

B-Engrossed
House Bill 2456

Ordered by the House June 24
Including House Amendments dated April 25 and June 24

Introduced and printed pursuant to House Rule 12.00. 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.

Prohibits Public Employees Retirement Board from paying certain increased benefits by reason of state income taxation of payments made by board if person receiving payments does not pay Oregon income tax on retirement benefits. Provides procedures for enforcing prohibition.

Imposes similar prohibition for certain public employers that provide retirement benefits for police officers and firefighters other than by participation in Public Employees Retirement System. Excludes recipients whose effective date of retirement is before, or who otherwise began receiving payments before, January 1, 2012.

Provides for expedited review by Supreme Court upon petition by adversely affected party.

Increases, for biennium beginning July 1, 2011, limitation on expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by Public Employees Retirement System.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to payments made under Public Employees Retirement System that are not subject to
3 Oregon income tax; creating new provisions; amending ORS 237.637 and 314.840; limiting
4 expenditures; and declaring an emergency.

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

6 **SECTION 1. Sections 2 to 7 of this 2011 Act are added to and made a part of ORS chapter**
7 **238.**

8 **SECTION 2. Increased benefits under chapter 569, Oregon Laws 1995, not payable to**
9 **nonresidents. (1) Except as provided in sections 2 to 7 of this 2011 Act, the Public Employees**
10 **Retirement Board may not pay the increased benefit provided by chapter 569, Oregon Laws**
11 **1995, if the board receives notice under sections 2 to 7 of this 2011 Act that the payments**
12 **made to the person under this chapter are not subject to Oregon personal income tax under**
13 **ORS 316.127 (9).**

14 **(2) The provisions of sections 2 to 7 of this 2011 Act do not apply to:**

15 **(a) A retired member of the system who is receiving payments under this chapter and**
16 **whose effective date of retirement is before January 1, 2012;**

17 **(b) A person who is receiving payments under this chapter by reason of the retirement**
18 **of a member whose effective date of retirement is before January 1, 2012; and**

19 **(c) Any other person who receives payments under this chapter that began before Janu-**
20 **ary 1, 2012.**

21 **(3) The board shall give written notification of the provisions of sections 2 to 7 of this**
22 **2011 Act to all persons applying for or receiving payments under this chapter.**

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 (4) A person receiving payments under this chapter that are not increased under chapter
2 569, Oregon Laws 1995, by reason of sections 2 to 7 of this 2011 Act has no right or claim to
3 the increased benefit provided by chapter 569, Oregon Laws 1995, except as provided in
4 sections 2 to 7 of this 2011 Act.

5 **SECTION 3. Applicant's statement; resumption of residency.** (1) A person applying for
6 payments under this chapter shall give a written statement to the Public Employees Retirement
7 Board that indicates whether the payments will be subject to Oregon personal income
8 tax under ORS 316.127 (9). If the person fails to provide the statement required by this sub-
9 section, or the statement indicates that the payments will not be subject to Oregon personal
10 income tax under ORS 316.127 (9), the board may not pay the person the increased benefit
11 provided by chapter 569, Oregon Laws 1995.

12 (2) If a person is receiving payments under this chapter that have not been increased
13 under chapter 569, Oregon Laws 1995, by reason of the provisions of subsection (1) of this
14 section, and thereafter the payments become subject to Oregon personal income tax, the
15 person shall promptly notify the Public Employees Retirement Board by written statement
16 that the payments are subject to Oregon personal income tax.

17 (3) If a person is receiving payments under this chapter that have not been increased
18 under chapter 569, Oregon Laws 1995, by reason of the provisions of subsection (1) of this
19 section, and the board receives notice under subsection (2) of this section that payments to
20 the person under this chapter are subject to Oregon personal income tax, or determines
21 under section 5 of this 2011 Act that payments to the person under this chapter are subject
22 to Oregon personal income tax, the board shall initiate payment of the increased benefit
23 provided by chapter 569, Oregon Laws 1995. The increase in benefits becomes effective on the
24 first day of the calendar year following receipt of notice by the board.

25 **SECTION 4. Nonresidency after benefits commenced; required statement; subsequent**
26 **residency.** (1) If a person is receiving payments under this chapter, and after the payments
27 commence the payments cease to be subject to Oregon personal income tax under ORS
28 316.127 (9), the person shall promptly notify the Public Employees Retirement Board by
29 written statement that the payments are no longer subject to Oregon personal income tax.
30 The board shall reduce any benefits payable to the person by the amount by which the ben-
31 efits were increased under chapter 569, Oregon Laws 1995. The reduction in benefits becomes
32 effective on the first day of the calendar year following receipt of notice by the board.

33 (2) If a person is receiving payments under this chapter that have been reduced under
34 the provisions of subsection (1) of this section, and thereafter the payments become subject
35 to Oregon personal income tax, the person shall promptly notify the board by written state-
36 ment that the payments are once again subject to Oregon personal income tax.

37 (3) If a person is receiving payments under this chapter that have been reduced under
38 the provisions of subsection (1) of this section, and the board receives notice under sub-
39 section (2) of this section that payments to the person under this chapter are once again
40 subject to Oregon personal income tax, or determines under section 5 of this 2011 Act that
41 payments to the person under this chapter are once again subject to Oregon personal income
42 tax, the board shall resume payment of the increased benefit provided by chapter 569, Oregon
43 Laws 1995. The increase in benefits becomes effective on the first day of the calendar year
44 following receipt of notice by the board.

45 **SECTION 5. Information from Department of Revenue.** (1) Not less than once each cal-

1 **endar year, the Public Employees Retirement Board shall provide to the Department of Re-**
2 **venue information identifying persons to whom payments have been made under this**
3 **chapter. The Department of Revenue shall provide to the board such information on Oregon**
4 **personal income tax returns as the board deems necessary to determine whether the pay-**
5 **ments made to the person under this chapter are subject to Oregon personal income tax**
6 **under ORS 316.127 (9).**

7 **(2) If the board determines that the payments made to a person under this chapter are**
8 **not subject to Oregon personal income tax under ORS 316.127 (9) based on information pro-**
9 **vided by the Department of Revenue under this section, and the person is receiving the in-**
10 **creased benefit provided by chapter 569, Oregon Laws 1995, the board shall reduce the**
11 **benefits payable to the person as provided in section 4 (1) of this 2011 Act.**

12 **(3) If the board determines that the payments made to a person under this chapter are**
13 **subject to Oregon personal income tax based on information provided by the Department of**
14 **Revenue under this section, and the person is not receiving the increased benefit provided**
15 **by chapter 569, Oregon Laws 1995, the board shall increase the benefits payable to the person**
16 **as provided in section 3 (3) or 4 (3) of this 2011 Act.**

17 **SECTION 6. Statements constitute declaration under penalty of perjury. A statement**
18 **required under sections 2 to 7 of this 2011 Act constitutes a declaration under penalty of**
19 **perjury and must include the following sentence in prominent letters immediately above the**
20 **signature of the declarant: "I hereby declare that the above statement is true to the best**
21 **of my knowledge and belief, and that I understand it is subject to penalty for perjury."**

22 **SECTION 7. Rules. The Public Employees Retirement Board may establish rules for the**
23 **administration of sections 2 to 7 of this 2011 Act.**

24 **SECTION 8. ORS 237.637 is amended to read:**

25 **237.637. (1) Any public employer that provides retirement benefits to its police officers and**
26 **firefighters other than by participation in the Public Employees Retirement System pursuant to the**
27 **provisions of ORS 237.620 shall provide increases to the police officers and firefighters of the public**
28 **employer, both active and retired, that are equal to the increases in retirement benefits that are**
29 **provided for in chapter 569, Oregon Laws 1995, for active and retired police officers or firefighters**
30 **who are members of the Public Employees Retirement System, or the public employer shall provide**
31 **to those police officers and firefighters increases in retirement benefits that are the actuarial**
32 **equivalent of the increases in retirement benefits that are provided for in chapter 569, Oregon Laws**
33 **1995, for police officers or firefighters who are members of the Public Employees Retirement System.**
34 **Increases provided under this section shall be reduced by the amount of any benefit increase pro-**
35 **vided by ORS 237.635 in the same manner that increases in retirement benefits that are provided for**
36 **in chapter 569, Oregon Laws 1995, for active and retired police officers or firefighters who are**
37 **members of the Public Employees Retirement System are reduced to reflect amounts paid to those**
38 **members under the provisions of chapter 796, Oregon Laws 1991. No other retirement benefit or**
39 **other benefit provided by those public employers shall be decreased by the employer by reason of**
40 **the increases mandated by this section.**

41 **(2) A public employer that is subject to the requirements of this section shall cease**
42 **paying increased benefits under this section if the payments made to the person are not**
43 **subject to Oregon personal income tax under ORS 316.127 (9). A public employer that is**
44 **subject to the requirements of this section shall adopt procedures similar to those described**
45 **in sections 2 to 7 of this 2011 Act for the purpose of implementing this subsection. The De-**

1 **partment of Revenue shall provide to a public employer that is subject to the requirements**
2 **of this section such information regarding Oregon personal income tax returns as the public**
3 **employer deems necessary to determine whether the retirement benefits paid to the person**
4 **by the public employer are subject to Oregon personal income tax under ORS 316.127 (9).**

5 **(3) The provisions of subsection (2) of this section do not apply to:**

6 **(a) A retired police officer or firefighter who is receiving payments under the public**
7 **employer's plan and whose effective date of retirement is before January 1, 2012;**

8 **(b) A person who is receiving payments under the public employer's plan by reason of the**
9 **retirement of a police officer or firefighter whose effective date of retirement is before Jan-**
10 **uary 1, 2012; and**

11 **(c) Any other person who receives payments under the public employer's plan that began**
12 **before January 1, 2012.**

13 **SECTION 9. Sections 2 to 7 of this 2011 Act and the amendments to ORS 237.637 by sec-**
14 **tion 8 of this 2011 Act do not affect any benefit paid under chapter 569, Oregon Laws 1995,**
15 **before January 1, 2012.**

16 **SECTION 10. ORS 314.840 is amended to read:**

17 314.840. (1) The Department of Revenue may:

18 (a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230
19 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, represen-
20 tative or designee, with a copy of the taxpayer's income tax return filed with the department for
21 any year, or with a copy of any report filed by the taxpayer in connection with the return, or with
22 any other information the department considers necessary.

23 (b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

24 (c) Publish statistics so classified as to prevent the identification of income or any particulars
25 contained in any report or return.

26 (d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social
27 Security number, employer identification number or other taxpayer identification number to the ex-
28 tent necessary in connection with collection activities or the processing and mailing of correspond-
29 ence or of forms for any report, return or claim required in the administration of ORS 310.630 to
30 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net in-
31 come.

32 (2) The department also may disclose and give access to information described in ORS 314.835
33 to:

34 (a) The Governor of the State of Oregon or the authorized representative of the Governor:

35 (A) With respect to an individual who is designated as being under consideration for appoint-
36 ment or reappointment to an office or for employment in the office of the Governor. The information
37 disclosed shall be confined to whether the individual:

38 (i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more
39 than the three immediately preceding years for which the individual was required to file an Oregon
40 individual income tax return.

41 (ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or
42 otherwise respond to a deficiency notice within 30 days of its mailing.

43 (iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature
44 of the penalty.

45 (iv) Has been or is under investigation for possible criminal offenses under the Oregon personal

1 income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose
2 of making the appointment, reappointment or decision to employ or not to employ the individual in
3 the office of the Governor.

4 (B) For use by an officer or employee of the Oregon Department of Administrative Services duly
5 authorized or employed to prepare revenue estimates, or a person contracting with the Oregon De-
6 partment of Administrative Services to prepare revenue estimates, in the preparation of revenue
7 estimates required for the Governor's budget under ORS 291.201 to 291.226, or required for sub-
8 mission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee
9 on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342, 291.348 and 291.445.
10 The Department of Revenue shall disclose and give access to the information described in ORS
11 314.835 for the purposes of this subparagraph only if:

12 (i) The request for information is made in writing, specifies the purposes for which the request
13 is made and is signed by an authorized representative of the Oregon Department of Administrative
14 Services. The form for request for information shall be prescribed by the Oregon Department of
15 Administrative Services and approved by the Director of the Department of Revenue.

16 (ii) The officer, employee or person receiving the information does not remove from the premises
17 of the Department of Revenue any materials that would reveal the identity of a personal or corpo-
18 rate taxpayer.

19 (b) The Commissioner of Internal Revenue or authorized representative, for tax administration
20 and compliance purposes only.

21 (c) For tax administration and compliance purposes, the proper officer or authorized represen-
22 tative of any of the following entities that has or is governed by a provision of law that meets the
23 requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

24 (A) A state;

25 (B) A city, county or other political subdivision of a state;

26 (C) The District of Columbia; or

27 (D) An association established exclusively to provide services to federal, state or local taxing
28 authorities.

29 (d) The Multistate Tax Commission or its authorized representatives, for tax administration and
30 compliance purposes only. The Multistate Tax Commission may make the information available to
31 the Commissioner of Internal Revenue or the proper officer or authorized representative of any
32 governmental entity described in and meeting the qualifications of paragraph (c) of this subsection.

33 (e) The Attorney General, assistants and employees in the Department of Justice, or other legal
34 representative of the State of Oregon, to the extent the department deems disclosure or access
35 necessary for the performance of the duties of advising or representing the department pursuant to
36 ORS 180.010 to 180.240 and the tax laws of this state.

37 (f) Employees of the State of Oregon, other than of the Department of Revenue or Department
38 of Justice, to the extent the department deems disclosure or access necessary for such employees
39 to perform their duties under contracts or agreements between the department and any other de-
40 partment, agency or subdivision of the State of Oregon, in the department's administration of the
41 tax laws.

42 (g) Other persons, partnerships, corporations and other legal entities, and their employees, to
43 the extent the department deems disclosure or access necessary for the performance of such others'
44 duties under contracts or agreements between the department and such legal entities, in the
45 department's administration of the tax laws.

1 (h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS
2 173.850. Such officer or representative shall not remove from the premises of the department any
3 materials that would reveal the identity of any taxpayer or any other person.

4 (i) The Department of Consumer and Business Services, to the extent the department requires
5 such information to determine whether it is appropriate to adjust those workers' compensation
6 benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or
7 earned income received by an individual.

8 (j) Any agency of the State of Oregon, or any person, or any officer or employee of such agency
9 or person to whom disclosure or access is given by state law and not otherwise referred to in this
10 section, including but not limited to the Secretary of State as Auditor of Public Accounts under
11 section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to
12 ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district
13 attorney regarding cases for which they are providing support enforcement services under ORS
14 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of
15 Accountancy, pursuant to ORS 673.415.

16 (k) The Director of the Department of Consumer and Business Services to determine that a
17 person complies with ORS chapter 656 and the Director of the Employment Department to determine
18 that a person complies with ORS chapter 657, the following employer information:

19 (A) Identification numbers.

20 (B) Names and addresses.

21 (C) Inception date as employer.

22 (D) Nature of business.

23 (E) Entity changes.

24 (F) Date of last payroll.

25 (L) The Director of Human Services to determine that a person has the ability to pay for care
26 that includes services provided by the Eastern Oregon Training Center or the Department of Human
27 Services to collect any unpaid cost of care as provided by ORS chapter 179.

28 (m) The Director of the Oregon Health Authority to determine that a person has the ability to
29 pay for care that includes services provided by the Blue Mountain Recovery Center or the Oregon
30 State Hospital or the Oregon Health Authority to collect any unpaid cost of care as provided by
31 ORS chapter 179.

32 (n) Employees of the Employment Department to the extent the Department of Revenue deems
33 disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary
34 to performance of their duties in administering the tax imposed by ORS chapter 657.

35 (o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and
36 powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and
37 standard industrial classification, if available.

38 (p) Employees of the Department of State Lands for the purposes of identifying, locating and
39 publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter
40 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the
41 refund amount.

42 (q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement
43 agencies to assist in the investigation or prosecution of the following criminal activities:

44 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
45 to the stolen document, the name, address and taxpayer identification number of the payee, the

1 amount of the check and the date printed on the check.

2 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
3 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
4 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
5 dress and taxpayer identification number of the payee, the amount of the check, the date printed
6 on the check and the altered name and address.

7 (r) The United States Postal Inspection Service or a federal law enforcement agency, including
8 but not limited to the United States Department of Justice, to assist in the investigation of the fol-
9 lowing criminal activities:

10 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
11 to the stolen document, the name, address and taxpayer identification number of the payee, the
12 amount of the check and the date printed on the check.

13 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
14 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
15 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
16 dress and taxpayer identification number of the payee, the amount of the check, the date printed
17 on the check and the altered name and address.

18 (s) The United States Financial Management Service, for purposes of facilitating the reciprocal
19 offsets described in ORS 305.612.

20 (t) A municipal corporation of this state for purposes of assisting the municipal corporation in
21 the administration of a tax of the municipal corporation that is imposed on or measured by income,
22 wages or net earnings from self-employment. Any disclosure under this paragraph may be made only
23 pursuant to a written agreement between the Department of Revenue and the municipal corporation
24 that ensures the confidentiality of the information disclosed.

25 (u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS
26 314.843.

27 **(v) The Public Employees Retirement Board, to the extent necessary to carry out the**
28 **purposes of sections 2 to 7 of this 2011 Act, and to any public employer, to the extent nec-**
29 **essary to carry out the purposes of ORS 237.637 (2).**

30 (3)(a) Each officer or employee of the department and each person described or referred to in
31 subsection (2)(a), (e) to (k) or (n) to (q) of this section to whom disclosure or access to the tax in-
32 formation is given under subsection (2) of this section or any other provision of state law, prior to
33 beginning employment or the performance of duties involving such disclosure or access, shall be
34 advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the vio-
35 lation of ORS 314.835, and shall as a condition of employment or performance of duties execute a
36 certificate for the department, in a form prescribed by the department, stating in substance that the
37 person has read these provisions of law, that the person has had them explained and that the person
38 is aware of the penalties for the violation of ORS 314.835.

39 (b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a
40 written agreement has been entered into between the Department of Revenue and the person de-
41 scribed in subsection (2)(r) of this section to whom disclosure or access to the tax information is
42 given, providing that:

43 (A) Any information described in ORS 314.835 that is received by the person pursuant to sub-
44 section (2)(r) of this section is confidential information that may not be disclosed, except to the ex-
45 tent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of

1 this section;

2 (B) The information shall be protected as confidential under applicable federal and state laws;
3 and

4 (C) The United States Postal Inspection Service or the federal law enforcement agency shall
5 give notice to the Department of Revenue of any request received under the federal Freedom of In-
6 formation Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

7 (4) The Department of Revenue may recover the costs of furnishing the information described
8 in subsection (2)(k) to (m) and (o) to (q) of this section from the respective agencies.

9 **SECTION 11.** Sections 2 to 7 of this 2011 Act and the amendments to ORS 237.637 by
10 section 8 of this 2011 Act become operative on January 1, 2012.

11 **SECTION 12.** (1) Jurisdiction is conferred on the Supreme Court to determine in the
12 manner provided by this section whether the provisions of sections 2 to 7 of this 2011 Act
13 and the amendments to ORS 237.637 and 314.840 by sections 8 and 10 of this 2011 Act breach
14 any contract between members of the Public Employees Retirement System and their em-
15 ployers, violate the terms of the settlement agreement entered into in the case of Stovall v.
16 State, 324 Or. 92 (1996) or violate any constitutional provision, including but not limited to
17 impairment of contract rights of members of the Public Employees Retirement System under
18 section 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the
19 United States Constitution.

20 (2) A person who is or who will be adversely affected by sections 2 to 7 of this 2011 Act
21 or the amendments to ORS 237.637 and 314.840 by sections 8 and 10 of this 2011 Act may in-
22 stitute a proceeding for review by filing with the Supreme Court a petition that meets the
23 following requirements:

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

25 (b) The petition must include the following:

26 (A) A statement of the basis of the challenge; and

27 (B) A statement and supporting affidavit showing how the petitioner is adversely af-
28 fected.

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

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

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

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

38 **SECTION 13.** Notwithstanding any other law limiting expenditures, the limitation on
39 expenditures established by section 1 (1), chapter _____, Oregon Laws 2011 (Enrolled House
40 Bill 5039), for the biennium beginning July 1, 2011, as the maximum limit for payment of ex-
41 penses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding
42 lottery funds and federal funds, collected or received by the Public Employees Retirement
43 System, is increased by \$570,412.

44 **SECTION 14.** The section captions used in this 2011 Act are provided only for the con-
45 venience of the reader and do not become part of the statutory law of this state or express

1 any legislative intent in the enactment of this 2011 Act.

2 **SECTION 15. This 2011 Act being necessary for the immediate preservation of the public**
3 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
4 **on its passage.**

5
