting all active and inactive member accounts and the benefit payments for some 45,000 recipients. Many of those recipients, however, had already received overpayments before their benefit was corrected on a going-forward basis.

The PERS Board adopted an Order on Repayment Methods in January 2006 to describe how those overpayments were to be recovered. That order was challenged and the recovery efforts enjoined until the challenges were resolved. Recently, the Oregon Supreme Court decided that PERS' recovery efforts could continue.

The first Strunk/Eugene project completed its benefit adjustment and overpayment determination efforts by June 30, 2009. PERS is seeking additional Other Funds budget limitation and limited duration positions so the recovery efforts that were enjoined during that first project can now be completed.

Note that the original Strunk/Eugene project was budgeted a total of \$9,822,300 during the 2005-07 and 2007-09 biennia. Actual project expenditures were only \$7,479,333 because the recovery efforts were enjoined by the court challenges, and various efficiencies were developed over the course of the project. As such, \$2,342,967 from that first project was not expended and, in essence, remained in the PERS fund.

Now that the court judgments have been entered to lift the injunction and allow PERS' recovery efforts to continue, the agency has considered the most expeditious and efficient way to effectuate the recoveries. Attachment 1 to this letter is a business case that provides a detailed description of the agency's proposed process and the resources necessary to support those efforts.

Action Requested

PERS requests that the Emergency Board:

1. Increase the agency's approved Other Funds limitation from \$78,010,820 to \$80,082,230 for the 2011-13 biennium. This increase would be allocated as set forth below:

| | | |
|--------------------------------|-----------|--------------------|
| Personal Services | | \$916,771 |
| Services & Supplies | | |
| IT Professional Services | \$675,000 | |
| Training & Office Expenses | \$9,639 | |
| Other S&S (Collection expense) | \$470,000 | |
| | | <u>\$1,154,639</u> |
| | Total | \$2,071,410 |

2. Approve the addition of three (1.62 FTE) limited-duration Accounting Technician 3 positions.

Legislation Affected

If approved, the additional Other Funds budget limitation would increase the amount of Administrative & Operating Expenses allocated to this agency by House Bill 5039, Section 1 (1) (495, Oregon Laws 2011).

Sincerely,



Paul R. Cleary, Executive Director

**Budget Development Business Case for
Strunk/Eugene Recovery Project Request
To the May 2012 E-Board**




Destiny Olivas, Project Manager



Date



Steven Patrick Rodeman, Deputy Director &
Executive Sponsor



Date



Kyle J. Knoll, Budget Officer



Date

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1 Executive Summary

The Oregon Public Employees Retirement System (PERS) is requesting the following additions to its legislatively approved budget for the 2011-13 biennium:

Three Limited Duration Positions; 1.62 FTE

Personal Services Other Fund Limitation Increase of \$916,771

Services & Supplies Other Fund Limitation Increase of \$1,154,639

Capital Outlay Other Fund Limitation \$0

Total Other Fund Limitation \$2,071,410 (sum of Personal Services, Services & Supplies, & Capital Outlay above) to be spent in the 2011-13 biennium.

These limitation increases are necessary for PERS to proceed to recover overpaid benefits from a large population of benefit recipients, in conformance with recent Oregon Supreme Court decisions. The recovery effort was not contemplated in the agency's 2011-13 legislatively approved budget as these court challenges had not yet been resolved.

Now that the challenges are resolved, PERS is seeking a total of \$2,071,410 in additional limitation to resume recovering a total of approximately \$164,684,600 in overpaid benefits.

2 Introduction and Background

In 2005, the Oregon Supreme Court decided two cases (*Strunk* and *City of Eugene*) which upheld portions of the 2003 PERS Reform legislation and previous circuit court decisions. Those decisions established that the PERS board erred in crediting earnings to member regular accounts at the rate of 20% for calendar year 1999. Instead, the legislature and court directed that a rate of 11.33% crediting for that year was correct.

As a result, PERS began a project to adjust member accounts and benefit levels to the correct amount. That project, referred to as the Strunk/Eugene Project, was initiated in 2006. Before the erroneous benefits were adjusted, however, some payments had been made to retired members, inactive members, beneficiaries, and alternate payees based on the 20% crediting rate for 1999. The original Strunk/Eugene Project included a component to recover those overpayments as part of the benefit adjustment process. In furtherance of that effort, the PERS Board adopted an Order on Repayment Methods on January 27, 2006. That order was separately challenged in court. On June 20, 2007, a Circuit Court judge held that PERS' order was not valid and enjoined further collection efforts. The Strunk/Eugene project team continued on with adjusting account balances and ongoing benefits, capturing the amounts that were overpaid prior to the adjustments but not collecting on those amounts, to conform to the court's

injunction. That project's activities were completed by the project deadline of June 30, 2009, leaving the overpaid amounts unrecovered.

On October 6, 2011, the Oregon Supreme Court found that the PERS Board's order was valid. Therefore, PERS must now endeavor to recover the remaining overpayments to complete the work from the original Strunk/Eugene project. The renewed effort will require validating the debtor population, confirming invoice amounts, and setting up collection plans with the recipients.

Note that the first Strunk/Eugene project was originally budgeted a total of \$9,822,300 during the 2005-07 and 2007-09 biennia. Actual project total expenditures, however, were only \$7,479,333, so the agency had a net savings of \$2,342,967 in the first project. These savings resulted from reduced operating expenditures because the recovery efforts were enjoined, as well as from efficiencies developed during the course of the project.

3 Problem Definition and Desired Business Goals / Objectives

The recovery is in accordance with the PERS Board's fiduciary obligations as defined in ORS 238.715, Recovery of Overpayments, and the supporting administrative rules.

The recovery effort will involve collections on an estimated \$164,684,600 in overpayments from 28,974 benefit recipients, spread across the following groups:

| Group Type | Population | Dollar Amount Owed |
|--|------------|--------------------|
| Monthly Retirements | 20,139 | \$128,844,272 |
| Lump Sum Retirements | 1,919 | \$21,327,244 |
| Withdrawals | 4,042 | \$5,513,034 |
| Police & Fire Unit Accounts | 1,204 | \$516,819 |
| Deceased (Received overpayment prior to death) | 928 | \$4,200,427 |
| Beneficiaries (Survivor of a deceased member who has received benefits) | 742 | \$4,282,803 |

4 Proposal

This recovery effort would follow standard state agency collection practices with modifications in light of the substantial number of benefit recipients. Benefit recipients will have different options to return the overpayment depending on their current relationship with PERS. Generally, these options will depend on whether the recipient continues to receive a PERS benefit payment from which a deduction can reasonably be made to recover the overpayment. Those recipients will be presented with three options:

1. Repay the amount owed in a single, lump sum payment;
2. Do nothing, and PERS will recover the overpayment via a 2% reduction in the recipient's gross monthly benefit; or

3. Contact PERS to request that a greater percentage of their monthly benefit be deducted so the overpayment is recovered in less time.

If the recipient opts to return the overpayment through a deduction to their monthly benefit and the full amount is not recovered by the time those benefits cease (usually as a result of the recipient’s death), PERS will seek to recover the remaining overpayment from available assets, if any, through reasonable recovery efforts.

Those recipients who do not currently receive a benefit payment from PERS or whose payment is insufficient to reasonably support recovery through a deduction will have two options:

1. Repay the amount owed in a single, lump sum payment; or
2. Contact PERS to set up a payment plan to return the overpayment over time.

Those recipients who do not contact PERS will be referred to the Oregon Department of Revenue for collections or, if the recipient is out of state, to a private collection agency as per the state’s accounts receivable policies.

The additional budget limitation that PERS is requesting would fund the following Personal Services or Services & Supplies functions:

Personal Services

Three Limited-Duration Accounting Technician 3 \$179,504

Two positions will lead the recovery efforts with the team of temporary employees listed below, as well as respond to escalations and monitor the accounts turned over to the Department of Revenue and private collection agencies. One position will administer payment plans and process payments.

Eight Temporary Staff for Collection Activities – Revenue Agent 1 \$273,139

These positions will handle communications with benefit recipients, including phone calls and correspondence. They will answer benefit adjustment questions and negotiate payment arrangements within defined parameters.

One Temporary Staff Accounting Technician 2 \$34,129

The position will support the Limited Duration Accounting 3 positions by processing correspondence, generate reports, and process payments.

One Temporary Staff for Data Entry Activities \$ 31,692

The position will enter overpayment invoices and benefit payment deductions.

Overtime costs for current Retirement Counselor 2 positions \$398,307

A small number of accounts were not reconciled during the first Strunk/Eugene project as they were very complex calculations and recovery efforts were enjoined, so there was no need to complete them. Now, current staff will use overtime hours to complete the adjustments and determine overpayments.

Sub-Total for Personal Services \$916,771

Services and Supplies

System Automation Costs \$675,000

IT Professional Services costs to augment current invoicing, payment, and reporting functions.

| | |
|---|--------------------|
| Training & Office Expenses | \$9,639 |
| Collection Costs (current biennium) | <u>\$470,000</u> |
| Fees paid to the Oregon Department of Revenue and private collection agencies to pursue further recoveries once PERS completes the billing cycle, if the recipient does not comply. | |
| Sub-Total for Services & Supplies | \$1,154,639 |
| Total Recovery Costs for 2011-13 Biennium | \$2,071,410 |

4.1 Assumptions

Based on experience from the first Strunk/Eugene project, approximately 4% of the recipients who continue to receive monthly PERS benefit payments will opt to return the overpayment in a single, lump sum payment rather than allow the payment deduction. The population of members with an on-going monthly benefit is 20,139. If that percentage holds true, 19,333 recipients will need to be set up for benefit deductions.

There are 8,835 benefit recipients who do not receive on-going monthly benefit payments. Only a small percentage of those recipients are expected to return the overpayment in a lump sum, so the vast majority will need to be set up on a payment plan that will require on-going payment posting, monitoring, and possible modification.

4.1.1 Business Needs

PERS' current collection process would be accelerated under this proposal. Predominantly, these benefit recipients have already been notified that they received an overpayment, so the collection process is shortened to a 30 day time line. This budget request is predicated that reduced time line to provide for a lower staffing requirement and completion of the initial phase of the recovery within the current biennium.

4.1.2 Workload

PERS currently maintains a collection staff of one full time dedicated collector, one cashier with shared duties, and one accounting person with shared duties, all supervised by a manager who is also responsible for other aspects of PERS' accounting and banking processes. This staff processes a current collection population of approximately 300 active accounts.

This recovery effort will increase that population to 28,974 accounts over an initial 11 months of collection processing. The additional workload will extend to a minimum of 6 years for payment processing, monitoring, and follow up of those accounts. This extended effort will also include processing accounts deemed uncollectable.

4.1.3 Volumes / Position Duties

For this recovery effort to complete its initiation phase during the remaining 13 months of the 2011-13 biennium, the following staff are requested to augment the agency's current capacity to process collection accounts:

- 10 Collection Staff. Of these positions, eight will be filled through hiring temporary workers, with two Limited Duration positions that will lead these recovery efforts and coordinate the on-going recovery effort in future biennia (recoveries are projected to stretch over at least six to seven years). Due to the nature of the recipient's obligation, the financial impact these efforts are likely to have on many recipients, and the potential complexity of the issues involved, these positions will be filled at the Accounting Technician 3 level.
- 3 Support staff. One Accounting Technician 3 is requested as a Limited Duration position to augment the agency's current collections staff in administering payment plans and processing payments. Two other positions (Accounting Technician 2 and Public Service Rep. 3) will be filled by temporary workers to process correspondence and payments.

4.2 Benefits

This recovery effort benefits the agency on several levels. Beyond the fiduciary responsibility of protecting the agencies assets, this recovery effort will attempt to recover \$164,684,600 in overpaid benefits, returning those monies to the fund. Other benefits include meeting the agency requirement of adherence to Oregon Statute, Oregon Administrative Rules and the Oregon Accounting Manual.

4.3 Resource Estimates

4.3.1 – 4.3.5 Excel Worksheets

4.4 Risk Assessment & Mitigation Strategy

The October 6, 2011, ruling by the Oregon Supreme Court compels the agency to complete this recovery effort. Failure to complete this effort will result in the agency failing to meet its fiduciary obligation to recover overpayments and otherwise fail to conform to Oregon statutes, administrative rules, and state agency guidelines.

An alternate mitigation strategy would be to complete this effort with existing staff over a much longer time period. Due to the demographic age of the population, a sense of urgency is already felt. If PERS were limited to resorting to pursuing this recovery effort using only current staff, this project would take several years to complete, and the effectiveness of that effort would be greatly diminished. In addition, this mitigation strategy would create a backlog of work for the core mission of administration of retirement benefits in a timely manner.

4.5 Alternatives Considered

Several alternatives were considered for this recovery effort, ranging from using the agency's full current collection process to outsourcing the entire effort to a private collection agency. Under each alternative, the cost, complexity, and time required for each of those options far exceeded the proposed solution.

The only other viable solution for this effort was to complete the recovery using one or more private collection firms. This effort would have consisted of the agency delivering

the invoices to outside firms to act as its agent in contacting the members and establishing a recovery plan. While this option would not require additional PERS staff or appreciably impact the agency's core processes, the fees paid to these private collection agencies (usually averaging 20% of the amount recovered) would mean the cost of this alternative would exceed \$31 million, based on a total recovery of \$164,684,600. PERS would also need additional staff resources to support the communication, accounting, and reporting requirements under this option.

5 Appendices

Attach appendices and forward Business Case draft to Budget Officer for review and completion of financial analysis, and submittal to the Executive Sponsor and Deputy Director / Chief Operating Officer.
