

House Bill 2454

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Rules)

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 use of accumulated unused vacation leave and unused sick leave in computation of final average salary for purposes of determining retirement benefit of member of Public Employees Retirement System. Applies only to members who retire on or after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to final average salary of members of Public Employees Retirement System; creating new
3 provisions; amending ORS 238.005, 238.580 and 292.180 and sections 3 and 4, chapter 1, Oregon
4 Laws 2010; repealing ORS 238.350 and 238.355; and declaring an emergency.

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

6 **SECTION 1.** ORS 238.005, as amended by section 8, chapter 1, Oregon Laws 2010, is amended
7 to read:

8 238.005. For purposes of this chapter:

9 (1) "Annuity" means payments for life derived from contributions made by a member as provided
10 in this chapter.

11 (2) "Board" means the Public Employees Retirement Board.

12 (3) "Calendar year" means 12 calendar months commencing on January 1 and ending on De-
13 cember 31 following.

14 (4) "Continuous service" means service not interrupted for more than five years, except that
15 such continuous service shall be computed without regard to interruptions in the case of:

16 (a) An employee who had returned to the service of the employer as of January 1, 1945, and
17 who remained in that employment until having established membership in the Public Employees
18 Retirement System.

19 (b) An employee who was in the armed services on January 1, 1945, and returned to the service
20 of the employer within one year of the date of being otherwise than dishonorably discharged and
21 remained in that employment until having established membership in the Public Employees Retire-
22 ment System.

23 (5) "Creditable service" means any period of time during which an active member is being paid
24 a salary by a participating public employer and for which benefits under this chapter are funded by
25 employer contributions and earnings on the fund. For purposes of computing years of "creditable
26 service," full months and major fractions of a month shall be considered to be one-twelfth of a year
27 and shall be added to all full years. "Creditable service" includes all retirement credit received by
28 a member.

29 (6) "Earliest service retirement age" means the age attained by a member when the member
30 could first make application for retirement under the provisions of ORS 238.280.

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 (7) "Employee" includes, in addition to employees, public officers, but does not include:

2 (a) Persons engaged as independent contractors.

3 (b) Seasonal, emergency or casual workers whose periods of employment with any public em-
4 ployer or public employers do not total 600 hours in any calendar year.

5 (c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, pro-
6 vided sheltered employment or made-work by a public employer in an employment or industries
7 program maintained for the benefit of such persons.

8 (d) Persons employed and paid from federal funds received under the Emergency Job and Un-
9 employment Assistance Act of 1974 (Public Law 93-567) or any other federal program intended pri-
10 marily to alleviate unemployment. However, any such person shall be considered an "employee" if
11 not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects to
12 have the person so considered by an irrevocable written notice to the board.

13 (e) Persons who are employees of a railroad, as defined in ORS 824.020, and who, as such em-
14 ployees, are included in a retirement plan under federal railroad retirement statutes. This paragraph
15 shall be deemed to have been in effect since the inception of the system.

16 (8) "Final average salary" means whichever of the following is greater:

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

26 (b) One-third of the total salary paid by a participating public employer to an employee who is
27 an active member of the system in the last 36 calendar months of active membership before the ef-
28 fective date of retirement of the employee.

29 (9) "Firefighter" does not include a volunteer firefighter, but does include:

30 (a) The State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals; and

31 (b) An employee of the State Forestry Department who is certified by the State Forester as a
32 professional wildland firefighter and whose primary duties include the abatement of uncontrolled
33 fires as described in ORS 477.064.

34 (10) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-
35 lowing.

36 (11) "Fund" means the Public Employees Retirement Fund.

37 (12)(a) "Member" means a person who has established membership in the system and whose
38 membership has not been terminated as described in ORS 238.095. "Member" includes active, inac-
39 tive and retired members.

40 (b) "Active member" means a member who is presently employed by a participating public em-
41 ployer in a qualifying position and who has completed the six-month period of service required by
42 ORS 238.015.

43 (c) "Inactive member" means a member who is not employed in a qualifying position, whose
44 membership has not been terminated in the manner described by ORS 238.095, and who is not retired
45 for service or disability.

1 (d) "Retired member" means a member who is retired for service or disability.

2 (13)(a) "Member account" means the regular account and the variable account.

3 (b) "Regular account" means the account established for each active and inactive member under
4 ORS 238.250.

5 (c) "Variable account" means the account established for a member who participates in the
6 Variable Annuity Account under ORS 238.260.

7 (14) "Normal retirement age" means:

8 (a) For a person who establishes membership in the system before January 1, 1996, as described
9 in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter
10 or 58 years of age if the employee retires at that age as other than a police officer or firefighter.

11 (b) For a person who establishes membership in the system on or after January 1, 1996, as de-
12 scribed in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or
13 firefighter or 60 years of age if the employee retires at that age as other than a police officer or
14 firefighter.

15 (15) "Pension" means annual payments for life derived from contributions by one or more public
16 employers.

17 (16) "Police officer" includes:

18 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions
19 whose duties, as assigned by the Director of the Department of Corrections, include the custody of
20 persons committed to the custody of or transferred to the Department of Corrections and employees
21 of the Department of Corrections who were classified as police officers on or before July 27, 1989,
22 whether or not such classification was authorized by law.

23 (b) Employees of the Department of State Police who are classified as police officers by the
24 Superintendent of State Police.

25 (c) Employees of the Oregon Liquor Control Commission who are classified as enforcement of-
26 ficers by the administrator of the commission.

27 (d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified
28 by the sheriff, are the regular duties of police officers or corrections officers.

29 (e) Police chiefs and police personnel of a city who are classified as police officers by the
30 council or other governing body of the city.

31 (f) Parole and probation officers employed by the Department of Corrections, parole and pro-
32 bation officers who are transferred to county employment under ORS 423.549 and adult parole and
33 probation officers, as defined in ORS 181.610, who are classified as police officers for the purposes
34 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
35 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
36 ented by a labor organization, any proposal by the county to change that classification or to cease
37 to classify adult parole and probation officers as police officers for the purposes of this chapter is
38 a mandatory subject of bargaining.

39 (g) Police officers appointed under ORS 276.021 or 276.023.

40 (h) Employees of the Port of Portland who are classified as airport police by the Board of
41 Commissioners of the Port of Portland.

42 (i) Employees of the State Department of Agriculture who are classified as livestock police of-
43 ficers by the Director of Agriculture.

44 (j) Employees of the Department of Public Safety Standards and Training who are classified by
45 the department as other than secretarial or clerical personnel.

- 1 (k) Investigators of the Criminal Justice Division of the Department of Justice.
- 2 (L) Corrections officers as defined in ORS 181.610.
- 3 (m) Employees of the Oregon State Lottery Commission who are classified by the Director of the
4 Oregon State Lottery as enforcement agents pursuant to ORS 461.110.
- 5 (n) The Director of the Department of Corrections.
- 6 (o) An employee who for seven consecutive years has been classified as a police officer as de-
7 fined by this section, and who is employed or transferred by the Department of Corrections to fill
8 a position designated by the Director of the Department of Corrections as being eligible for police
9 officer status.
- 10 (p) An employee of the Department of Corrections classified as a police officer on or prior to
11 July 27, 1989, whether or not that classification was authorized by law, as long as the employee
12 remains in the position held on July 27, 1989. The initial classification of an employee under a sys-
13 tem implemented pursuant to ORS 240.190 does not affect police officer status.
- 14 (q) Employees of a school district who are appointed and duly sworn members of a law
15 enforcement agency of the district as provided in ORS 332.531 or otherwise employed full-time as
16 police officers commissioned by the district.
- 17 (r) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,
18 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who
19 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the
20 Department of Corrections or the Oregon Youth Authority.
- 21 (s) Employees at youth correction facilities as defined in ORS 420.005 whose primary job de-
22 scription involves the custody, control, treatment, investigation or supervision of juveniles placed
23 in such facilities.
- 24 (t) Employees of the Oregon Youth Authority who are classified as juvenile parole and probation
25 officers.
- 26 (17) "Public employer" means the state, one of its agencies, any city, county, or municipal or
27 public corporation, any political subdivision of the state or any instrumentality thereof, or an agency
28 created by one or more such governmental organizations to provide governmental services. For
29 purposes of this chapter, such agency created by one or more governmental organizations is a gov-
30 ernmental instrumentality and a legal entity with power to enter into contracts, hold property and
31 sue and be sued.
- 32 (18) "Prior service credit" means credit provided under ORS 238.442 or under ORS 238.225 (2)
33 to (6) (1999 Edition).
- 34 (19) "Qualifying position" means one or more jobs with one or more participating public em-
35 ployers in which an employee performs 600 or more hours of service in a calendar year, excluding
36 any service in a job for which a participating public employer does not provide benefits under this
37 chapter pursuant to an application made under ORS 238.035.
- 38 (20) "Retirement credit" means a period of time that is treated as creditable service for the
39 purposes of this chapter.
- 40 (21)(a) "Salary" means the remuneration paid an employee in cash out of the funds of a public
41 employer in return for services to the employer, plus the monetary value, as determined by the
42 Public Employees Retirement Board, of whatever living quarters, board, lodging, fuel, laundry and
43 other advantages the employer furnishes the employee in return for services.
- 44 (b) "Salary" includes but is not limited to:
- 45 (A) Payments of employee and employer money into a deferred compensation plan, which are

1 deemed salary paid in each month of deferral;

2 (B) The amount of participation in a tax-sheltered or deferred annuity, which is deemed salary
3 paid in each month of participation;

4 (C) Retroactive payments described in section 7, chapter 1, Oregon Laws 2010; and

5 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
6 652.190.

7 (c) "Salary" or "other advantages" does not include:

8 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the
9 employer;

10 (B) Payments for insurance coverage by an employer on behalf of employee or employee and
11 dependents, for which the employee has no cash option;

12 (C) Payments made on account of an employee's death;

13 (D) Any lump sum payment for accumulated unused sick leave;

14 (E) Any accelerated payment of an employment contract for a future period or an advance
15 against future wages;

16 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement
17 gratuitous payment;

18 (G) Payments for periods of leave of absence after the date the employer and employee have
19 agreed that no future services qualifying pursuant to ORS 238.015 (3) will be performed[, *except for*
20 *sick leave and vacation*];

21 (H) Payments for instructional services rendered to institutions of the Oregon University System
22 or the Oregon Health and Science University when such services are in excess of full-time employ-
23 ment subject to this chapter. A person employed under a contract for less than 12 months is subject
24 to this subparagraph only for the months to which the contract pertains; [*or*]

25 (I) Payments made by an employer for insurance coverage provided to a domestic partner of an
26 employee[.]; **or**

27 **(J) Any lump sum payment for accumulated unused vacation leave or other unused paid**
28 **leave.**

29 (22) "School year" means the period beginning July 1 and ending June 30 next following.

30 (23) "System" means the Public Employees Retirement System.

31 (24) "Vested" means being an active member of the system in each of five calendar years.

32 (25) "Volunteer firefighter" means a firefighter whose position normally requires less than 600
33 hours of service per year.

34 **SECTION 2.** ORS 238.580 is amended to read:

35 238.580. (1) ORS 238.005 (3) and (21), 238.025, 238.078, 238.082, 238.092, 238.115 (1), 238.250,
36 238.255, 238.260, [238.350,] 238.380, 238.410, 238.415, 238.420, 238.445, 238.458, 238.460, 238.465,
37 238.475, 238.600, 238.605, 238.610, 238.618, 238.630, 238.635, 238.645, 238.650, 238.655, 238.660, 238.665,
38 238.670 and 238.705 and the increases provided by ORS 238.385 for members of the system who are
39 serving as other than police officers or firefighters apply in respect to service as a judge member.

40 (2) This chapter applies in respect to persons described in ORS 238.505 (1) and in respect to
41 service as a judge member only as specifically provided in ORS 238.500 to 238.585.

42 **SECTION 3.** ORS 292.180 is amended to read:

43 292.180. (1) The Oregon Department of Administrative Services may render a monthly or quar-
44 terly invoice to all state agencies utilizing or intending to utilize the joint payroll system in the
45 future. This monthly or quarterly invoice shall be equal to demonstrated savings of Workers' Com-

1 pension workday tax costs which are a direct result of the savings from payment of the workday
 2 tax based on actual days worked by the employee.

3 (2) It is the intention of this section to allow the department to use demonstrated savings of
 4 Workers' Compensation workday tax costs to pay for the implementation costs of ORS [238.350,]
 5 240.546, 292.026, 292.033, 292.070 to 292.110, 292.170 and this section and the moneys received are
 6 continuously appropriated for the purposes of ORS [238.350,] 240.546, 292.026, 292.033, 292.070 to
 7 292.110, 292.170 and this section.

8 (3) Any excess moneys remaining after the implementation of ORS [238.350,] 240.546, 292.026,
 9 292.033, 292.070 to 292.110, 292.170 and this section shall be returned pro rata on the basis of total
 10 moneys to agency contributions to the agencies from which received. However, if the amount re-
 11 maining is less than \$10,000, that amount may be transferred to the General Fund as a miscellaneous
 12 receipt.

13 **SECTION 4.** Section 3, chapter 1, Oregon Laws 2010, is amended to read:

14 **Sec. 3.** (1) Not earlier than two years before a member's earliest service retirement age, a
 15 member may request a verification of retirement data from the Public Employees Retirement Board.
 16 Upon receiving a request under this section, the board shall notify all of the member's participating
 17 public employers of the request. In a manner specified by rules of the board, the board shall allow
 18 those employers a reasonable time to confirm the records relating to the member that were provided
 19 to the board before the request was made. The board shall thereafter provide a verification to the
 20 member that includes the following data, as reflected in the records of the Public Employees Re-
 21 tirement System:

22 (a) The service information reported by the member's employers and the number of years and
 23 months of creditable service or retirement credit derived from that information, determined as of a
 24 date specified in the verification.

25 (b) The salary data reported by the member's employers for each calendar year, and the final
 26 average salary for the member derived from that data.

27 (c) If applicable, the member's regular account balance, and any variable account balance, as
 28 of the end of a calendar year specified in the verification.

29 *[(d) If applicable, the total amount of unused sick leave accumulated by the member as of a date
 30 specified in the verification.]*

31 (2) A member of the system may dispute the accuracy of the data provided in the verification
 32 by filing a written notice of dispute with the board not more than 60 days after the date on which
 33 the verification is provided to the member. Upon receiving a notice of dispute under this subsection,
 34 the board shall determine the accuracy of the disputed data and make a written decision based on
 35 its determination. The board shall provide to the member a copy of the decision and a written ex-
 36 planation of any applicable statutes and rules. A member may seek judicial review of the decision
 37 as provided in ORS 183.484 and rules of the board.

38 (3) Except as provided in this section, when a member who receives a verification under this
 39 section retires for service, the creditable service, retirement credit, final average salary[,] **and**
 40 member account balances [*and accumulated unused sick leave*] used in calculating the member's re-
 41 tirement allowance or pension may not be less than the amounts provided in the verification, subject
 42 to adjustments for:

43 (a) Creditable service or retirement credit accrued by the member after the date specified in the
 44 verification.

45 (b) Salary attributable to periods of employment after the date specified in the verification.

1 (c) Earnings and losses credited to the member's accounts from the end of the calendar year
 2 specified in the verification to the member's effective retirement date, in accordance with rules
 3 adopted by the board.

4 *[(d) Sick leave used and accrued after the date specified in the verification.]*

5 (4) The board may use creditable service, retirement credit, final average salary[,] **or** member
 6 account balances *[or accumulated unused sick leave]* in calculating a member's service retirement
 7 allowance that is less than the amounts provided in a verification received under this section if the
 8 member knew that the amounts were not accurate at the time the verification was provided and the
 9 member did not dispute the accuracy of the amounts as provided in subsection (2) of this section.

10 (5) A participating public employer may not modify information provided to the board relating
 11 to a member's creditable service, retirement credit, final average salary[,] **or** employee contributions
 12 *[or accumulated unused sick leave]* after the board provides the member with a verification under this
 13 section that is based on that information except in response to the board's request for the purpose
 14 of a determination under subsection (2) or (4) of this section.

15 (6)(a) Subject to paragraph (b) of this subsection, erroneous payments or overpayments paid to
 16 or on account of a member based on a verification provided under this section may not be recovered
 17 under ORS 238.715, but may be charged to the reserve account established under ORS 238.670 (1),
 18 or charged as an administrative expense under ORS 238.610.

19 (b) The board shall recover erroneous payments or overpayments paid to or on account of a
 20 member based on a verification provided under this section if the board determines that the recov-
 21 ery is required to maintain the status of the system and the Public Employees Retirement Fund as
 22 a qualified governmental retirement plan and trust under the Internal Revenue Code and under
 23 regulations adopted pursuant to the Internal Revenue Code.

24 (7) A member may dispute the accuracy of data in a verification only as provided under this
 25 section. A member may not dispute the accuracy of data in a verification in the manner provided
 26 by ORS 238.450.

27 (8) A member shall be provided with one verification under this section at no cost. The board
 28 may establish procedures for recovering administrative costs from members for services in providing
 29 additional verifications.

30 **SECTION 5.** Section 4, chapter 1, Oregon Laws 2010, is amended to read:

31 **Sec. 4.** *[(1) Except as provided in this section,]* Section 3, **chapter 1, Oregon Laws 2010**, *[of this*
 32 *2009 Act]* becomes operative on July 1, 2011.

33 *[(2) The requirement that the Public Employees Retirement Board provide verification of the*
 34 *amount of a member's accumulated unused sick leave under section 3 (1)(d) of this 2009 Act first ap-*
 35 *plies to requests for verifications of retirement data received by the board on or after July 1, 2012.]*

36 **SECTION 6. The amendments to ORS 238.005, 238.580 and 292.180 by sections 1 to 5 of this**
 37 **2011 Act and the repeal of ORS 238.350 and 238.355 by section 8 of this 2011 Act apply only**
 38 **to members of the Public Employees Retirement System who retire on or after the effective**
 39 **date of this 2011 Act.**

40 **SECTION 7. (1) Jurisdiction is conferred on the Supreme Court to determine in the**
 41 **manner provided by this section whether this 2011 Act breaches any contract between**
 42 **members of the Public Employees Retirement System and their employers or violates any**
 43 **constitutional provision, including but not limited to impairment of contract rights of mem-**
 44 **bers of the Public Employees Retirement System under section 21, Article I of the Oregon**
 45 **Constitution, or clause 1, section 10, Article I of the United States Constitution.**

1 **(2) A person who is adversely affected by this 2011 Act or who will be adversely affected**
2 **by this 2011 Act may institute a proceeding for review by filing with the Supreme Court a**
3 **petition that meets the following requirements:**

4 **(a) The petition must be filed within 60 days after the effective date of this 2011 Act.**

5 **(b) The petition must include the following:**

6 **(A) A statement of the basis of the challenge; and**

7 **(B) A statement and supporting affidavit showing how the petitioner is adversely af-**
8 **ected.**

9 **(3) The petitioner shall serve a copy of the petition by registered or certified mail upon**
10 **the Public Employees Retirement Board, the Attorney General and the Governor.**

11 **(4) Proceedings for review under this section shall be given priority over all other mat-**
12 **ters before the Supreme Court.**

13 **(5) The Supreme Court shall allow public employers participating in the Public Employees**
14 **Retirement System to intervene in any proceeding under this section.**

15 **(6) In the event the Supreme Court determines that there are factual issues in the peti-**
16 **tion, the Supreme Court may appoint a special master to hear evidence and to prepare re-**
17 **commended findings of fact.**

18 **SECTION 8.** **ORS 238.350 and 238.355 are repealed.**

19 **SECTION 9.** **This 2011 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
21 **on its passage.**

22