

House Bill 2455

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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**.

Limits retirement allowance or pension payable to retired member of Public Employees Retirement System to final average salary of member. 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 maximum benefit payable under Public Employees Retirement System; creating new
3 provisions; amending ORS 238.300, 238.320 and 238A.125; and declaring an emergency.

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

5 **SECTION 1.** ORS 238.300 is amended to read:

6 238.300. Upon retiring from service at normal retirement age or thereafter, a member of the
7 **Public Employees Retirement** System shall receive a service retirement allowance [*which*]. **The**
8 **service retirement allowance may not exceed the member's final average salary, and** shall
9 consist of the following annuity and pensions:

10 (1) A refund annuity which shall be the actuarial equivalent of accumulated contributions, if
11 any, by the member and interest thereon credited at the time of retirement, which annuity shall
12 provide an allowance payable during the life of the member and at death a lump sum equal in
13 amount to the difference between accumulated contributions at the time of retirement and the sum
14 of the annuity payments actually made to the member during life shall be paid to such person, if any,
15 as the member nominates by written designation duly acknowledged and filed with the board or shall
16 otherwise be paid according to the provisions of this chapter for disposal of an amount credited to
17 the member account of a member at the time of death in the event the member designates no ben-
18 eficiary to receive the amount or no such beneficiary is able to receive the amount. If death of the
19 member occurs before the first payment is due, the member account of the member shall be treated
20 as though death had occurred before retirement.

21 (2)(a) A life pension (nonrefund) for current service provided by the contributions of employers,
22 which pension, subject to paragraph (b) of this subsection, shall be an amount which, when added
23 to the sum of the annuity, if any, under subsection (1) of this section and the annuity, if any, pro-
24 vided on the same basis and payable from the Variable Annuity Account, both annuities considered
25 on a refund basis, results in a total of:

26 (A) For service as a police officer or firefighter, two percent of final average salary multiplied
27 by the number of years of membership in the system as a police officer or firefighter before the ef-
28 fective date of retirement.

29 (B) For service as other than a police officer or firefighter, including service as a member of the
30 Legislative Assembly, 1.67 percent of final average salary multiplied by the number of years of

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 membership in the system as other than a police officer or firefighter before the effective date of
 2 retirement.

3 (b) A pension under this subsection shall be at least:

4 (A) For a member who first establishes membership in the system before July 1, 2003, the
 5 actuarial equivalent of the annuity provided by the accumulated contributions of the member. A
 6 person establishes membership in the system before July 1, 2003, for the purposes of this subpara-
 7 graph if:

8 (i) The person is a member of the system, or a judge member of the system, on the day imme-
 9 diately before July 1, 2003; or

10 (ii) The person performed any period of service for a participating public employer before July
 11 1, 2003, that is credited to the six-month period of employment required of an employee under ORS
 12 238.015 before an employee may become a member of the system.

13 (B) For a member who made contributions before August 21, 1981, the equivalent of a pension
 14 computed pursuant to this subsection as it existed immediately before that date.

15 (c) As used in this subsection, "number of years of membership" means the number of full years
 16 of creditable service plus any remaining fraction of a year of creditable service. Except as other-
 17 wise provided in this paragraph, in determining a remaining fraction a full month shall be consid-
 18 ered as one-twelfth of a year and a major fraction of a month shall be considered as a full month.
 19 Membership of a school district employee, an employee of the State Board of Higher Education en-
 20 gaged in teaching or other school activity at an institution of higher education or an employee of
 21 the Department of Human Services, the Oregon Youth Authority, the Department of Corrections or
 22 the State Board of Education engaged in teaching or other school activity at an institution super-
 23 vised by the authority, board or department, for all portions of a school year in a calendar year in
 24 which the district school, institution of higher education or school activity at an institution so
 25 supervised in which the member is employed is normally in session shall be considered as a full
 26 one-half year of membership. The number of years of membership of a member who received a refund
 27 of contributions as provided in ORS 237.976 (2) is limited to the number of years after the day before
 28 the date on which the refund was received. The number of years of membership of a member who
 29 is separated, for any reason other than death or disability, from all service entitling the member to
 30 membership in the system, who withdraws the amount credited to the member account of the mem-
 31 ber in the fund during absence from such service and who thereafter reenters the service of an
 32 employer participating in the system but does not repay the amount so withdrawn as provided in
 33 this chapter, is limited to the number of years after the day before the date of so reentering.

34 (3) An additional life pension (nonrefund) for prior service credit, including military service,
 35 credited to the member at the time of first becoming a member of the system, as elsewhere provided
 36 in this chapter, which pension shall be provided by the contributions of the employer.

37 **SECTION 2.** ORS 238.320 is amended to read:

38 238.320. (1) Whenever an employee who is a member of the **Public Employees Retirement**
 39 **System** is found, after being examined by one or more physicians selected by the board, to be men-
 40 tally or physically incapacitated for an extended duration, as determined by medical examination,
 41 and thereby unable to perform any work for which qualified, by injury or disease sustained while
 42 in actual performance of duty and not intentionally self-inflicted, the member shall receive a disa-
 43 bility retirement allowance consisting of:

44 (a) A disability retirement refund annuity based on the contributions, if any, credited to the
 45 member account of the member.

1 (b) A current service pension provided by the contributions of employers equal to:

2 (A) For a police officer or firefighter, the pension to which the member would have been entitled
 3 if the member had worked continuously until attaining the age of 55, or if the member has attained
 4 the age of 55, the pension which the member would receive were the member to retire for service,
 5 as provided in this chapter.

6 (B) For a member other than a police officer or firefighter, the pension to which the member
 7 would have been entitled if the member had worked continuously until attaining the age of 58, or
 8 if the member has attained the age of 58, the pension which the member would receive were the
 9 member to retire for service, as provided in this chapter.

10 (c) The same prior service pension the member would have received had the member worked
 11 until normal retirement age.

12 (2) As used in subsection (1) of this section, "injury" means bodily injury causing the disability
 13 directly and independently of all other causes and effected solely through accidental means.

14 (3) Whenever an employee who is a member of the system and who has been an employee for
 15 10 years or more of an employer participating in the system is found, after being examined by one
 16 or more physicians selected by the board, to be mentally or physically incapacitated for an extended
 17 duration, as determined by medical examination, and thereby unable to perform any work for which
 18 qualified, from cause other than injury or disease sustained while in actual performance of duty or
 19 intentionally self-inflicted, the member shall receive a disability retirement allowance as provided
 20 in subsection (1) of this section.

21 (4) Payments under a disability retirement allowance provided for in subsection (1) or (3) of this
 22 section for the first 90-day period of incapacity shall be withheld until such 90-day period has
 23 elapsed.

24 (5) An inactive member is not eligible for disability benefits referred to in subsection (1) or (3)
 25 of this section unless the member applies for such disability benefits within five calendar years after
 26 the date of separation from service with a participating public employer if the disability is contin-
 27 uous from such separation date or within six months after the date of such separation from service
 28 if disability occurs after such separation date.

29 (6) In computing years of employment for the purpose of subsection (3) of this section, the fol-
 30 lowing schedule shall be used: For employment before the employee established membership in the
 31 Public Employees Retirement System, a member shall be considered to have been employed for one
 32 year for each year of prior service credit allowed, and for any minor fraction of a year of continuous
 33 service as certified by the employer for which no prior service credit was granted. After having
 34 established membership in the Public Employees Retirement System a member shall be considered
 35 to have been employed one year for each 12-month period or major fraction thereof during which
 36 time the member received compensation for employment which entitled the member to membership
 37 in the system, as evidenced by payroll records. For the purpose of determining a member's eligibility
 38 for disability benefits, no leave of absence after a member ceases to work for any participating em-
 39 ployer shall be considered other than accumulated sick leave not in excess of 90 days. The effective
 40 date of the disability shall not in any event be determined by the board as prior to the last day for
 41 which the disabled member performed services for a participating employer. No benefits may be paid
 42 for any month in which the member received salary or sick leave benefits from the participating
 43 employer.

44 (7) For the purposes of subsections (1) and (3) of this section, a member of the system shall be
 45 considered to be mentally or physically incapacitated for an extended duration if the mental or

1 physical incapacity can be expected to result in death or has lasted or can be expected to last for
 2 a continuous period of not less than 90 days.

3 **(8) A disability retirement allowance under this section may not exceed the member's**
 4 **final average salary.**

5 **SECTION 3.** ORS 238A.125, as amended by section 2, chapter 82, Oregon Laws 2010, is amended
 6 to read:

7 238A.125. (1) **Subject to subsection (2) of this section,** upon retiring at normal retirement age,
 8 a vested pension program member shall be paid an annual pension for the life of the member as
 9 follows:

10 (a) For service as a police officer or firefighter, 1.8 percent of final average salary multiplied
 11 by the number of years of retirement credit attributable to service as a police officer or firefighter.

12 (b) For service as other than a police officer or firefighter, 1.5 percent of final average salary
 13 multiplied by the number of years of retirement credit attributable to service as other than a police
 14 officer or firefighter.

15 **(2) The pension payable to a pension program member may not exceed the member's final**
 16 **average salary.**

17 [(2)] **(3)** Notwithstanding any provision of ORS 238A.100 to 238A.245, the annual benefit payable
 18 to a member under the pension program and under any other tax-qualified defined benefit plan
 19 maintained by the participating public employer may not exceed the applicable limitations set forth
 20 in 26 U.S.C. 415(b), as in effect on December 31, 2009. The Public Employees Retirement Board shall
 21 adopt rules for the administration of this limitation, including adjustments in the annual dollar lim-
 22 itation to reflect cost-of-living adjustments authorized by the Internal Revenue Service.

23 [(3)] **(4)** The board shall make no actuarial adjustment in a member's pension calculated under
 24 this section by reason of the member's retirement after normal retirement age.

25 **SECTION 4.** The amendments to ORS 238.300, 238.320 and 238A.125 by sections 1 to 3 of
 26 this 2011 Act apply only to members of the Public Employees Retirement System who retire
 27 on or after the effective date of this 2011 Act.

28 **SECTION 5.** (1) **Jurisdiction is conferred on the Supreme Court to determine in the**
 29 **manner provided by this section whether this 2011 Act breaches any contract between**
 30 **members of the Public Employees Retirement System and their employers or violates any**
 31 **constitutional provision, including but not limited to impairment of contract rights of mem-**
 32 **bers of the Public Employees Retirement System under section 21, Article I of the Oregon**
 33 **Constitution, or clause 1, section 10, Article I of the United States Constitution.**

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

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

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

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

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

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

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

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

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

6 **SECTION 6.** **This 2011 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
8 **on its passage.**

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