



Oregon

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TO: Members of the PERS Board

FROM: Melanie Chandler, Research Policy Coordinator, Policy Analysis and Compliance Section
Stephanie Vaughn, Manager, Policy Analysis and Compliance Section

SUBJECT: Adoption of Rulemaking to Implement 2025 Senate Bill 588:

OAR 459-001-0035 *Contested Case Hearing*
 OAR 459-015-0001 *ORS 238 Disability Definitions*
 OAR 459-015-0005 *ORS 238 Disability Eligibility*
 OAR 459-015-0010 *ORS 238 Disability Eligibility Criteria*
 OAR 459-015-0030 *ORS 238 Disability Hearings*
 OAR 459-015-0045 *ORS 238 Disability Return to Work*
 OAR 459-076-0001 *OPSRP Disability Definitions*
 OAR 459-076-0005 *OPSRP Disability Eligibility*
 OAR 459-076-0010 *OPSRP Disability Eligibility Criteria*
 OAR 459-076-0030 *OPSRP Disability Hearings*

OVERVIEW

- Action: Adoption of rulemaking to implement 2025 Senate Bill 588.
- Reason: Updating rules to implement 2025 legislation impacting PERS.

BACKGROUND

The 2025 Oregon Legislature enacted several PERS-related bills which require rulemaking including SB 588 which has to do with Disability benefits. There are two areas impacted by SB 588: Disability Eligibility & Contested Case Timelines. The bill included an emergency clause and was effective on passage, May 27, 2025.

- Disability Eligibility for Police Officer and Firefighter (P&F) members, Generally

The bill redefines the disability eligibility standard for P&F members from a standard where members are considered disabled if they are “unable to perform any work for which qualified” to a standard where the member is considered disabled if they are “unable to perform the work the member performed *at the time the member became disabled.*” Emphasis added.

Under the new eligibility standard, P&F members are considered disabled if, due to their injury/condition, they cannot return to the P&F position they held at the time of their disability, regardless of their ability to perform any other work given their general health and qualifications. For example, a P&F member with a back injury who is no longer able to work as a firefighter

would be considered disabled even if that member held a PhD and would be qualified and able to be employed as a researcher, a professor, or a policy analyst.

This change is applicable for both duty and non-duty disability cases and applies for disability retirements for Tier One/Tier Two members under ORS 238.320 as well as disability benefits provided to OPSRP members under ORS 238A.235.

- Disability Eligibility for OPSRP members, Generally

Traditionally, members receiving an OPSRP disability benefit were in jeopardy of losing their benefit if they received earned income in any amount. Prior to SB 588, disability benefits under ORS 238A.235 were paid until the member was no longer disabled, until the member reached normal retirement age under ORS 238A.160, or until the member retired on or after their earliest retirement date under ORS 238A.165. Over the years, the PERS Board had clarified in rule what constitutes “earned income” and tried to distinguish between allowable and not-allowable income that would impact a member’s benefit eligibility.

The Legislature has now expanded and clarified the conditions by which an OPSRP disability benefit under ORS 238A.235 will cease being paid. Under SB 588, a disability benefit will be paid until:

- The member is no longer disabled,
- **The member returns to employment with any employer, including self-employment,**
- **The member receives earned income in any month in an irregular or unpredictable manner that exceeds 10 percent of the monthly salary of the member determined as of the last full month of employment before disability commenced,**
- The member reaches normal retirement age under ORS 238A.160, or
- The member retires on or after the earliest retirement date under ORS 238A.165.

The **bolded** language above is new. The “irregular and unpredictable” language is an attempt to accommodate the rare situations when a disabled OPSRP member receives de minimis income due to things such as a stipend for volunteer work, or nominal winnings from playing poker.

- Contested Case Timelines for P&F Members

SB 588 provides that if a P&F member had requested a contested case hearing to dispute final denial of application for disability retirement under ORS 238.320 or a disability benefit under ORS 238A.235 *and* that hearing has not yet been referred for a hearing prior to the effective date of the bill (May 27, 2025), PERS must refer the case for hearing within 360 days (by May 22, 2026). If PERS fails to refer the P&F members’ cases for a contested case hearing by that time, the member prevails in their request for disability benefits under ORS 238.320 or 238A.235, respectively.

For contested case hearing requests submitted by P&F members to dispute final denial of application for disability retirement under ORS 238.320 or a disability benefit under ORS 238A.235 on or after the effective date of the bill (May 27, 2025), PERS must refer the case for hearing no later than 180 days after the member requested the hearing or no later than 360 days if the member requests an extension. If the case is not referred for a hearing within the specified time, the P&F member prevails in their request for disability benefits under ORS 238.320 or 238A.235, respectively.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely, and in person, on October 28, 2025, at 2:00 p.m. The public comment period ended October 31, 2025, at 5:00 p.m. No public comments were received.

LEGAL REVIEW

The attached rules were submitted to the Department of Justice for legal review, and any comments or changes have been incorporated into rules as presented for adoption.

IMPACT

Mandatory: Yes.

Benefit: Updates the rules to reflect recent legislative changes and provides clarification on the agency's administration of disability programs.

Cost: There are no discrete costs attributable to the rules.

RULEMAKING TIMELINE

September 23, 2025:	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
October 1, 2025:	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. The public comment period begins.
September 26, 2025:	PERS Board notified that staff began the rulemaking process.
October 28, 2025:	Rulemaking hearing washeld remotely and at the PERS headquarters at 2:00 p.m.
October 31, 2025:	Public comment period endedat 5:00 p.m.
December 5, 2025:	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to adopt the rules implementing 2025 Senate Bill 588-related edits.
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommend the PERS Board choose Option #1.

- B.2.c Attachment 1 – OAR 459-001-0035 *Contested Case Hearing*
- B.2.c Attachment 2 – OAR 459-015-0001 *ORS 238 Disability Definitions*
- B.2.c Attachment 3 – OAR 459-015-0005 *ORS 238 Disability Eligibility*
- B.2.c Attachment 4 – OAR 459-015-0010 *ORS 238 Disability Eligibility Criteria*
- B.2.c Attachment 5 – OAR 459-015-0030 *ORS 238 Disability Hearings*
- B.2.c Attachment 6 – OAR 459-015-0045 *ORS 238 Disability Return to Work*
- B.2.c Attachment 7 – OAR 459-076-0001 *OPSRP Disability Definitions*
- B.2.c Attachment 8 – OAR 459-076-0005 *OPSRP Disability Eligibility*
- B.2.c Attachment 9 – OAR 459-076-0010 *OPSRP Disability Eligibility Criteria*
- B.2.c Attachment 10 – OAR 459-076-0030 *OPSRP Disability Hearings*