



Oregon

Kate Brown, Governor

Public Employees Retirement System

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TO: Ways & Means General Government Subcommittee Members
FROM: Kevin Olineck, Director
SUBJECT: *Strunk/Eugene* Recovery Limitations

OVERVIEW

PERS benefit recipients received overpayments as a result of the PERS Board crediting accounts with 20% earnings in 1999 instead of 11.33% that the Oregon Supreme Court later determined to be the proper amount. Members, or their beneficiaries, who received overpayments based on the higher crediting rate were notified in January 2006 that an overpayment occurred. PERS began collection efforts in 2006 however, subsequent court challenges suspended PERS from recovery effort. Resolution by the Oregon Supreme Court, of all challenges enabled PERS to resume recovery efforts in August 2012 from the remaining accounts affected by the overcrediting payment.

At the Phase II Budget presentation I was asked about the limits that PERS can place on recovering these overpayments for benefits in pay. The limits that PERS adheres to are set out in statute with the most relevant section as follows:

238.715 Recovery of overpayments; rules.

(3) Unless the member or other person receiving a monthly payment from the fund authorizes a greater reduction, the board may not reduce the monthly payment made to a member or other person under the provisions of subsection (1) of this section by an amount that is equal to more than 10 percent of the monthly payment.

The following is the whole section of statute for reference:

238.715 Recovery of overpayments; rules.

(1) If the Public Employees Retirement Board determines that a member of the Public Employees Retirement System or any other person receiving a monthly payment from the Public Employees Retirement Fund has received any amount in excess of the amounts that the member or other person is entitled to under this chapter and ORS chapter 238A, the board may recover the overpayment or other improperly made payment by:

(a) Reducing the monthly payment to the member or other person for as many months as may be determined by the board to be necessary to recover the overpayment or other improperly made payment;
or

(b) Reducing the monthly payment to the member or other person by an amount actuarially determined to be adequate to recover the overpayment or other improperly made payment during the period during which the monthly payment will be made to the member or other person.

(2)(a) Any person who receives a payment from the Public Employees Retirement Fund and who is not entitled to receive that payment, including a member of the system who receives an overpayment, holds the improperly made payment in trust subject to the board's recovery of that payment under this section or by a civil action or other proceeding.

(b) The board may recover an improperly made payment in the manner provided by subsection (1) of this section from any person who receives an improperly made payment from the fund and who subsequently becomes entitled to receive a monthly payment from the fund.

(c) The board may recover an improperly made payment by reducing any lump sum payment in the amount necessary to recover the improperly made payment if a person who receives an improperly made payment from the fund subsequently becomes entitled to receive a lump sum payment from the fund.

(3) Unless the member or other person receiving a monthly payment from the fund authorizes a greater reduction, the board may not reduce the monthly payment made to a member or other person under the provisions of subsection (1) of this section by an amount that is equal to more than 10 percent of the monthly payment.

(4) Before reducing a benefit to recover an overpayment or erroneous payment, or pursuing any other collection action under this section, the board shall give notice of the overpayment or erroneous payment to the person who received the payment. The notice shall describe the manner in which the person who received the payment may appeal the board's determination that an overpayment or erroneous payment was made, the action the board may take if the person does not respond to the notice and the authority of the board to assess interest, penalties or costs of collection.

(5) If the board determines that an overpayment or erroneous payment was not caused by the system or by a participating public employer, the board may assess interest in an amount equal to one percent per month on the balance of the improperly made payment until the payment is fully recovered. The board may also assess to the member or other person all costs incurred by the system in recovering the payment, including attorney fees. Interest and costs may be collected in the manner prescribed in subsections (1) and (2) of this section. The board may waive the interest and costs on an overpayment or other improperly made payment for good cause shown.

(6) Notwithstanding ORS 293.240, the board may waive the recovery of any payment or payments made to a person who was not entitled to receive the payment or payments if the total amount of the overpayment or other improperly made payments is less than \$50.

(7) A payment made to a person from the fund may not be recovered by the board unless within six years after the date that the payment was made the board has commenced proceedings to recover the payment. For the purposes of subsection (1) of this section, the board shall be considered to have commenced proceedings to recover the payment upon mailing of notice to the person receiving a monthly payment that the board has determined that an overpayment or other improperly made payment has been made.

(8) The remedies authorized under this section are supplemental to any other remedies that may be available to the board for recovery of amounts incorrectly paid from the fund to members of the system or other persons.

(9) The board shall adopt rules establishing the procedures to be followed by the board in recovering overpayments and erroneous payments under this section. [Formerly 237.312; 2003 c.105 §6; 2003 c.733 §66]