

Enrolled House Bill 2456

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Rules)

CHAPTER

AN ACT

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

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

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

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

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

- (a) A retired member of the system who is receiving payments under this chapter and whose effective date of retirement is before January 1, 2012;**
- (b) A person who is receiving payments under this chapter by reason of the retirement of a member whose effective date of retirement is before January 1, 2012; and**
- (c) Any other person who receives payments under this chapter that began before January 1, 2012.**

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

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

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

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

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

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

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

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

SECTION 5. Information from Department of Revenue. (1) Not less than once each calendar year, the Public Employees Retirement Board shall provide to the Department of Revenue information identifying persons to whom payments have been made under this chapter. The Department of Revenue shall provide to the board such information on Oregon personal income tax returns as the board deems necessary to determine whether the payments made to the person under this chapter are subject to Oregon personal income tax under ORS 316.127 (9).

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

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

SECTION 6. Statements constitute declaration under penalty of perjury. A statement required under sections 2 to 7 of this 2011 Act constitutes a declaration under penalty of

perjury and must include the following sentence in prominent letters immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is subject to penalty for perjury."

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

SECTION 8. ORS 237.637 is amended to read:

237.637. (1) Any public employer that provides retirement benefits to its police officers and firefighters other than by participation in the Public Employees Retirement System pursuant to the provisions of ORS 237.620 shall provide increases to the police officers and firefighters of the public employer, both active and retired, that are equal to the increases in retirement benefits that are provided for in chapter 569, Oregon Laws 1995, for active and retired police officers or firefighters who are members of the Public Employees Retirement System, or the public employer shall provide to those police officers and firefighters increases in retirement benefits that are the actuarial equivalent of the increases in retirement benefits that are provided for in chapter 569, Oregon Laws 1995, for police officers or firefighters who are members of the Public Employees Retirement System. Increases provided under this section shall be reduced by the amount of any benefit increase provided by ORS 237.635 in the same manner that increases in retirement benefits that are provided for in chapter 569, Oregon Laws 1995, for active and retired police officers or firefighters who are members of the Public Employees Retirement System are reduced to reflect amounts paid to those members under the provisions of chapter 796, Oregon Laws 1991. No other retirement benefit or other benefit provided by those public employers shall be decreased by the employer by reason of the increases mandated by this section.

(2) A public employer that is subject to the requirements of this section shall cease paying increased benefits under this section if the payments made to the person are not subject to Oregon personal income tax under ORS 316.127 (9). A public employer that is subject to the requirements of this section shall adopt procedures similar to those described in sections 2 to 7 of this 2011 Act for the purpose of implementing this subsection. The Department of Revenue shall provide to a public employer that is subject to the requirements of this section such information regarding Oregon personal income tax returns as the public employer deems necessary to determine whether the retirement benefits paid to the person by the public employer are subject to Oregon personal income tax under ORS 316.127 (9).

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

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

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

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

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

SECTION 10. ORS 314.840 is amended to read:

314.840. (1) The Department of Revenue may:

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

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

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

(d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or other taxpayer identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report, return or claim required in the administration of ORS 310.630 to 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net income.

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

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

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

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

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

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

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

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

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

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

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

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

(A) A state;

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

(C) The District of Columbia; or

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

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

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

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

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

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

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

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

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

- (A) Identification numbers.
- (B) Names and addresses.
- (C) Inception date as employer.
- (D) Nature of business.
- (E) Entity changes.
- (F) Date of last payroll.

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

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

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

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

(p) Employees of the Department of State Lands for the purposes of identifying, locating and publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter

694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the refund amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The petition must include the following:

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

(B) A statement and supporting affidavit showing how the petitioner is adversely affected.

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

(4) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

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

(6) In the event the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.

SECTION 13. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (1), chapter 495, Oregon Laws 2011 (Enrolled House Bill 5039), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Public Employees Retirement System, is increased by \$570,412.

SECTION 14. The section captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

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

Passed by House June 27, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate June 29, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State