

**A-Engrossed**  
**House Bill 3401**

Ordered by the House May 29  
Including House Amendments dated May 29

Sponsored by Representative HUNT; Representatives BARTON, D EDWARDS, JENSON, SPRENGER, Senator NELSON

**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.

Allows public employer participating in Public Employees Retirement System to request that excess amounts in side account established for lump sum payment be [*refunded to employer or*] applied to offset contributions to individual account program if Public Employees Retirement Board determines that amounts in account exceed amounts necessary to fund employer's actuarial liabilities **unless board determines that applying excess amounts would cause system or Public Employees Retirement Fund to lose qualification as qualified governmental retirement plan and trust under Internal Revenue Code.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to public employee retirement; creating new provisions; amending ORS 238.229 and 238.660;  
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 238.229 is amended to read:

6 238.229. (1) If a participating public employer is grouped with any other public employer for the  
7 purpose of computing employer contributions under ORS 238.225 and the individual public employer  
8 makes a lump sum payment that is in addition to the normal **employer** contribution of the public  
9 employer, the Public Employees Retirement Board shall adjust the amount of **employer** contribu-  
10 tions to be made by the individual public employer to ensure that the benefit of the lump sum pay-  
11 ment accrues only to the individual public employer making the payment. An individual public  
12 employer that makes a lump sum payment under the provisions of this subsection shall remain  
13 grouped with other public employers as provided by ORS 238.227 and 238A.220 for the purpose of  
14 all liabilities of the employer that are not paid under this subsection. The board by rule may es-  
15 tablish a minimum lump sum payment that must be made by an individual public employer before  
16 adjusting **employer** contributions under this subsection. Notwithstanding any minimum lump sum  
17 payment established by the board, the board must allow an individual public employer to make a  
18 lump sum payment under this subsection if the payment is equal to the full amount of the individual  
19 public employer's accrued unfunded liabilities under this section and ORS chapter 238A.

20 (2) The board shall establish a separate account within the Public Employees Retirement Fund  
21 for each lump sum payment made under this section by an individual public employer. The board  
22 shall credit to each account all interest and other income received from investment of the account  
23 funds during the calendar year. Except as provided in subsection (3) of this section, the board may  
24 not collect any administrative expense or other charge from the account or from earnings on the

**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 account. **Except as provided in subsections (5) and (6) of this section,** the account shall be used  
 2 to offset contributions **to the system** that the public employer would otherwise be required to make  
 3 for the liabilities against which the lump sum payment is applied.

4 (3) The board may charge a participating public employer expenses for administration of an ac-  
 5 count established under subsection (2) of this section in an amount not to exceed \$2,500 for the  
 6 calendar year in which the account is established and for the immediately following two calendar  
 7 years, and in an amount not to exceed \$1,000 per year for all subsequent years.

8 (4) If a participating public employer has any liabilities that are attributable to creditable ser-  
 9 vice by employees of the employer before the participating public employer was grouped with other  
 10 public employers under ORS 238.227, whether under this section or pursuant to board rule, any lump  
 11 sum payment made under this section must be applied first against those liabilities, with the oldest  
 12 liability being paid first. Any amounts remaining after application under this subsection must be  
 13 deposited in a separate account established under subsection (2) of this section.

14 (5) **Except as provided in subsection (6) of this section, if the board determines at any**  
 15 **time after an actuarial study that the amounts in an account established under subsection**  
 16 **(2) of this section exceed the amounts necessary to fund the employer's actuarial liabilities**  
 17 **under the system, upon request of the employer, the board shall apply the excess amounts**  
 18 **to offset contributions to the individual account program that the employer has agreed to**  
 19 **pay under ORS 238A.335 or 238A.340. The board may apply excess amounts to offset contri-**  
 20 **butions to the individual account program under this subsection only to the extent that the**  
 21 **application will not result in the balance in the account being reduced to less than the out-**  
 22 **standing principal balance owed on the bonds issued to fund the account. If the request is**  
 23 **made by a school district, the school district must attach to the request a copy of a resol-**  
 24 **ution adopted by the district school board for the district authorizing the request. The board**  
 25 **shall adopt rules governing offsets under the provisions of this subsection.**

26 (6) **The board shall apply any excess amounts in an account established under subsection**  
 27 **(2) of this section to offset contributions to the individual account program pursuant to**  
 28 **subsection (5) of this section only if the board has determined that applying the excess**  
 29 **amounts does not cause the system or the Public Employees Retirement Fund to lose quali-**  
 30 **fication as a qualified governmental retirement plan and trust under the Internal Revenue**  
 31 **Code and under regulations adopted pursuant to the Internal Revenue Code.**

32 **SECTION 2.** ORS 238.660 is amended to read:

33 238.660. (1) The Public Employees Retirement Fund is declared to be a trust fund, separate and  
 34 distinct from the General Fund, for the uses and purposes set forth in this chapter and ORS chapter  
 35 238A and ORS 237.950 to 237.980, and for no other use or purpose, except that this provision shall  
 36 not be deemed to amend or impair the force or effect of any law of this state specifically authorizing  
 37 the investment of moneys from the fund. Interest earned by the fund shall be credited to the fund.  
 38 Except as otherwise specifically provided by law, the Public Employees Retirement Board estab-  
 39 lished by ORS 238.630 is declared to be the trustee of the fund. Consistent with the legislative intent  
 40 expressed in ORS 238.601, and to the extent it is consistent with the board's fiduciary duties, the  
 41 board shall give equal consideration to the interests of participating public employers and the in-  
 42 terests of members. Nothing in this subsection shall be construed to impose a fiduciary duty on the  
 43 board to consider the interests of public employers, and the board shall consider the interests of  
 44 public employers only with respect to matters unrelated to the board's fiduciary duties as trustee  
 45 of the fund.

1 (2) Until all liabilities to members and their beneficiaries are satisfied, assets of the fund may  
2 not be diverted or otherwise put to any use that is not for the exclusive benefit of members and  
3 their beneficiaries. This subsection does not limit return of employer contributions for health bene-  
4 fits in the manner provided by ORS 238.410, 238.415 and 238.420 upon satisfaction of all liabilities  
5 for health benefits under those sections.

6 (3) The State of Oregon and other public employers that make contributions to the fund have  
7 no proprietary interest in the fund or in the contributions made to the fund by them. The state and  
8 other public employers disclaim any right to reclaim those contributions and waive any right of  
9 reclamation they may have in the fund. This subsection does not prohibit alteration or refund of  
10 employer contributions if the alteration or refund is authorized under this chapter or ORS chapter  
11 238A and is due to erroneous payment or decreased liability for employer contributions under the  
12 system. **This subsection does not prohibit the offset of contributions to the individual account**  
13 **program under ORS 238.229 (5).**

14 (4) The board may accept gifts of money or other property from any source, given for the uses  
15 and purposes of the system. Money so received shall be paid into the fund. Money or other property  
16 so received shall be used for the purposes for which received. Unless otherwise prescribed by the  
17 source from which the money or other property is received, the money shall be considered as income  
18 of the fund and the other property shall be retained, managed and disposed of as are investments  
19 of the fund.

20 (5) All moneys paid into the fund shall be deposited with the State Treasurer, who shall be  
21 custodian of the fund and pay all warrants drawn on it in compliance with law. No such warrant  
22 shall be paid until the claim for which it is drawn is first approved by the director or designee and  
23 otherwise audited and verified as required by law. Monthly, each beneficiary's gross benefit shall  
24 be calculated; applicable deductions made for taxes, insurance and other withholdings; and the net  
25 amount paid to the beneficiary, by check or by electronic funds transfer (EFT) to the beneficiary's  
26 bank. A deduction summary shall be made, by type, and a check issued for the aggregate of each  
27 type for transmittal to the appropriate taxing jurisdiction, vendor or institution. A voucher shall be  
28 prepared and transmitted to the Oregon Department of Administrative Services for reimbursement  
29 of the checking account, and the department shall draw a warrant on the State Treasurer, payable  
30 to the Public Employees Retirement System, for the amount thereof.

31 (6) Any warrant, check or order for the payment of benefits or refunds under the system out of  
32 the fund issued by the board which is canceled, declared void or otherwise made unpayable pursuant  
33 to law because it is outstanding and unpaid for a period of more than two years, may be reissued  
34 by the board without bond if the payee is located after such warrant, check or order is canceled,  
35 declared void or otherwise made unpayable pursuant to law.

36 (7) All references in this chapter to checks or warrants are subject to the provisions of ORS  
37 291.001.

38 (8) The board shall provide for an annual audit of the retirement fund and for an annual report  
39 to the Legislative Assembly and to all members of, retirees of, and all employers participating in,  
40 the system. The annual report must contain financial statements prepared in accordance with gen-  
41 erally accepted accounting principles. The financial statements must include the report of any in-  
42 dependent auditor.

43 (9) The board may review legislative proposals for changes in the benefits provided under this  
44 chapter and ORS chapter 238A and may make recommendations to committees of the Legislative  
45 Assembly on those proposed changes. In making recommendations under this subsection, the board

1 acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommen-  
2 dations under this subsection on the Oregon Public Service Retirement Plan established by ORS  
3 chapter 238A, the board shall seek to maintain the balance between benefits and costs, and the  
4 relative risk borne by employers and employees with respect to investment performance, reflected  
5 in ORS chapter 238A as in effect on January 1, 2004.

6 (10) The board shall appoint a committee to advise the board on legislative proposals for  
7 changes in the benefits provided under this chapter and ORS chapter 238A. The committee must  
8 have an equal number of members representing labor and management. No costs of reviewing leg-  
9 islative proposals and making recommendations under this subsection may be charged to the fund.  
10 Any member of the committee who is an active member of the system shall be released by the par-  
11 ticipating public employer who employs the member for the purpose of conducting the official busi-  
12 ness of the committee, and the wages or salary of the member may not be reduced by the employer  
13 during periods that the member is released from duty for the purpose of conducting the official  
14 business of the committee.

15 **SECTION 3. As soon as possible after the effective date of this 2009 Act, the Public Em-**  
16 **ployees Retirement Board shall seek a ruling from the Internal Revenue Service on whether**  
17 **the application of excess amounts in an account established under ORS 238.229 (2) to offset**  
18 **contributions to the individual account program pursuant to ORS 238.229 (5) would cause the**  
19 **system or the Public Employees Retirement Fund to lose qualification as a qualified gov-**  
20 **ernmental retirement plan and trust under the Internal Revenue Code and under regulations**  
21 **adopted pursuant to the Internal Revenue Code.**

22 **SECTION 4. This 2009 Act being necessary for the immediate preservation of the public**  
23 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
24 **on its passage.**

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