

House Bill 2985

Sponsored by Representative RICHARDSON (Presession filed.)

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 employer pick-up of six percent employee contribution required of members of Public Employees Retirement System.

Eliminates ability of public employer to make employer contributions to individual account program of system.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; amending ORS 238.229, 238.660,
3 238A.005 and 238A.340; repealing ORS 238A.335; and declaring an emergency.

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

5 **SECTION 1. ORS 238A.335 is repealed.**

6 **SECTION 2.** ORS 238.229 is amended to read:

7 238.229. (1) If a participating public employer is grouped with any other public employer for the
8 purpose of computing employer contributions under ORS 238.225 and the individual public employer
9 makes a lump sum payment that is in addition to the normal employer contribution of the public
10 employer, the Public Employees Retirement Board shall adjust the amount of employer contributions
11 to be made by the individual public employer to ensure that the benefit of the lump sum payment
12 accrues only to the individual public employer making the payment. An individual public employer
13 that makes a lump sum payment under the provisions of this subsection shall remain grouped with
14 other public employers as provided by ORS 238.227 and 238A.220 for the purpose of all liabilities
15 of the employer that are not paid under this subsection. The board by rule may establish a minimum
16 lump sum payment that must be made by an individual public employer before adjusting employer
17 contributions under this subsection. Notwithstanding any minimum lump sum payment established
18 by the board, the board must allow an individual public employer to make a lump sum payment un-
19 der this subsection if the payment is equal to the full amount of the individual public employer's
20 accrued unfunded liabilities under this section and ORS chapter 238A.

21 (2) The board shall establish a separate account within the Public Employees Retirement Fund
22 for each lump sum payment made under this section by an individual public employer. The board
23 shall credit to each account all interest and other income received from investment of the account
24 funds during the calendar year. Except as provided in subsection (3) of this section, the board may
25 not collect any administrative expense or other charge from the account or from earnings on the
26 account. [*Except as provided in subsections (5) and (6) of this section,*] The account shall be used to
27 offset contributions to the system that the public employer would otherwise be required to make for
28 the liabilities against which the lump sum payment is applied.

29 (3) The board may charge a participating public employer expenses for administration of an ac-
30 count established under subsection (2) of this section in an amount not to exceed \$2,500 for the

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 calendar year in which the account is established and for the immediately following two calendar
 2 years, and in an amount not to exceed \$1,000 per year for all subsequent years.

3 (4) If a participating public employer has any liabilities that are attributable to creditable ser-
 4 vice by employees of the employer before the participating public employer was grouped with other
 5 public employers under ORS 238.227, whether under this section or pursuant to board rule, any lump
 6 sum payment made under this section must be applied first against those liabilities, with the oldest
 7 liability being paid first. Any amounts remaining after application under this subsection must be
 8 deposited in a separate account established under subsection (2) of this section.

9 *[(5) Except as provided in subsection (6) of this section, if the board determines at any time after
 10 an actuarial study that the amounts in an account established under subsection (2) of this section ex-
 11 ceed the amounts necessary to fund the employer's actuarial liabilities under the system, upon request
 12 of the employer, the board shall apply the excess amounts to offset contributions to the individual ac-
 13 count program that the employer has agreed to pay under ORS 238A.335 or 238A.340. The board may
 14 apply excess amounts to offset contributions to the individual account program under this subsection
 15 only to the extent that the application will not result in the balance in the account being reduced to less
 16 than the outstanding principal balance owed on the bonds issued to fund the account. If the request is
 17 made by a school district, the school district must attach to the request a copy of a resolution adopted
 18 by the district school board for the district authorizing the request. The board shall adopt rules gov-
 19 erning offsets under the provisions of this subsection.]*

20 *[(6) The board shall apply any excess amounts in an account established under subsection (2) of
 21 this section to offset contributions to the individual account program pursuant to subsection (5) of this
 22 section only if the board has determined that applying the excess amounts does not cause the system
 23 or the Public Employees Retirement Fund to lose qualification as a qualified governmental retirement
 24 plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Inter-
 25 nal Revenue Code.]*

26 **SECTION 3.** ORS 238.660 is amended to read:

27 238.660. (1) The Public Employees Retirement Fund is declared to be a trust fund, separate and
 28 distinct from the General Fund, for the uses and purposes set forth in this chapter and ORS chapter
 29 238A and ORS 237.950 to 237.980, and for no other use or purpose, except that this provision shall
 30 not be deemed to amend or impair the force or effect of any law of this state specifically authorizing
 31 the investment of moneys from the fund. Interest earned by the fund shall be credited to the fund.
 32 Except as otherwise specifically provided by law, the Public Employees Retirement Board estab-
 33 lished by ORS 238.630 is declared to be the trustee of the fund. Consistent with the legislative intent
 34 expressed in ORS 238.601, and to the extent it is consistent with the board's fiduciary duties, the
 35 board shall give equal consideration to the interests of participating public employers and the in-
 36 terests of members. Nothing in this subsection shall be construed to impose a fiduciary duty on the
 37 board to consider the interests of public employers, and the board shall consider the interests of
 38 public employers only with respect to matters unrelated to the board's fiduciary duties as trustee
 39 of the fund.

40 (2) Until all liabilities to members and their beneficiaries are satisfied, assets of the fund may
 41 not be diverted or otherwise put to any use that is not for the exclusive benefit of members and
 42 their beneficiaries. This subsection does not limit return of employer contributions for health bene-
 43 fits in the manner provided by ORS 238.410, 238.415 and 238.420 upon satisfaction of all liabilities
 44 for health benefits under those sections.

45 (3) The State of Oregon and other public employers that make contributions to the fund have

1 no proprietary interest in the fund or in the contributions made to the fund by them. The state and
2 other public employers disclaim any right to reclaim those contributions and waive any right of
3 reclamation they may have in the fund. This subsection does not prohibit alteration or refund of
4 employer contributions if the alteration or refund is authorized under this chapter or ORS chapter
5 238A and is due to erroneous payment or decreased liability for employer contributions under the
6 system. *[This subsection does not prohibit the offset of contributions to the individual account program*
7 *under ORS 238.229 (5).]*

8 (4) The board may accept gifts of money or other property from any source, given for the uses
9 and purposes of the system. Money so received shall be paid into the fund. Money or other property
10 so received shall be used for the purposes for which received. Unless otherwise prescribed by the
11 source from which the money or other property is received, the money shall be considered as income
12 of the fund and the other property shall be retained, managed and disposed of as are investments
13 of the fund.

14 (5) All moneys paid into the fund shall be deposited with the State Treasurer, who shall be
15 custodian of the fund and pay all warrants drawn on it in compliance with law. No such warrant
16 shall be paid until the claim for which it is drawn is first approved by the director or designee and
17 otherwise audited and verified as required by law. Monthly, each beneficiary's gross benefit shall
18 be calculated; applicable deductions made for taxes, insurance and other withholdings; and the net
19 amount paid to the beneficiary, by check or by electronic funds transfer (EFT) to the beneficiary's
20 bank. A deduction summary shall be made, by type, and a check issued for the aggregate of each
21 type for transmittal to the appropriate taxing jurisdiction, vendor or institution. A voucher shall be
22 prepared and transmitted to the Oregon Department of Administrative Services for reimbursement
23 of the checking account, and the department shall draw a warrant on the State Treasurer, payable
24 to the Public Employees Retirement System, for the amount thereof.

25 (6) Any warrant, check or order for the payment of benefits or refunds under the system out of
26 the fund issued by the board which is canceled, declared void or otherwise made unpayable pursuant
27 to law because it is outstanding and unpaid for a period of more than two years, may be reissued
28 by the board without bond if the payee is located after such warrant, check or order is canceled,
29 declared void or otherwise made unpayable pursuant to law.

30 (7) All references in this chapter to checks or warrants are subject to the provisions of ORS
31 291.001.

32 (8) The board shall provide for an annual audit of the retirement fund and for an annual report
33 to the Legislative Assembly and to all members of, retirees of, and all employers participating in,
34 the system. The annual report must contain financial statements prepared in accordance with gen-
35 erally accepted accounting principles. The financial statements must include the report of any in-
36 dependent auditor.

37 (9) The board may review legislative proposals for changes in the benefits provided under this
38 chapter and ORS chapter 238A and may make recommendations to committees of the Legislative
39 Assembly on those proposed changes. In making recommendations under this subsection, the board
40 acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommen-
41 dations under this subsection on the Oregon Public Service Retirement Plan established by ORS
42 chapter 238A, the board shall seek to maintain the balance between benefits and costs, and the
43 relative risk borne by employers and employees with respect to investment performance, reflected
44 in ORS chapter 238A as in effect on January 1, 2004.

45 (10) The board shall appoint a committee to advise the board on legislative proposals for

1 changes in the benefits provided under this chapter and ORS chapter 238A. The committee must
 2 have an equal number of members representing labor and management. No costs of reviewing leg-
 3 islative proposals and making recommendations under this subsection may be charged to the fund.
 4 Any member of the committee who is an active member of the system shall be released by the par-
 5 ticipating public employer who employs the member for the purpose of conducting the official busi-
 6 ness of the committee, and the wages or salary of the member may not be reduced by the employer
 7 during periods that the member is released from duty for the purpose of conducting the official
 8 business of the committee.

9 **SECTION 4.** ORS 238A.005, as amended by section 9, chapter 1, Oregon Laws 2010, and section
 10 1, chapter 82, Oregon Laws 2010, is amended to read:

11 238A.005. For the purposes of this chapter:

12 (1) "Active member" means a member of the pension program or the individual account program
 13 of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

14 (2) "Actuarial equivalent" means a payment or series of payments having the same value as the
 15 payment or series of payments replaced, computed on the basis of interest rate and mortality as-
 16 sumptions adopted by the board.

17 (3) "Board" means the Public Employees Retirement Board.

18 (4) "Eligible employee" means a person who performs services for a participating public em-
 19 ployer, including elected officials other than judges. "Eligible employee" does not include:

20 (a) Persons engaged as independent contractors;

21 (b) Aliens working under a training or educational visa;

22 (c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190,
 23 provided sheltered employment or make-work by a public employer;

24 (d) Persons categorized by a participating public employer as student employees;

25 (e) Any person who is an inmate of a state institution;

26 (f) Employees of foreign trade offices of the Oregon Business Development Department who live
 27 and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

28 (g) An employee actively participating in an alternative retirement program established under
 29 ORS 353.250 or an optional retirement plan established under ORS 341.551;

30 (h) Employees of the Oregon University System who are actively participating in an optional
 31 retirement plan offered under ORS 243.800;

32 (i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003,
 33 for membership in the system under the provisions of ORS chapter 238 or other law;

34 (j) Any person who belongs to a class of employees who are not eligible to become members of
 35 the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

36 (k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who
 37 continues to receive retirement benefits while employed; and

38 (L) Judges.

39 (5) "Firefighter" means:

40 (a) A person employed by a local government, as defined in ORS 174.116, whose primary job
 41 duties include the fighting of fires;

42 (b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals;
 43 and

44 (c) An employee of the State Forestry Department who is certified by the State Forester as a
 45 professional wildland firefighter and whose primary duties include the abatement of uncontrolled

1 fires as described in ORS 477.064.

2 (6) "Fund" means the Public Employees Retirement Fund.

3 (7)(a) "Hour of service" means:

4 (A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment
5 by a participating public employer for performance of duties in a qualifying position; and

6 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave
7 during which an employee does not perform duties but for which the employee is directly or indi-
8 rectly paid or entitled to payment by a participating public employer for services in a qualifying
9 position, as long as the hour is within the number of hours regularly scheduled for the performance
10 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-
11 thorized leave.

12 (b) "Hour of service" does not include any hour for which payment is made or due under a plan
13 maintained solely for the purpose of complying with applicable workers' compensation laws or un-
14 employment compensation laws.

15 (8) "Inactive member" means a member of the pension program or the individual account pro-
16 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who
17 is not a retired member and who is not employed in a qualifying position.

18 (9) "Individual account program" means the defined contribution individual account program of
19 the Oregon Public Service Retirement Plan established under ORS 238A.025.

20 (10) "Member" means an eligible employee who has established membership in the pension pro-
21 gram or the individual account program of the Oregon Public Service Retirement Plan and whose
22 membership has not been terminated under ORS 238A.110 or 238A.310.

23 (11) "Participating public employer" means a public employer as defined in ORS 238.005 that
24 provides retirement benefits for employees of the public employer under the system.

25 (12) "Pension program" means the defined benefit pension program of the Oregon Public Service
26 Retirement Plan established under ORS 238A.025.

27 (13) "Police officer" means a police officer as described in ORS 238.005.

28 (14) "Qualifying position" means one or more jobs with one or more participating public em-
29 ployers in which an eligible employee performs 600 or more hours of service in a calendar year,
30 excluding any service in a job for which benefits are not provided under the Oregon Public Service
31 Retirement Plan pursuant to ORS 238A.070 (2).

32 (15) "Retired member" means a pension program member who is receiving a pension as provided
33 in ORS 238A.180 to 238A.195.

34 (16)(a) "Salary" means the remuneration paid to an active member in return for services to the
35 participating public employer, including remuneration in the form of living quarters, board or other
36 items of value, to the extent the remuneration is includable in the employee's taxable income under
37 Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection,
38 but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether
39 those amounts are includable in taxable income.

40 (b) "Salary" includes the following amounts:

41 (A) Payments of employee and employer money into a deferred compensation plan that are made
42 at the election of the employee.

43 (B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the
44 employee.

45 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit

1 plan by the employer at the election of the employee and that is not includable in the taxable in-
2 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2009.

3 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
4 election of the employee and that is not included in the taxable income of the employee by reason
5 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2009.

6 (E) Retroactive payments described in section 7, chapter 1, Oregon Laws 2010.

7 [(F) *The amount of an employee contribution to the individual account program that is paid by the*
8 *employer and deducted from the compensation of the employee, as provided under ORS 238A.335 (1)*
9 *and (2)(a).]*

10 [(G) *The amount of an employee contribution to the individual account program that is not paid*
11 *by the employer under ORS 238A.335.]*

12 [(H)] (F) Wages of a deceased member paid to a surviving spouse or dependent children under
13 ORS 652.190.

14 (c) "Salary" does not include the following amounts:

15 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the
16 employer.

17 (B) Payments made on account of an employee's death.

18 (C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid
19 leave.

20 (D) Any severance payment, accelerated payment of an employment contract for a future period
21 or advance against future wages.

22 (E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

23 (F) Payment for a leave of absence after the date the employer and employee have agreed that
24 no future services in a qualifying position will be performed.

25 (G) Payments for instructional services rendered to institutions of the Oregon University System
26 or the Oregon Health and Science University when those services are in excess of full-time em-
27 ployment subject to this chapter. A person employed under a contract for less than 12 months is
28 subject to this subparagraph only for the months covered by the contract.

29 [(H) *The amount of an employee contribution to the individual account program that is paid by the*
30 *employer and is not deducted from the compensation of the employee, as provided under ORS 238A.335*
31 *(1) and (2)(b).]*

32 [(I)] (H) Any amount in excess of \$200,000 for a calendar year. If any period over which salary
33 is determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by
34 a fraction, the numerator of which is the number of months in the determination period and the
35 denominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate
36 cost-of-living adjustments authorized by the Internal Revenue Service.

37 (17) "System" means the Public Employees Retirement System.

38 **SECTION 5.** ORS 238A.340 is amended to read:

39 238A.340. (1) A participating public employer may agree, by a written employment policy or
40 agreement, to make employer contributions for members of the individual account program employed
41 by the employer. The percentage of salary paid as employer contributions may not be less than one
42 percent of salary or more than six percent of salary, and must be a whole number. A participating
43 public employer may make an agreement under this section for specific groups of employees em-
44 ployed by the public employer.

45 (2) If a participating public employer makes employer contributions under this section and the

1 member for *[which]* **whom** the contributions are made fails to vest in the employer account under
 2 the provisions of ORS 238A.320, the Public Employees Retirement Board shall apply the contribu-
 3 tions in the employer account against other obligations of the employer under the Oregon Public
 4 Service Retirement Plan.

5 **(3) A participating public employer may not make employer contributions under this**
 6 **section on or after the effective date of this 2011 Act.**

7 **SECTION 6.** The repeal of ORS 238A.335 by section 1 of this 2011 Act and the amendments
 8 to ORS 238.229, 238.660, 238A.005 and 238A.340 by sections 2 to 5 of this 2011 Act do not affect
 9 any collective bargaining agreement entered into before the effective date of this 2011 Act.
 10 Any collective bargaining agreement entered into on or after the effective date of this 2011
 11 Act may not contain a provision requiring a public employer to pay employee contributions
 12 required by ORS 238A.330.

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

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

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

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

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

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

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

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

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

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

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