

House Bill 2456

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**.

Prohibits Public Employees Retirement Board from paying increased benefit 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.

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

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 237.635 and 237.637; and declaring
4 an emergency.

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

6 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 238.**

7 **SECTION 2. (1) The Public Employees Retirement Board may not pay the increased**
8 **benefit provided by ORS 238.375, 238.380, 238.385 and 238.387 to a person during any period**
9 **of time in which payments made to the person under this chapter are not subject to Oregon**
10 **personal income tax under ORS 316.127 (9).**

11 **(2) The board shall require that a person applying for payments under this chapter give**
12 **a written statement that indicates whether the person will be a resident of Oregon when the**
13 **payments are to be made. If the person indicates that the person will not be a resident of**
14 **this state when the payments are to be made, the board may not pay the person the in-**
15 **creased benefit provided by ORS 238.375, 238.380, 238.385 and 238.387.**

16 **(3) If a person is receiving payments under this chapter and, after the payments com-**
17 **ence, the payments become exempt from Oregon personal income tax under ORS 316.127**
18 **(9), the person shall promptly notify the board that the payments are no longer subject to**
19 **Oregon personal income tax. Upon receiving notice under this subsection, the board shall**
20 **reduce the benefits payable to the person by the percentage by which the benefits were in-**
21 **creased under ORS 238.375, 238.380, 238.385 and 238.387.**

22 **(4) Not less than once each calendar year, the Department of Revenue shall provide to**
23 **the board such information on Oregon personal income tax returns as the board determines**
24 **to be helpful in determining whether persons receiving payments under this chapter have**
25 **complied with the requirements of this section. Notwithstanding ORS 314.835 or other law**
26 **governing the disclosure of tax information, the department shall provide the board with the**
27 **information requested by the board.**

28 **(5) If the board at any time after the retirement or death of a person has reason to be-**

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 believe that a person receiving payments under this chapter does not pay Oregon personal in-
 2 come tax on those payments under ORS 316.127 (9), the board shall require the person to
 3 provide the board with a written statement that indicates whether the person pays Oregon
 4 personal income tax on payments received under this chapter. The board shall require a
 5 statement under this subsection from a person receiving payments under this chapter who
 6 has not already provided a statement or notification under subsection (2) or (3) of this sec-
 7 tion if:

8 (a) The person directs that payments be mailed to an address that is not located in this
 9 state; or

10 (b) The person's address of record with the board is not located in this state.

11 (6) The statements required by subsections (2) and (5) of this section constitute declara-
 12 tions under penalty of perjury and must include the following sentence in prominent letters
 13 immediately above the signature of the declarant: "I hereby declare that the above statement
 14 is true to the best of my knowledge and belief, and that I understand it is subject to penalty
 15 for perjury."

16 (7) The board shall reduce the benefits payable to a person by the percentage by which
 17 the benefits were increased under ORS 238.375, 238.380, 238.385 and 238.387 if the board at any
 18 time determines that:

19 (a) The person has failed to comply with subsection (3) of this section;

20 (b) The person has failed to provide a statement required by subsection (2) or (5) of this
 21 section; or

22 (c) The person has provided a false statement under subsection (2) or (5) of this section.

23 (8) Notwithstanding ORS 238.375 (2), if a person fails to comply with the requirements
 24 of this section and the board reduces the benefits payable to the person under this section,
 25 the board may recover as overpayments all amounts improperly paid to the person in the
 26 manner provided by ORS 238.715.

27 (9) If the board reduces the benefits payable to a person under this section and the per-
 28 son thereafter resumes residency in this state and resumes payment of Oregon personal in-
 29 come taxes on payments made under this chapter, the board shall resume paying the
 30 increased benefit provided by ORS 238.375, 238.380, 238.385 and 238.387. The board by rule shall
 31 establish procedures for resumption of payments of increased benefits under this subsection.

32 (10) The board shall give written notification of the provisions of this section to all per-
 33 sons applying for payments under this chapter.

34 (11) The requirements of this section apply only to persons who receive the increased
 35 benefit provided by ORS 238.375, 238.380, 238.385 and 238.387.

36 **SECTION 3.** ORS 237.635 is amended to read:

37 237.635. (1) Any public employer that provides retirement benefits to its police officers and
 38 firefighters other than by participation in the Public Employees Retirement System pursuant to the
 39 provisions of ORS 237.620 shall provide increases to the police officers and firefighters of the public
 40 employer, both active and retired, that are equal to the increases in retirement benefits that are
 41 provided for in [*this 1991 Act*] **ORS 238.385 and 238.387** for active and retired police officers or
 42 firefighters who are members of the Public Employees Retirement System, or shall provide to those
 43 police officers and firefighters increases in retirement benefits that are the actuarial equivalent of
 44 the increases in retirement benefits that are provided for in [*this 1991 Act*] **ORS 238.385 and 238.387**
 45 for police officers or firefighters who are members of the Public Employees Retirement System. No

1 other retirement benefit or other benefit provided by those public employers shall be decreased by
2 the employer by reason of the increases mandated by this section.

3 (2) The increased benefits provided for in this section apply only to police officers or firefighters
4 who establish membership before July 14, 1995, in a retirement plan or system offered by a public
5 employer in lieu of membership in the Public Employees Retirement System pursuant to the pro-
6 visions of ORS 237.620.

7 (3) **A public employer that is subject to the requirements of this section shall cease**
8 **paying increased benefits under this section to any person who is not a resident of this state**
9 **and who does not pay Oregon personal income tax on the payments made to the person. A**
10 **public employer that is subject to the requirements of this section shall adopt procedures**
11 **similar to those described in section 2 of this 2011 Act for the purpose of implementing this**
12 **subsection.**

13 **SECTION 4.** ORS 237.637 is amended to read:

14 237.637. (1) Any public employer that provides retirement benefits to its police officers and
15 firefighters other than by participation in the Public Employees Retirement System pursuant to the
16 provisions of ORS 237.620 shall provide increases to the police officers and firefighters of the public
17 employer, both active and retired, that are equal to the increases in retirement benefits that are
18 provided for in [*chapter 569, Oregon Laws 1995,*] **ORS 238.375 and 238.380** for active and retired
19 police officers or firefighters who are members of the Public Employees Retirement System, or the
20 public employer shall provide to those police officers and firefighters increases in retirement bene-
21 fits that are the actuarial equivalent of the increases in retirement benefits that are provided for in
22 [*chapter 569, Oregon Laws 1995,*] **ORS 238.375 and 238.380** for police officers or firefighters who are
23 members of the Public Employees Retirement System. Increases provided under this section shall
24 be reduced by the amount of any benefit increase provided by ORS 237.635 in the same manner that
25 increases in retirement benefits that are provided for in [*chapter 569, Oregon Laws 1995,*] **ORS**
26 **238.375 and 238.380** for active and retired police officers or firefighters who are members of the
27 Public Employees Retirement System are reduced to reflect amounts paid to those members under
28 the provisions of [*chapter 796, Oregon Laws 1991*] **ORS 238.385 and 238.387**. No other retirement
29 benefit or other benefit provided by those public employers shall be decreased by the employer by
30 reason of the increases mandated by this section.

31 (2) **A public employer that is subject to the requirements of this section shall cease**
32 **paying increased benefits under this section to any person who is not a resident of this state**
33 **and who does not pay Oregon personal income tax on the payments made to the person. A**
34 **public employer that is subject to the requirements of this section shall adopt procedures**
35 **similar to those described in section 2 of this 2011 Act for the purpose of implementing this**
36 **subsection.**

37 **SECTION 5.** The amendments to ORS 237.635 and 237.637 by sections 3 and 4 of this 2011
38 Act do not affect any benefit paid under the provisions of chapter 796, Oregon Laws 1991, or
39 chapter 569, Oregon Laws 1995, before January 1, 2012.

40 **SECTION 6.** Sections 1 and 2 of this 2011 Act and the amendments to ORS 237.635 and
41 237.637 by sections 3 and 4 of this 2011 Act become operative January 1, 2012.

42 **SECTION 7.** (1) Jurisdiction is conferred on the Supreme Court to determine in the
43 manner provided by this section whether the provisions of section 2 of this 2011 Act and the
44 amendments to ORS 237.635 and 237.637 by sections 3 and 4 of this 2011 Act breach any
45 contract between members of the Public Employees Retirement System and their employers,

1 violate the terms of the settlement agreement entered into in the case of *Stovall v. State*,
2 324 Or. 92 (1996) or violate any constitutional provision, including but not limited to impair-
3 ment of contract rights of members of the Public Employees Retirement System under sec-
4 tion 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the United
5 States Constitution.

6 (2) A person who is or who will be adversely affected by section 2 of this 2011 Act or the
7 amendments to ORS 237.635 and 237.637 by sections 3 and 4 of this 2011 Act may institute a
8 proceeding for review by filing with the Supreme Court a petition that meets the following
9 requirements:

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

11 (b) The petition must include the following:

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

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

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

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

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

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

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

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