

House Bill 2704

Sponsored by COMMITTEE ON BUSINESS AND LABOR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Eliminates offset for workers' compensation benefits in calculating disability retirement allowance payable to Tier 2 member of Public Employees Retirement System. Eliminates offset for workers' compensation benefits in calculating disability benefit payable to member of Oregon Public Service Retirement Plan.

Becomes operative January 1, 2010.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; amending ORS 238.435 and
3 238A.235; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 238.435 is amended to read:

6 238.435. (1) Notwithstanding the definition of "salary" or "other advantages" provided by ORS
7 238.005, for the purpose of calculating the retirement allowance of a person who establishes mem-
8 bership in the system on or after January 1, 1996, as described in ORS 238.430, the Public Employees
9 Retirement Board shall not include any lump sum payment for accrued vacation pay made to the
10 member during the last 36 calendar months of membership before the effective date of retirement
11 of the member, or during any period of time taken into account for purposes of determining the
12 three years in which the member was paid the highest salary for the purposes of determining the
13 member's final average salary.

14 (2) Notwithstanding the definition of "final average salary" provided by ORS 238.005, for the
15 purpose of calculating the retirement allowance of a person who establishes membership in the
16 system on or after January 1, 1996, as described in ORS 238.430, and who is not employed by a local
17 government as defined in ORS 174.116, the term "final average salary" means whichever of the fol-
18 lowing is greater:

19 (a) The average salary per calendar year paid to a public employee who is an active member
20 of the system in three of the calendar years of membership before the effective date of retirement
21 of the employee, in which three years the employee was paid the highest salary. The three calendar
22 years in which the employee was paid the largest total salary may include calendar years in which
23 the employee was employed for less than a full calendar year. If the number of calendar years of
24 active membership before the effective date of retirement of the employee is three or less, the final
25 average salary for the employee is the average salary per calendar year paid to the public employee
26 in all of those years, without regard to whether the employee was employed for full calendar years.

27 (b) One-third of the total salary paid to a public employee who is an active member of the sys-
28 tem in the last 36 calendar months of membership before the effective date of retirement of the
29 employee.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) For the purposes of calculating the final average salary of a member under subsection (2)
 2 of this section, the Public Employees Retirement Board shall:

3 (a) Include any salary paid in or for the calendar month of separation from employment;

4 (b) Exclude any salary for any pay period before the first full pay period that is included in the
 5 three calendar years of membership under subsection (2)(a) of this section if the three calendar years
 6 were consecutive; and

7 (c) Exclude any salary for any pay period before the first full pay period that is included in the
 8 last 36 calendar months of membership under subsection (2)(b) of this section.

9 (4) Notwithstanding the definition of “final average salary” provided by ORS 238.005, for the
 10 purpose of calculating the retirement allowance of a person who establishes membership in the
 11 system on or after January 1, 1996, as described in ORS 238.430, and who is employed by a local
 12 government as defined in ORS 174.116, the term “final average salary” means whichever of the fol-
 13 lowing is greater:

14 (a) The average salary per calendar year earned by a public employee who is an active member
 15 of the system in three of the calendar years of membership before the effective date of retirement
 16 of the employee, in which three years the employee earned the highest salary. The three calendar
 17 years in which the employee earned the largest total salary may include calendar years in which
 18 the employee was employed for less than a full calendar year. If the number of calendar years of
 19 active membership before the effective date of retirement of the employee is three or less, the final
 20 average salary for the employee is the average salary per calendar year earned by the public em-
 21 ployee in all of those years, without regard to whether the employee was employed for full calendar
 22 years.

23 (b) One-third of the total salary earned by a public employee who is an active member of the
 24 system in the last 36 calendar months of membership before the effective date of retirement of the
 25 employee.

26 (5) The normal retirement age is 60 years of age for a member who establishes membership in
 27 the system on or after January 1, 1996, as described in ORS 238.430, and who retires as other than
 28 a police officer or firefighter.

29 (6) ORS 238.255 does not apply to any person who establishes membership in the Public Em-
 30 ployees Retirement System on or after January 1, 1996, as described in ORS 238.430.

31 *[(7) Notwithstanding any other provision of this chapter, for the purpose of calculating a monthly*
 32 *disability retirement allowance payable to a member who establishes membership in the system on or*
 33 *after January 1, 1996, as described in ORS 238.430, the sum of the monthly amount of the disability*
 34 *retirement allowance and of any monthly payment on account of temporary total disability or permanent*
 35 *total disability under the provisions of ORS chapter 656 may not exceed the member's monthly salary,*
 36 *determined as of the date the member becomes disabled. The board shall reduce any disability retire-*
 37 *ment allowance payable under this chapter in the amount determined to be necessary by the board to*
 38 *meet the limitation imposed by this subsection.]*

39 [(8)] (7) Except as provided in this section, all provisions of this chapter are applicable to per-
 40 sons who establish membership in the system on or after January 1, 1996, as described in ORS
 41 238.430.

42 **SECTION 2. The amendments to ORS 238.435 by section 1 of this 2009 Act apply to all**
 43 **monthly disability retirement allowances paid on or after the operative date specified in**
 44 **section 5 of this 2009 Act. As soon as possible after the effective date of this 2009 Act, the**
 45 **Public Employees Retirement Board shall recalculate any disability retirement allowance**

1 **being paid on the effective date of this 2009 Act, and the recalculated disability retirement**
 2 **allowance shall be effective for the month of December 2009 and payable January 1, 2010.**

3 **SECTION 3.** ORS 238A.235 is amended to read:

4 238A.235. (1) *[Subject to subsection (3) of this section,]* An active member of the pension program
 5 described in subsection (2) of this section who becomes disabled shall receive a disability benefit in
 6 the amount of 45 percent of the salary of the member determined as of the last full month of em-
 7 ployment before the disability commences.

8 (2) The provisions of this section apply only to:

9 (a) A member, other than a school employee as defined by ORS 238A.140, who has accrued 10
 10 years or more of retirement credit before the member becomes disabled;

11 (b) A member who is a school employee as defined by ORS 238A.140 and who was an active
 12 member in 10 or more calendar years before the member becomes disabled; or

13 (c) A member who becomes disabled by reason of injury or disease sustained while in the actual
 14 performance of duty.

15 *[(3)(a) Except as provided by paragraph (b) of this subsection, the sum of the monthly amount of*
 16 *the disability benefit under this section and of any monthly payment by reason of temporary total dis-*
 17 *ability or permanent total disability under the provisions of ORS chapter 656 may not exceed 75 percent*
 18 *of the member's monthly salary, determined as of the date the member becomes disabled. The Public*
 19 *Employees Retirement Board shall reduce any disability benefit payable under this section in the*
 20 *amount determined to be necessary by the board to meet the limitation imposed by this subsection.]*

21 *[(b) This subsection does not affect cost-of-living adjustments under ORS 238A.210, and increases*
 22 *in the monthly amount of the disability benefit under this section due to those cost-of-living adjustments*
 23 *may not be considered by the Public Employees Retirement Board in determining whether the limitation*
 24 *imposed by this subsection has been exceeded.]*

25 *[(4)]* (3) A *[disability retirement pension]* **disability benefit** under this section shall be paid until:

26 (a) The member is no longer disabled; or

27 (b) The member attains normal retirement age under ORS 238A.160.

28 *[(5)]* (4) A member is considered to be disabled for the purpose of this section if the member is
 29 found, after being examined by one or more physicians selected by the board, to be mentally or
 30 physically incapacitated for an extended duration and unable to perform any work for which quali-
 31 fied, by reason of injury or disease that was not intentionally self-inflicted.

32 **SECTION 4. The amendments to ORS 238A.235 by section 3 of this 2009 Act apply to all**
 33 **disability benefits paid on or after the operative date specified in section 5 of this 2009 Act.**
 34 **As soon as possible after the effective date of this 2009 Act, the Public Employees Retirement**
 35 **Board shall recalculate any disability benefit being paid on the effective date of this 2009 Act,**
 36 **and the recalculated disability benefit shall be effective for the month of December 2009 and**
 37 **payable January 1, 2010.**

38 **SECTION 5. The amendments to ORS 238.435 and 238A.235 by sections 1 and 3 of this 2009**
 39 **Act become operative on January 1, 2010.**

40 **SECTION 6. This 2009 Act being necessary for the immediate preservation of the public**
 41 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
 42 **on its passage.**