

C-Engrossed
House Bill 2873

Ordered by the Senate June 19
Including House Amendments dated May 4 and June 15 and Senate
Amendments dated June 19

Sponsored by COMMITTEE ON JUDICIARY

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.

Modifies method by which Public Employees Retirement Board calculates certain retirement benefit increases.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; amending ORS 238.082, 238.380 and
3 238.385; repealing section 7, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 112); and
4 declaring an emergency.

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

6 **SECTION 1.** ORS 238.380 is amended to read:

7 238.380. (1)(a) Upon retirement of an employee who is a member of the Public Employees Re-
8 tirement System and computation of that member's service retirement allowance under ORS 238.300,
9 238.305 or 238.425, or computation of any disability retirement allowance under ORS 238.320,
10 238.325, 238.330, 238.345 or 238.425, the Public Employees Retirement Board shall add to the amount
11 of the allowance, including amounts attributable to prior service credit and the amount of any re-
12 fund of accumulated employee contributions, the greater of the percentage increase calculated under
13 ORS 238.385 or a percentage increase calculated under subsection (4) of this section. No benefit
14 shall be paid to a member or beneficiary under ORS 238.385 if the benefit payable to the member
15 or beneficiary under this section is larger than the benefit payable under ORS 238.385.

16 (b) The percentage increase provided for in this section shall be adjusted by the board to reflect
17 increases or decreases in a member's retirement allowance that are attributable to the member's
18 participation in the Variable Annuity Account established by ORS 238.260, that are attributable to
19 a change in the member's beneficiary or payment option under ORS 238.305 or 238.325, or that are
20 attributable to corrections to the member's retirement allowance calculation.

21 (c) The percentage increase provided for in this section shall be applied to any lump sum pay-
22 ment made to a member or a beneficiary of a member on or after January 1, 1991, that is attribut-
23 able to a retroactive correction or adjustment of the amount payable to the member or beneficiary
24 as a retirement allowance or that is attributable to a retroactive correction or adjustment to any
25 other benefit that entitles a member or beneficiary to an increased benefit under this section. The
26 percentage increase payable under this paragraph applies only to the principal amounts included in
27 the lump sum payment as a retroactive correction or adjustment and does not apply to any interest

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 on the retroactive correction or adjustment paid as part of the lump sum payment.

2 (2) The amount of any death benefit under ORS 238.390, 238.395, 238.400 or 238.405, including
 3 the amount of any monthly payments, shall be increased by the greater of the percentage provided
 4 for in ORS 238.385 or the percentage calculated under subsection (4) of this section.

5 (3)(a) A member of the system who elects to receive a lump sum in lieu of a retirement allow-
 6 ance or other benefit under ORS 238.315 shall receive an increase based on the greater of the per-
 7 centage provided for in ORS 238.385 or the percentage calculated under subsection (4) of this
 8 section.

9 (b) A member of the system who withdraws the amount credited to the member account, if any,
 10 of the member in the fund under the provisions of ORS 238.265, or whose member account is re-
 11 turned to the employee after the membership of the employee is terminated under the provisions of
 12 ORS 238.095, shall receive an additional amount calculated by multiplying the amount of the member
 13 account of the member by the greater of the percentage provided for in ORS 238.385 or the per-
 14 centage calculated under subsection (4) of this section. If a member thereafter elects to obtain res-
 15 toration of creditable service by repaying the amount of the withdrawn member account pursuant
 16 to the provisions of ORS 238.105, the member must also repay all amounts paid under this section,
 17 together with interest from the date of withdrawal at the same rate as applied to the withdrawn
 18 member account under ORS 238.105. If a member repays only part of the withdrawn member account
 19 pursuant to the provisions of ORS 238.115, the member must repay that part of the amount paid
 20 under this section that is proportionate to the portion of the withdrawn member account that is
 21 repaid under ORS 238.115, together with interest from the date of withdrawal at the same rate as
 22 applied to the withdrawn member account under ORS 238.115. All amounts paid to the member that
 23 are subsequently repaid under ORS 238.105 or 238.115 shall be deposited by the board to the em-
 24 ployer reserve for pension accounts in the fund.

25 (4)(a) The Public Employees Retirement Board shall calculate a multiplier for the purposes of
 26 this section equal to the percentage produced by the following formula:

27
$$1$$

28
$$\frac{1 - \text{the maximum Oregon}}{\text{personal income tax rate}}$$

29 **.91**

30
 31
 32 (b) Upon the retirement or death of a member of the system, the board shall determine the
 33 fraction of the member's retirement allowance or death benefit, including any refund or lump sum
 34 payment, that is attributable to service rendered by the member before October 1, 1991. The board
 35 shall then calculate a percentage that is equal to that fraction multiplied by the multiplier deter-
 36 mined by the board under paragraph (a) of this subsection. The percentage so calculated shall be
 37 used to determine the amount of the increase in benefits provided to a member, if any, under this
 38 section.

39 (5) For the purpose of determining that portion of a retirement allowance or death benefit at-
 40 tributable to service rendered before October 1, 1991, the board shall divide the number of years
 41 of creditable service performed before October 1, 1991, by the total number of years of creditable
 42 service during which the pension income was earned. For the purposes of this subsection:

43 (a) The number of years of creditable service does not include any period of employment for
 44 which a benefit is paid for prior service credit.

45 (b) Except as provided in subsection [(8)(a)] (7) of this section, the number of years of creditable

1 service includes all retirement credit of the member, and any retirement credit of a member that is
2 attributable to periods of service, employment or other activity performed before October 1, 1991,
3 shall be considered creditable service performed before October 1, 1991.

4 (6) The increased benefits provided for in this section shall be funded by employer contributions.

5 *[(7) If the maximum Oregon income tax rate is changed for any taxable year, the board shall utilize*
6 *the new rate for the purposes of calculating the benefit provided for in this section for all members of*
7 *the system who retire or die after the change in rates takes effect. In addition, the board shall recal-*
8 *culate the benefits payable to all retired members of the Public Employees Retirement System, or to the*
9 *beneficiaries of those members, using the new tax rate. The benefit so recalculated shall be applicable*
10 *to the first full month after the recalculation is made, and be payable the first day of the month im-*
11 *mediately following. If by reason of the calculation or recalculation of the benefit under this subsection*
12 *the amount of the benefit provided for in this section is decreased, any benefits paid after the change*
13 *in the tax rate takes effect and before the calculation or recalculation is made shall not be recoverable*
14 *by the system, but the Public Employees Retirement Board shall ensure that only the amount of the*
15 *benefit so calculated or recalculated shall be paid after the calculation or recalculation is made.]*

16 *[(8)(a)]* (7) The increased benefits provided by this section apply only to members who establish
17 membership in the Public Employees Retirement System before July 14, 1995, and whose effective
18 date of retirement or date of death is on or after January 1, 1991. The increased benefits provided
19 by this section do not apply to any creditable service or prior service credit acquired by a member
20 under the terms of a contract of integration entered into pursuant to ORS 238.035, 238.680 or 238.690
21 on or after October 1, 1991.

22 *[(b) The recalculation of benefits provided for in subsection (7) of this section applies to all retired*
23 *members, without regard to the date of the member's retirement or death.]*

24 *[(9)]* (8) If a member is entitled to receive an increased benefit under the provisions of this
25 section, and any portion of the member's retirement allowance or other benefit payable under the
26 system is payable to an alternate payee under the provisions of ORS 238.465, the increased benefits
27 payable under this section shall be divided between the member and the alternate payee in propor-
28 tion to the share of the total benefit received by each person. If an alternate payee elects to begin
29 receiving benefits under ORS 238.465 (1) before the member's effective date of retirement, the al-
30 ternate payee may not begin receiving the increased benefit provided for in this section until bene-
31 fits are first paid from the system on behalf of the member.

32 *[(10)]* (9) A person establishes membership in the system before July 14, 1995, for the purposes
33 of subsection *[(8)]* (7) of this section if:

34 (a) The person is a member of the system, or a judge member of the system, on July 14, 1995;

35 (b) The person was a member of the system before July 14, 1995, ceased to be a member of the
36 system under the provisions of ORS 238.095, 238.265 or 238.545 before July 14, 1995, but restores
37 part or all of the forfeited creditable service from before July 14, 1995, under the provisions of ORS
38 238.105 or 238.115 after July 14, 1995; or

39 (c) The person performed any period of service for a participating public employer before July
40 14, 1995, that is credited to the six-month period of employment required of an employee under ORS
41 238.015 before an employee may become a member of the system.

42 **SECTION 2.** ORS 238.385 is amended to read:

43 238.385. (1)(a) Upon retirement of an employee who is a member of the Public Employees Re-
44 tirement System and computation of that member's service retirement allowance under ORS 238.300,
45 238.305 or 238.425, or computation of any disability retirement allowance under ORS 238.320,

1 238.325, 238.330, 238.345 or 238.425, the Public Employees Retirement Board shall add to the amount
2 of the allowance, including amounts attributable to prior service credit and the amount of any re-
3 fund of accumulated member contributions, an additional amount equal to the percentage increase
4 provided in subsection (4) of this section.

5 (b) The percentage increase provided for in this section shall be adjusted by the board to reflect
6 increases or decreases in a member's retirement allowance that are attributable to the member's
7 participation in the Variable Annuity Account established by ORS 238.260, that are attributable to
8 a change in the member's beneficiary or payment option under ORS 238.305 or 238.325, or that are
9 attributable to corrections to the member's retirement allowance calculation.

10 (c) The percentage increase provided for in this section shall be applied to any lump sum pay-
11 ment made to a member or a beneficiary of a member on or after January 1, 1991, that is attribut-
12 able to a retroactive correction or adjustment of the amount payable to the member or beneficiary
13 as a retirement allowance or that is attributable to a retroactive correction or adjustment to any
14 other benefit that entitles a member or beneficiary to an increased benefit under this section. The
15 percentage increase payable under this paragraph applies only to the principal amounts included in
16 the lump sum payment as a retroactive correction or adjustment and does not apply to any interest
17 on the retroactive correction or adjustment paid as part of the lump sum payment.

18 (2) The amount of any death benefit under ORS 238.390, 238.395, 238.400 or 238.405, including
19 the amount of any monthly payments, shall be increased by an amount equal to the percentage in-
20 crease provided in subsection (4) of this section.

21 (3)(a) A member of the system who receives a lump sum under ORS 238.315 in lieu of a retire-
22 ment allowance or other benefit shall receive an additional amount equal to the percentage increase
23 provided in subsection (4) of this section.

24 (b) A member of the system who withdraws the amount credited to the member account, if any,
25 of the member under the provisions of ORS 238.265, or whose member account is returned to the
26 employee after the membership of the employee is terminated under the provisions of ORS 238.095,
27 shall receive an additional amount calculated by multiplying the amount of the member account of
28 the member by the percentage increase provided for under subsection (4) of this section. If a member
29 thereafter elects to obtain restoration of creditable service by repaying the amount of the withdrawn
30 member account pursuant to the provisions of ORS 238.105, the member must also repay all amounts
31 paid under this section, together with interest from the date of withdrawal at the same rate as ap-
32 plied to the withdrawn member account under ORS 238.105. If a member repays only part of the
33 withdrawn member account pursuant to the provisions of ORS 238.115, the member must repay that
34 part of the amount paid under this section that is proportionate to the portion of the withdrawn
35 member account that is repaid under ORS 238.115, together with interest from the date of with-
36 drawal at the same rate as applied to the withdrawn member account under ORS 238.115. All
37 amounts paid to the member that are subsequently repaid under ORS 238.105 or 238.115 shall be
38 deposited by the board to the employer reserve for pension accounts in the fund.

39 (4)(a) The percentage increases provided for in this section to the benefits payable to or on ac-
40 count of a member of the system who is serving as other than a police officer or firefighter at the
41 time of death or retirement shall be:

42 (A) For a member with a combined total of 10 or more years of creditable service in the system
43 and prior service credit but less than a combined total of 20 years, one percent.

44 (B) For a member with a combined total of 20 or more years of creditable service in the system
45 and prior service credit but less than a combined total of 25 years, two percent.

1 (C) For a member with a combined total of 25 or more years of creditable service in the system
2 and prior service credit but less than a combined total of 30 years, three percent.

3 (D) For a member with a combined total of 30 or more years of creditable service in the system
4 and prior service credit, four percent.

5 (b) The percentage increases provided for in this section to the benefits payable to or on ac-
6 count of a member of the system who is serving as a police officer or firefighter at the time of death
7 or retirement shall be:

8 (A) For a member with a combined total of 10 or more years of creditable service in the system
9 and prior service credit but less than a combined total of 20 years, one percent.

10 (B) For a member with a combined total of 20 or more years of creditable service in the system
11 and prior service credit but less than a combined total of 25 years, two and one-half percent.

12 (C) For a member with a combined total of 25 or more years of creditable service in the system
13 and prior service credit, four percent.

14 (c) The benefits payable to or on account of a member with less than a combined total of 10
15 years of creditable service in the system and prior service credit at the time of death or retirement
16 shall not be increased under the provisions of this section.

17 (5) The increased benefits provided for in this section shall be funded by employer contributions.

18 (6) This section applies only to a member who establishes membership in the Public Employees
19 Retirement System before July 14, 1995, as described in ORS 238.380 [(10)] (9), and whose effective
20 date of retirement or date of death is on or after January 1, 1991. The increased benefits provided
21 by this section do not apply to any creditable service or prior service credit acquired by a member
22 under the terms of a contract of integration entered into pursuant to ORS 238.035, 238.680 or 238.690
23 on or after October 1, 1991.

24 (7) If a member is entitled to receive an increased benefit under the provisions of this section,
25 and any portion of the member's retirement allowance or other benefit payable under the system is
26 payable to an alternate payee under the provisions of ORS 238.465, the increased benefits payable
27 under this section shall be divided between the member and the alternate payee in proportion to the
28 share of the total benefit received by each person. If an alternate payee elects to begin receiving
29 benefits under ORS 238.465 (1) before the member's effective date of retirement, the alternate payee
30 may not begin receiving the increased benefit provided for in this section until benefits are first paid
31 from the system on behalf of the member.

32 **SECTION 3.** If Senate Bill 112 becomes law, ORS 238.082, as amended by section 1, chapter
33 _____, Oregon Laws 2009 (Enrolled Senate Bill 112), is amended to read:

34 238.082. (1) Subject to the limitations in subsection (2) of this section, any public employer may
35 employ any person receiving a service retirement allowance if the administrative head of such em-
36 ployer is satisfied that such employment is in the public interest.

37 (2) The period or periods of employment by one or more public employers of any person receiv-
38 ing a service retirement allowance may not total 1,040 hours or more in any calendar year; but if
39 the person is receiving old-age, survivors or disability insurance benefits under the federal Social
40 Security Act, the person may be employed for the number of hours for which the salary equals the
41 maximum allowed for receipt of the full amount of those benefits to which the person is entitled.

42 (3) The limitations on employment imposed by subsection (2) of this section do not apply to a
43 retired member who is employed as a teacher or as an administrator, as those terms are defined in
44 ORS 342.120, if the retired member is employed by a school district or community college district
45 located within a county with a population of not more than 35,000 inhabitants according to the lat-

1 est federal decennial census, or is employed by an education service district and the retired mem-
2 ber's primary work duties are performed in a county with a population of not more than 35,000
3 inhabitants according to the latest federal decennial census. A retired member who is employed
4 under this subsection as a teacher, as defined in ORS 342.120, by the same public employer that
5 employed the member at the time of retirement remains in the same collective bargaining unit that
6 included the member before retirement.

7 (4) The limitations on employment imposed by subsection (2) of this section do not apply to a
8 retired member who is employed:

9 (a) By the sheriff of a county with a population of fewer than 75,000 inhabitants, according to
10 the latest federal decennial census;

11 (b) By the municipal police department of a city with a population of fewer than 15,000 inhab-
12 itants, according to the latest federal decennial census;

13 (c) By the state or a county for work in a correctional institution located in a county with a
14 population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

15 (d) By the Black Butte Ranch Rural Fire Protection District, the Black Butte Ranch Service
16 District or the Sunriver Service District;

17 (e) By the Oregon State Police for work in a county with a population of fewer than 75,000 in-
18 habitants, according to the latest federal decennial census; or

19 (f) As a deputy director or assistant director of the Department of Human Services, if the Gov-
20 ernor approves the exemption for the person from the limitations on employment imposed in sub-
21 section (2) of this section.

22 (5) The limitations on employment imposed by subsection (2) of this section do not apply to a
23 retired member who is employed to temporarily replace an employee who serves in the National
24 Guard or in a reserve component of the Armed Forces of the United States and who is called to
25 federal active duty.

26 (6) The limitations on employment imposed by subsection (2) of this section do not apply to a
27 retired member who is employed by a road assessment district organized under ORS 371.405 to
28 371.535.

29 (7) The limitations on employment imposed by subsection (2) of this section do not apply to a
30 retired member who is a nurse and is employed by a public employer as a nurse or for the purpose
31 of teaching nursing during the period in which a nursing workforce shortage declared by the Leg-
32 islative Assembly or the Governor is in effect.

33 (8)(a) Except as provided in paragraph (b) of this subsection, subsections (3) to (7) of this section
34 do not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3).

35 (b) Subsection (3) of this section applies to a person who retires under the provisions of ORS
36 238.280 (1) or (3) as long as the person's date of retirement is more than six months before the date
37 the person is employed under subsection (3) of this section.

38 (9) Employment under this section does not affect the status of a person as a retired member
39 of the system and a recipient of retirement benefits under this chapter.

40 (10) Hours worked by a person employed under subsections [(4) to (8)] (3) to (7) of this section
41 shall not be counted for the purpose of the limitations on employment imposed by subsection (2) of
42 this section.

43 **SECTION 4. The amendments to ORS 238.082 by section 3 of this 2009 Act apply to all**
44 **hours of work or service by a retired member of the Public Employees Retirement System**
45 **performed on or after January 1, 2004.**

1 **SECTION 5. If Senate Bill 112 becomes law, section 7, chapter____, Oregon Laws 2009**
2 **(Enrolled Senate Bill 112) (amending ORS 238.082), is repealed and ORS 238.082, as amended**
3 **by section 1, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 112), and section 3 of this**
4 **2009 Act, is amended to read:**

5 238.082. (1) Subject to the limitations in [*subsection (2) of*] this section, any public employer may
6 employ any [*person receiving a service retirement allowance*] **member who is retired for service** if
7 the administrative head of [*such*] **the public** employer is satisfied that such employment is in the
8 public interest.

9 [*(2) The period or periods of employment by one or more public employers of any person receiving*
10 *a service retirement allowance may not total 1,040 hours or more in any calendar year; but if the per-*
11 *son is receiving old-age, survivors or disability insurance benefits under the federal Social Security*
12 *Act, the person may be employed for the number of hours for which the salary equals the maximum*
13 *allowed for receipt of the full amount of those benefits to which the person is entitled.*]

14 **(2) Except as provided in this section, the period or periods of employment by one or**
15 **more public employers of a retired member who is reemployed under this section may not**
16 **total 1,040 hours or more in any calendar year.**

17 **(3) A retired member who is receiving old-age, survivors or disability insurance benefits**
18 **under the federal Social Security Act may be employed under this section for the number**
19 **of hours permitted by subsection (2) of this section, or for the number of hours for which**
20 **the salary equals the maximum allowed for receipt of the full amount of those benefits to**
21 **which the person is entitled, whichever is greater.**

22 [*(3)*] **(4) Except as provided in subsection (9) of this section,** the limitations on employment
23 imposed by [*subsection (2)*] **subsections (2) and (3)** of this section do not apply to a retired member
24 who is employed as a teacher or as an administrator, as those terms are defined in ORS 342.120, if
25 the retired member is employed by a school district or community college district located within a
26 county with a population of not more than 35,000 inhabitants according to the latest federal
27 decennial census, or is employed by an education service district and the retired member's primary
28 work duties are performed in a county with a population of not more than 35,000 inhabitants ac-
29 cording to the latest federal decennial census. A retired member who is employed under this sub-
30 section as a teacher, as defined in ORS 342.120, by the same public employer that employed the
31 member at the time of retirement remains in the same collective bargaining unit that included the
32 member before retirement.

33 [*(4)*] **(5) Except as provided in subsection (9) of this section,** the limitations on employment
34 imposed by [*subsection (2)*] **subsections (2) and (3)** of this section do not apply to a retired member
35 who is employed:

36 (a) By the sheriff of a county with a population of fewer than 75,000 inhabitants, according to
37 the latest federal decennial census;

38 (b) By the municipal police department of a city with a population of fewer than 15,000 inhab-
39 itants, according to the latest federal decennial census;

40 (c) By the state or a county for work in a correctional institution located in a county with a
41 population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

42 (d) By the Black Butte Ranch Rural Fire Protection District, the Black Butte Ranch Service
43 District or the Sunriver Service District;

44 (e) By the Oregon State Police for work in a county with a population of fewer than 75,000 in-
45 habitants, according to the latest federal decennial census; or

1 (f) As a deputy director or assistant director of the Department of Human Services, if the Gov-
2 ernor approves the exemption for the person from the limitations on employment imposed in [*sub-*
3 *section (2)*] **subsections (2) and (3)** of this section.

4 [(5)] **(6) Except as provided in subsection (9) of this section,** the limitations on employment
5 imposed by [*subsection (2)*] **subsections (2) and (3)** of this section do not apply to a retired member
6 who is employed to temporarily replace an employee who serves in the National Guard or in a re-
7 serve component of the Armed Forces of the United States and who is called to federal active duty.

8 [(6)] **(7) Except as provided in subsection (9) of this section,** the limitations on employment
9 imposed by [*subsection (2)*] **subsections (2) and (3)** of this section do not apply to a retired member
10 who is employed by a road assessment district organized under ORS 371.405 to 371.535.

11 [(7)] **(8) Except as provided in subsection (9) of this section,** the limitations on employment
12 imposed by [*subsection (2)*] **subsections (2) and (3)** of this section do not apply to a retired member
13 who is a nurse and is employed by a public employer as a nurse or for the purpose of teaching
14 nursing during the period in which a nursing workforce shortage declared by the Legislative As-
15 sembly or the Governor is in effect.

16 [(8)(a)] **(9)(a) Except as provided in paragraph (b) of this subsection, subsections [(3) to (7)] (4)**
17 **to (8)** of this section do not apply to any member who retires under the provisions of ORS 238.280
18 (1), (2) or (3).

19 (b) Subsection [(3)] **(4)** of this section applies to a person who retires under the provisions of
20 ORS 238.280 (1), **(2)** or (3) as long as the person's date of retirement is more than six months before
21 the date the person is employed under subsection [(3)] **(4)** of this section.

22 [(9)] **(10)** Employment under this section does not affect the status of a person as a retired
23 member of the system and a recipient of retirement benefits under this chapter.

24 [(10)] **(11)** Hours worked by a person employed under subsections [(3) to (7)] **(4) to (8)** of this
25 section shall not be counted for the purpose of the limitations on employment imposed by sub-
26 sections (2) **and (3)** of this section.

27 **SECTION 6. (1) The amendments to ORS 238.082 by section 5 of this 2009 Act become**
28 **operative January 1, 2010.**

29 **(2) The amendments to 238.082 by section 5 of this 2009 Act apply to any retired member**
30 **of the Public Employees Retirement System who is employed by a participating public em-**
31 **ployer before January 1, 2010, and who is an employee of the employer on January 1, 2010,**
32 **and to any retired member who is employed by a participating public employer on or after**
33 **January 1, 2010.**

34 **SECTION 7. This 2009 Act being necessary for the immediate preservation of the public**
35 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
36 **on its passage.**

37