



Oregon

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Public Employees Retirement System

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TO: Interested Parties
FROM: Heather Case, Senior Policy Director
SUBJECT: HB 2283 (2023) Summary – PERS’ Modernization Bill

BACKGROUND

With the conclusion of the majority of the SB 1049 (2019) implementation projects, the agency is turning its attention to modernization. These legislative concepts will facilitate working toward this goal. This bill will focus on ensuring PERS’ statutes are more clear, align standards where possible between Tier One/Tier Two members and OPSRP members for ease of administration, and provide refinement where needed to accurately convey current agency practice and plans for the future of the agency’s modernization project.

PROPOSED SOLUTION

The agency-requested Legislative Concept proposes the following changes:

- Clarifications and Housekeeping Amendments
 - When tax remedy was codified in ORS 238, the Legislature included language that specifically included judges in the statutory language. When the Legislature updated the tax remedy provisions in 2013 to include a residency requirement, they did not add the new tax remedy statutes to the list of statutes applicable to judge members, thereby inadvertently excluding judges from the new provisions. Amend ORS 238.580(1) to include all tax remedy statutes as applicable to judge members.
 - The definition of “qualifying position” is ambiguous with respect to partial years. Amend “qualifying position” definition to continue to support PERS administration for partial years.
 - Clarify that inactive and retired members are able to withdraw loss of membership (LOM) accounts. Former members eligible to withdraw their LOM account, lose their eligibility if they subsequently return to PERS covered employment later in their career and establish a new membership. Amend ORS 238.095 to clarify that an inactive member who has separated from all service with a participating employer, or a retired member who is receiving a disability or service retirement benefit may withdraw their LOM account.
 - Tax remedy provides for an increased benefit to the member’s service retirement, disability retirement, and lump-sum payouts including withdrawals, and death benefits. One of the ways to calculate the tax remedy benefit is by multiplying the amount of a member’s retirement allowance or death benefit with the percentage produced by the current statutory formula: 1/.91. It’s been argued that since 1/.91 produces 1.0989, members are therefore entitled to a 109.89 percent tax remedy rate. That argument and interpretation has been rejected by the Oregon Court of Appeals. However, we would like to nevertheless update

the statutory provision under ORS 238.364(4)(a) so the formula in question reads $1/.91 - 1$. This would prevent any future misinterpretation of the statute by membership.

- Employer paid pre-tax (EPPT) contributions occur when an employer is paying required contributions on behalf of the member without reducing the salary of the member. PERS allows hybrid “salary” treatment for EPPT contributions made on behalf of a Tier 1 or Tier 2 member. It is included for final average salary (FAS) purposes but excluded for the purpose of determining member contributions. Due to statutory changes made in 2003, the statute became silent on the treatment of EPPT contributions made on and after January 1, 2004. The lack of clarity was not immediately identified and PERS has continued to allow hybrid treatment for EPPT contributions before and after January 1, 2004. Amend the definition of “salary” in 238.005 to clearly support PERS’s hybrid treatment of EPPT contributions for Tier 1 and Tier 2 members.
- Aligning Standards for Consistency
 - Police and Fire (P&F) member unit purchases are required to be made within 60 days of a member’s effective retirement date. Revise ORS 238.440 to allow P&F unit purchases at retirement to be made within 90 days of the effective retirement date to bring this in line with timelines for all other purchases. Having the same deadline for purchases allows streamlined efficient administration for PERS.
 - Currently, a judge member account that would be paid in a lump sum to a surviving spouse can only be paid to the member's estate if the spouse predeceases the judge member, or if the judge member is not married. Amend the statute to align with other Tier 1/Tier 2 pre-retirement death benefit provisions to allow judge members to elect one or more non-spouse beneficiaries to receive the judge member’s account balance for any judge member with less than six years of service as a judge who dies before retirement and is not married.
 - Amend ORS 238.545 to allow judges to withdraw their judge member account if they are separated from all PERS employment and are not eligible for a retirement benefit. This would align treatment of judge members with treatment of other unvested PERS members.
 - Currently, when a Tier 1/Tier 2 member fails to designate a beneficiary, the default beneficiary is the member’s estate. For OPSRP members, the default is to pay the account first to the member’s surviving spouse, then to the member’s children, then to the member’s estate. To provide consistency, amend ORS 238.390 to revise the Tier 1/Tier 2 default to pay account to member’s surviving spouse, then to the member’s children, then to the member’s estate.
 - Currently, there is a disparity in statute such that OPSRP members who qualify for a disability benefit under provisions specific to educational employees may receive a lower than expected retirement benefit because their period of disability will not be included as retirement credit in their service retirement calculation. Amend ORS 238A.155 to address this disparity.
 - Currently under ORS 238.390(2), PERS is authorized to pay out a pre-retirement death benefit to the person who filed a small estate affidavit under ORS 114.505-.560; however, this same authority is not provided for PERS to pay out an IAP account balance in the event of pre-retirement death under ORS 238A.410. Amend ORS 238A.410 to establish

the authority to allow payment of the member's IAP account to the person who files a small estate affidavit.

- Substantive Clarifications/Improvements
 - Currently, there is no expressed time limit for employers to submit new or corrected employment data to PERS. Employers sometimes send new employment data many years past PERS year-end reconciliation, including after a member has retired, withdrawn or deceased. This late reporting requires PERS to re-evaluate prior determinations such as membership eligibility, retirement credit and salary. Late reporting may also impact other employers for that member, leading to invoices for contributions and prior year earnings. Amend ORS 238.450 and add new statutory provisions to allow PERS to lock member data. This amendment will allow PERS to engage in the rulemaking process with employer and member groups to create more specific rules regarding locking data, including allowing employers and members a final opportunity to review and verify data by a certain deadline, and then lock submitted data for each calendar year.
 - Under the terms set out in HB 2417 (2019), if eligible, a member's surviving spouse may elect to receive an alternate pre-retirement death benefit, but only if the spouse notifies the board in writing of an election to do so no later than 60 days after the date of death of the member. This timing can be an unexpected burden to some spouses. Amend ORS 238.395(2)(b) and (d) to require the surviving spouse to make the election within 60 days of the date of the estimate provided by PERS instead of the date of death.
 - Establish a standard for processing accounts when a member's surviving spouse elects to delay the start of payments but dies before payments commence.
 - Currently, for an OPSRP P&F member to be eligible to retire under the P&F standard age, they must have worked "continuously for a period of not less than five years immediately preceding the effective date of retirement" in a P&F position. This "immediate" language is problematic in that a member who takes any time between their last day of employment and their effective retirement date may lose their eligibility to retire under P&F timing. Amend statutory language in ORS 238A.160 to reflect that a member is eligible to retire as P&F so long as the required continuous five years in a P&F position was the member's last PERS-participating employment before retirement.
 - Statute provides that an OPSRP disability benefit shall be paid until the member is no longer disabled or until the member reaches *normal* retirement age. Normal retirement age for an OPSRP member is 65 years of age (60 for a P&F member). However, the *earliest* retirement age for a service retirement benefit is 55 years of age for a non-P&F member and 50 years of age for a P&F member. This inconsistency in timing could be interpreted to allow members to apply for an early service retirement while continuing to draw an OPSRP disability benefit. Amend ORS 238A.235 to eliminate this potential loophole.

The above amendments will assist PERS in implementing the long term effects and administration of its programs.