THE FOLLOWING IS FOR THE INFORMATION OF OSURA AND OTHER MEMBERS OF THE OREGON STATE UNIVERSITY COMMUNITY. IT IS NOT INTENDED AS EITHER LEGAL OR FINANCIAL ADVICE.

PERS: TODAY AND TOMORROW
SUMMARY BY THE OREGON STATE UNIVERSITY RETIREMENT ASSOCIATION MEMBER SERVICES COMMITTEE OF THE PRESENTATION ON APRIL 17, 2007 WITHYCOMBE AUDITORIUM ON THE OSU CAMPUS

I. INTRODUCTION

A. The Member Services Committee of the OSU Retirement Association (OSURA) sponsored a PERS information session on April 17, 2007 from 3:30-5:30 p.m. in Withycombe Auditorium on the Oregon State University campus.

B. The first speaker was Greg Hartman, an attorney whose firm, Bennett, Hartman, Morris & Kaplan, LLP. has handled much of the PERS litigation in the last few years. Mr. Hartman addressed the current legal and political status of PERS.

C. The second Speaker was Steve Delaney, Deputy Director of PERS, who addressed the current and future financial status of PERS.

II. LEGAL AND POLITICAL STATUS

A. Mr. Hartman summarized the legislation and subsequent associated cases to date. The problems with PERS arose in large part because earnings of the system in the late 1990s increased the value of benefits and led to the Money Match option becoming the preeminent form of benefit. This was followed by three poor investment years (2000-2002) which produced substantial unfunded liabilities for PERS. This caused the employer contributions to increase substantially with the result that the Oregon Legislature in 2003 enacted what is commonly called "PERS reform" legislation.

B. Various aspects of this legislation were challenged in a number of cases, primarily on the basis that the legislation improperly impaired members' contract rights.

C. A summary of the cases can be found as a link on the Bennett, Hartman, Morris & Kaplan Website at http://www.bennetthartman.com/pers_litigation.html

D. Another summary of cases can be found on the OPRI website at http://opri.org/news.htm.

E. Two important cases have been decided.

1. **Strunk (Sartain)**
   a. The Oregon Supreme Court on March 8, 2005 held that the regular accounts of Tier One members had to be credited at least 8% each year. The legislation, which had changed this to a guarantee of 8%

over the life of the account, was found to be an impairment of contract and was struck down.

b. Also under this decision, the 2% COLA, which had temporarily been suspended by the Legislature for certain Tier One employees who retired with an effective retirement date between April 1, 2000 and April 1, 2004 will be paid. These retirees are known as "window" retirees."

c. The court upheld the legislation to direct the 6% employee contribution to an Individual Account Program (IAP). This account is not guaranteed any earnings and is not used in the retirement calculation before applying the Money Match "doubling" option because it is a separate account.

d. The court also affirmed that updated actuarial factors would apply effective as of July 1, 2003.

2. **City of Eugene**

a. As a result of the high investment earnings, the PERS Board credited 20% earnings to the Regular Tier I accounts for the 1999 year. Several employers contested this as too high an amount. This trial court held that the 20% earnings awarded the regular accounts for the Tier One employees in 1999 was an abuse of discretion by the PERS Board. Ultimately a settlement was reached in which the Board would allocate only 11.33% to the regular accounts. On appeal the Oregon Supreme Court ruled on August 11, 2005, that the settlement made the issue moot.

b. The retirees affected by this ruling are all those who retire on and after April 1, 2000. In addition any Tier One employees who retired in an earlier time period but left some of their retirement funds in PERS that were credited with this 20% would also be affected. The difference between the 20% and the 11.33% is considered to be an overpayment that PERS became obligated to collect.

c. The settlement agreement required that the PERS Board reallocate some 1999 earnings to the Contingency Fund Reserve.

d. The agreement also required the Board to change the method for calculating Money Match benefits for those members who participate in the variable account.

F. Other pending cases challenging PERS' attempt to collect the overpayment.

1. **Arken:** This case again challenges PERS' ability to recover alleged overpayments from "window" retirees. This is still in the trial court. Whoever loses will probably appeal to the Oregon Supreme Court.

2. **Robinson:** This case also concerns issues on PERS' ability to recover the alleged overpayments from "window"retirees. It is also in the trial court and is expected to be appealed no matter who wins.

3. **Robertson:** While the other cases were filed in state courts, this case was brought in a federal court. The trial court ruled against the retirees, and the 9th Circuit Court of Appeals declined to review its three-judge panel decision in this case. The PERS Coalition has requested review by the U. S. Supreme Court. Such a review is unlikely because of vast number of appeals filed to this court and the few cases that the court takes.

4. **Henderson:** This case involves the use of actuarial tables. The federal ninth Circuit Court of Appeals sent the case back to the federal District Court (trial court) which had ruled against retirees. The Coalition is considering an appeal.

5. **Kay Bell:** Although not discussed by Mr. Hartman, this case is on the OPRI web site. The issue in this case is whether an individual can recover against PERS for being given incorrect information prior to retirement. This is another case likely to be appealed to the Oregon Court of Appeals or Supreme Court.

6. **White:** Again, while not discussed by Mr. Hartman, this case is on the OPRI website and presents a challenge to the settlement agreement reached after City of Eugene was decided in Marion County. This case is early in the trial phase.

7. **Murray:** One more case on the OPRI website, but not mentioned by Mr. Hartman challenges allocating administrative expenses to the variable account in years when that account had no earnings. The case is at the Oregon Court of Appeals.

8. **A Case Not Yet Brought:** Mr. Hartman is looking for volunteers, so the PERS Coalition can challenge the current rule on Money Match/Variable. That PERS rule came as a response to the **City of Eugene** settlement. In the trial court Judge Lipscomb fashioned a new rule under which long term employees who participate in the variable account and retire under the Money Match option would be likely to receive less retirement funds than the Coalition believes they are entitled to. For a discussion of this complex rule the reader is advised to read Judge Lipscomb's opinion in the **City of Eugene** case.

III. HOW PERS IS DEALING WITH COLLECTING THE OVERPAYMENTS

A Steve Delaney, Deputy Director of PERS, discussed how the collection of overpayments will be handled at the present time. This may change if there is a future court decision that overturns PERS' right to collect this money.

B. Salient Features of the Collection

1. A PERS letter that details the overpayment amount and the methods of recovery is being sent to those affected. It does not, however, show how the calculation was made. This information can be obtained by telephoning the number on the letter.

2. Retirees who did not take their entire retirement funds in a lump sum have two choices of how to repay the money. One choice is to have the monthly benefit amount reduced over the retiree's life by reducing the monthly payment of retirement benefits. The repayment will be made with no interest added. The other choice is for the retiree to return the overpayment in a lump sum.

3. For those who took their entire retirement as a lump sum, PERS plans to request full payment of the amount overpaid. Mr. Delaney said that at the present time any other collection method would be cumbersome and PERS is not set up to do this. In cases where the retiree rolled over this lump sum, there is a possibility of rolling those tax-deferred dollars back, but PERS does not know if this option will have tax consequences until they get a private letter ruling on this issue from the IRS.

4. The PERS website has examples of what might be expected in terms of changed benefits during the collection process. It can be found at http://oregon.gov/PERS/. These examples may be helpful, but for any individual retiree, they may not exactly fit his or her situation, and the retiree can choose to discuss the issue with PERS.

5. Because PERS had withheld COLAs for some time, these have to be added back, and the overall COLA adjustments may be greater than the deductions for the 1999 overpayments.

C. PERS, by law, had to choose among three options to collect the overpayments. They are (1) charge them to administrative expenses, (2) use contingency funds, or (3) collect directly from the retirees who benefited. They chose (3) because using either (1) or (2) would mean that members in the system other than those who received the benefit would have to pay a portion of this needed amount.

IV. OTHER PERS FACTS

A. PERS now has no unfunded liability. It is funded at 104 percent of its obligations, that is, it has more than a billion dollars over its present and anticipated future liabilities.

B. Mr. Delaney also discussed the Individual Account Program (IAP), a defined contribution program.

1. He stated and reiterated that the IAP funds are invested identically to those in regular PERS accounts, but there are still differences between the two. They are that the IAP funds: (1) are not guaranteed the annual 8%

and (2) will not be included in a doubling of funds in any Money Match calculation because they are in a separate account.

a. As to (1) immediately above, the future retiree could lose money if there is a downturn in the stock market, but has the expertise of the PERS investors, who have gained about 15% returns over each of the last three years.

b. As to (2) immediately above, the system had come to a point where the Money Match calculation gave the best retirement benefit to over 90 % of retirees, but now the system for most retirees will return to a full formula system resembling a traditional defined benefit retirement plan.

c.. Thus, for Tier One retirees, the average of the highest three years of salary will be multiplied by the number of years worked and then multiplied by 1.67% (2.00% for police and fire department employees). For instance, if an OSU professor retires with a highest average salary of $60,000 and he or she has worked 30 years, or attained age 58, that professor's annual pension benefit would be $30,000 or 50% of the highest average salary. Again the formula for police and fire department retirees uses age 55 (or age 50 with 25 years of service) for a full retirement.

2. Tier Two employees full retirement calculations are governed by a slightly older age, but the same factor (1.67%) is used for all except police and fire employees, who use 2.0%

3. For Oregon Public Service Retirement Plan (OPSRP) employees, the factor in the formula for full retirement benefits has been reduced to 1.5% and is used for all except police and fire employees who use a factor of 1.8. This plan was established by the Oregon Legislature to begin on August 29, 2003.

C. Employer rates had increased from about 10%-11% of an employee's salary to about 18% to serve Money Match. Now they have dropped somewhat and are expected to remain stable.

V. POSSIBLE LONG TERM EFFECTS OF THE LEGISLATIVE "FIXES" TO THE PERS SYSTEM

A. There are now three categories of state employees based on their pension plan. The PERS website gives details on these categories.

1. Tier One employees hired before 1/1/1996.

2. Tier Two employees hired on or after 1/1/1996 and up to 8/29/2003

3. Oregon Public Service Retirement Plan Employees hired on or after 8/29/2003**.**

B. Mr. Hartman argued that Oregon public employees, including university faculty and staff who had been attracted to Oregon public service employment by the former generous retirement benefits, even though salaries were in the bottom 25% of the nation, may no longer be willing to work in Oregon, and this could have a very significant negative effect on Oregon's economy.