

House Bill 3680

Sponsored by Representative CONGER; Representatives ESQUIVEL, HUFFMAN, JOHNSON, MCLANE, PARRISH, WHISNANT

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**.

Directs State Board of Education to determine whether one or more education service districts shall be joined together based on specified criteria, including resulting fiscal efficiencies, and to enter order joining districts if criteria are met.

Requires that payments made to substitute teachers be based on computations made for 2010-2011 school year.

Directs school district to pay substitute teacher based on two-hour increments, instead of based on half day or full day of pay.

Adds education service districts to definition of "educational institution" for purposes of provisions related to unemployment insurance.

Reduces, from annual to biennial, frequency of training that coaches must receive related to concussions and that school employees must receive related to child abuse and sexual conduct.

Allows employee of school district or education service district to elect to make employee contribution to employee's individual account of Public Employees Retirement System in amount that is less than six percent.

Places limitations on cost-of-living adjustment for retired member who was employee of school district or education service district at time of retirement.

Declares emergency, effective on July 1, 2011.

A BILL FOR AN ACT

1
2 Relating to cost reductions for education providers; creating new provisions; amending ORS 238.360,
3 238A.210, 238A.330, 336.485, 339.400, 342.610 and 657.010; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 334.**

6 **SECTION 2. (1) The State Board of Education, acting as the boundary board for educa-**
7 **tion service districts as provided by ORS 334.690, shall determine whether one or more edu-**
8 **cation service districts shall be joined together based on:**

9 (a) **The criteria described in ORS 334.690; and**

10 (b) **Whether the joining would result in fiscal efficiencies.**

11 (2) **Notwithstanding ORS 334.010 and 334.020, if the State Board of Education determines**
12 **that one or more education service districts shall be joined together as provided by sub-**
13 **section (1) of this section, the board shall enter an order to join the districts. The board shall**
14 **enter any orders required by this subsection no later than December 1, 2011, and the joining**
15 **together of the education service districts shall become effective on July 1, 2012.**

16 **SECTION 3. Section 4 of this 2011 Act is added to and made a part of ORS chapter 342.**

17 **SECTION 4. For the 2011-2012 and 2012-2013 school years, and notwithstanding ORS**
18 **342.610:**

19 (1) **The Department of Education shall not make the computation described in ORS**
20 **342.610.**

21 (2) **A school district shall make payments to substitute teachers under ORS 342.610 based**
22 **on computations that the Department of Education made for the 2010-2011 school year.**

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 **SECTION 5. Section 4 of this 2011 Act is repealed on July 1, 2013.**

2 **SECTION 6.** ORS 342.610 is amended to read:

3 342.610. (1) Teachers employed as substitute teachers shall not be paid less per day than 85
4 percent of 1/190th of the salary of a beginning teacher who holds a bachelor's degree. The salary
5 of the substitute teacher shall be computed as required in this subsection based on the statewide
6 average salary for beginning teachers who hold bachelor's degrees. The Department of Education
7 shall compute the statewide average salary to be used for purposes of this subsection, using the
8 latest data available to the department, but not data from earlier than the preceding school year.

9 *[(2) The school district shall set the working hours for a substitute teacher, and, when employed,*
10 *shall pay the substitute teacher a salary which is no less than one-half of the daily minimum salary*
11 *as computed under subsection (1) of this section. However, if the substitute teacher is employed for*
12 *more than one-half day, the substitute teacher shall receive a full day's pay.]*

13 **(2)(a) The school district shall set the working hours for a substitute teacher.**

14 **(b) When a substitute teacher is employed, the school district shall pay the substitute**
15 **teacher a salary that is calculated:**

16 **(A) In two-hour increments;**

17 **(B) By rounding up to the next two-hour increment if the substitute teacher is employed**
18 **for an amount of time that is less than a two-hour increment; and**

19 **(C) As a percentage of the daily minimum salary computed under subsection (1) of this**
20 **section.**

21 (3)(a) Notwithstanding subsection (1) of this section, teachers employed as substitute teachers
22 for more than 10 consecutive days in any one assignment for the same teacher shall not be paid
23 after the 10th day of the assignment less per day than 100 percent of 1/190th of the statewide av-
24 erage salary computed in subsection (1) of this section for districts with no salary scale; or, for
25 districts with a salary scale, the higher of:

26 (A) 1/190th of the employing school district's salary for a beginning teacher who holds a
27 bachelor's degree; or

28 (B) The statewide minimum per diem salary as computed in subsection (1) of this section.

29 (b) Used sick leave, whether paid or unpaid, and weekends, school holidays and days when
30 schools are closed by weather or other conditions and when substitute teachers are not required to
31 appear in person at the school shall not be considered in determining consecutive days for purposes
32 of this subsection.

33 (c) When substituting for a part-time teacher, the part of the day worked by the substitute shall
34 count as a full day in determining consecutive days for purposes of this subsection.

35 (4) Subsections (1) to (3) of this section do not apply to substitute teachers represented in a
36 bargaining unit in the school district by which they are employed.

37 **SECTION 7. The amendments to ORS 342.610 by section 6 of this 2011 Act first apply to**
38 **the 2011-2012 school year.**

39 **SECTION 8.** ORS 657.010, as amended by section 32, chapter 82, Oregon Laws 2010, is amended
40 to read:

41 657.010. As used in this chapter, unless the context requires otherwise:

42 (1) "Base year" means the first four of the last five completed calendar quarters preceding the
43 benefit year.

44 (2) "Benefits" means the money allowances payable to unemployed persons under this chapter.

45 (3) "Benefit year" means a period of 52 consecutive weeks commencing with the first week with

1 respect to which an individual files an initial valid claim for benefits, and thereafter the 52 consec-
 2 utive weeks period beginning with the first week with respect to which the individual next files an
 3 initial valid claim after the termination of the individual's last preceding benefit year except that
 4 the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping
 5 any quarter of the base year of a previously filed initial valid claim.

6 (4) "Calendar quarter" means the period of three consecutive calendar months ending on March
 7 31, June 30, September 30 or December 31, or the approximate equivalent thereof, as the Director
 8 of the Employment Department may, by regulation, prescribe.

9 (5) "Contribution" or "contributions" means the taxes, as defined in subsection (13) of this sec-
 10 tion, that are the money payments required by this chapter, or voluntary payments permitted, to be
 11 made to the Unemployment Compensation Trust Fund.

12 (6) "Educational institution[,]" [*including*] **means:**

13 (a) An institution of higher education, as defined in subsection (9) of this section[, *means an*];

14 (b) **An education service district established in ORS chapter 334; and**

15 (c) **Any other** institution:

16 [(a)] (A) In which participants, trainees or students are offered an organized course of study or
 17 training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities
 18 from, by or under the guidance of an instructor or teacher;

19 [(b)] (B) That is accredited, registered, approved, licensed or issued a permit to operate as a
 20 school by the Department of Education or other government agency, or that offers courses for credit
 21 that are transferable to an approved, registered or accredited school;

22 [(c)] (C) In which the course or courses of study or training that it offers may be academic,
 23 technical, trade or preparation for gainful employment in a recognized occupation; and

24 [(d)] (D) In which the course or courses of study or training are offered on a regular and con-
 25 tinuing basis.

26 (7) "Employment office" means a free public employment office or branch thereof, operated by
 27 this state or maintained as a part of a state-controlled system of public employment offices.

28 (8) "Hospital" means an organization that has been licensed, certified or approved by the Oregon
 29 Health Authority as a hospital.

30 (9) "Institution of higher education" means an educational institution that:

31 (a) Admits as regular students only individuals having a certificate of graduation from a high
 32 school, or the recognized equivalent of such a certificate;

33 (b) Is legally authorized in this state to provide a program of education beyond high school;

34 (c) Provides an educational program for which it awards a bachelor's or higher degree, or pro-
 35 vides a program that is acceptable for full credit toward such a degree, a program of post-graduate
 36 or post-doctoral studies, or a program of training to prepare students for gainful employment in a
 37 recognized occupation; and

38 (d) Is a public or other nonprofit institution.

39 (10) "Internal Revenue Code" means the federal Internal Revenue Code, as amended and in ef-
 40 fect on December 31, 2009.

41 (11) "Nonprofit employing unit" means an organization, or group of organizations, described in
 42 section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a)
 43 of the Internal Revenue Code.

44 (12) "State" includes, in addition to the states of the United States of America, the District of
 45 Columbia and Puerto Rico. However, for all purposes of this chapter the Virgin Islands shall be

1 considered a state on and after the day on which the United States Secretary of Labor first approves
 2 the Virgin Islands' law under section 3304(a) of the Federal Unemployment Tax Act as amended by
 3 Public Law 94-566.

4 (13) "Taxes" means the money payments to the Unemployment Compensation Trust Fund re-
 5 quired, or voluntary payments permitted, by this chapter.

6 (14) "Valid claim" means any claim for benefits made in accordance with ORS 657.260 if the
 7 individual meets the wages-paid-for-employment requirements of ORS 657.150.

8 (15) "Week" means any period of seven consecutive calendar days ending at midnight, as the
 9 director may, by regulation, prescribe. The director may by regulation prescribe that a "week" shall
 10 be "in," "within," or "during" the calendar quarter that includes the greater part of such week.

11 **SECTION 9.** ORS 336.485 is amended to read:

12 336.485. (1) As used in this section, "coach" means a person who instructs or trains members
 13 on a school athletic team, as identified by criteria established by the State Board of Education by
 14 rule.

15 (2)(a) Each school district shall ensure that coaches receive [*annual*] training **at least once**
 16 **every two years** to learn how to recognize the symptoms of a concussion and how to seek proper
 17 medical treatment for a person suspected of having a concussion.

18 (b) The board shall establish by rule:

19 (A) The requirements of the training described in paragraph (a) of this subsection, which shall
 20 be provided by using community resources to the extent practicable; and

21 (B) Timelines to ensure that, to the extent practicable, [*every*] a coach receives the training
 22 described in paragraph (a) of this subsection before the beginning of the season for the school ath-
 23 letic team.

24 (3)(a) A coach may not allow a member of a school athletic team to participate in any athletic
 25 event or training on the same day that the member:

26 (A) Exhibits signs, symptoms or behaviors consistent with a concussion following an observed
 27 or suspected blow to the head or body; or

28 (B) Has been diagnosed with a concussion.

29 (b) A coach may allow a member of a school athletic team who is prohibited from participating
 30 in an athletic event or training, as described in paragraph (a) of this subsection, to participate in
 31 an athletic event or training no sooner than the day after the member experienced a blow to the
 32 head or body and only after the member:

33 (A) No longer exhibits signs, symptoms or behaviors consistent with a concussion; and

34 (B) Receives a medical release form from a health care professional.

35 **SECTION 10.** ORS 339.400 is amended to read:

36 339.400. (1) An education provider shall provide to school employees training, **at least once**
 37 **every two years**, [*each school year*] on the prevention and identification of child abuse and sexual
 38 conduct and on the obligations of school employees under ORS 419B.005 to 419B.050 and under
 39 policies adopted by the school board to report child abuse and sexual conduct.

40 (2) An education provider shall make the training provided under subsection (1) of this section
 41 available [*each school year*] **at least once every two years** to parents and legal guardians of chil-
 42 dren who attend a school operated by the education provider. The training shall be provided sepa-
 43 rately from the training provided to school employees under subsection (1) of this section.

44 (3) An education provider shall make training that is designed to prevent child abuse and sexual
 45 conduct available [*each school year*] **at least once every two years** to children who attend a school

1 operated by the education provider.

2 **SECTION 11.** ORS 238A.330 is amended to read:

3 238A.330. (1) **Except as provided in subsection (2) of this section**, a member of the individual
4 account program must make employee contributions to the individual account program of six per-
5 cent of the member's salary.

6 **(2) An employee of a school district or an education service district may elect to make**
7 **an employee contribution that is a percentage of the employee's salary that is not less than**
8 **one percent or more than six percent. The percentage must be a whole number.**

9 [(2)] (3) Employee contributions made by a member of the individual account program under this
10 section shall be credited by the board to the employee account established for the member under
11 ORS 238A.350 (2).

12 **SECTION 12.** The Public Employees Retirement Board shall recalculate the contribution
13 rate of school districts and education service districts, pursuant to ORS 238.225, within 30
14 days after the effective date of this 2011 Act. The corrected rates take effect July 1, 2011.

15 **SECTION 13.** ORS 238.360 is amended to read:

16 238.360. (1) As soon as practicable after January 1 each year, the Public Employees Retirement
17 Board shall determine the percentage increase or decrease in the cost-of-living for the previous
18 calendar year, based on the Consumer Price Index (Portland area-all items) as published by the
19 Bureau of Labor Statistics of the U.S. Department of Labor for the Portland, Oregon, area.

20 **(2) [Prior to July 1 each year] Except as provided in subsection (3) of this section, before**
21 **July 1 of each year**, the allowance which the member or the member's beneficiary is receiving or
22 is entitled to receive on August 1 for the month of July shall be multiplied by the percentage figure
23 determined **under subsection (1) of this section**, and the allowance for the next 12 months begin-
24 ning July 1 adjusted to the resultant amount.

25 **(3) If the retired member was an employee of a school district or an education service**
26 **district at the time of retirement, before July 1 of each year the board shall multiply the**
27 **lesser of \$2,000 or the monthly payment that the member or the member's beneficiary is**
28 **receiving or is entitled to receive as a retirement allowance on August 1 for the month of**
29 **July by the percentage figure determined under subsection (1) of this section. The board**
30 **shall adjust all monthly payments made on or after August 1 based on the increase or de-**
31 **crease calculated under this section.**

32 [(2)] (4) [Such] **An** increase or decrease [shall] **under this section may** not exceed two percent
33 of any monthly retirement allowance in any year and no allowance shall be adjusted to an amount
34 less than the amount to which the recipient would be entitled if no cost-of-living adjustment were
35 authorized.

36 [(3)] (5) The amount of any cost-of-living increase or decrease in any year in excess of the
37 maximum annual retirement allowance adjustment of two percent shall be accumulated from year
38 to year and included in the computation of increases or decreases in succeeding years.

39 [(4)] (6) Any increase in the allowance shall be paid from contributions of the public employer
40 under ORS 238.225. Any decrease in the allowance shall be returned to the employer in the form
41 of a credit against contributions of the employer under ORS 238.225.

42 **SECTION 14.** ORS 238A.210 is amended to read:

43 238A.210. (1) As soon as practicable after January 1 each year, the Public Employees Retirement
44 Board shall determine the percentage increase or decrease in the cost of living for the previous
45 calendar year, based on the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers

1 for All Items, as published by the Bureau of Labor Statistics of the United States Department of
 2 Labor.

3 **(2) Except as provided in subsection (3) of this section,** before July 1 each year, the board
 4 shall adjust every pension payable under ORS 238A.180, 238A.185 and 238A.190, every disability
 5 benefit under ORS 238A.235 and every death benefit payable under ORS 238A.230 by multiplying the
 6 monthly payment by the percentage figure determined by the board. If a person has been receiving
 7 a pension or benefit for less than 12 months on July 1 of a calendar year, the board shall make a
 8 pro rata reduction of the adjustment based on the number of months that the pension or benefit was
 9 received before July 1 of the year. The adjustment shall be made for the payments payable on Au-
 10 gust 1 and thereafter.

11 **(3) If the retired member was an employee of a school district or an education service**
 12 **district at the time of retirement, before July 1 of each year the board shall multiply the**
 13 **lesser of \$2,000, the pension payable under ORS 238A.180, 238A.185 and 238A.190, the disability**
 14 **benefit payable under ORS 238A.235 or the death benefit payable under ORS 238A.230, by the**
 15 **percentage figure determined by the board. If the person has been receiving a pension or**
 16 **benefit for less than 12 months on July 1 of a calendar year, the board shall make a pro rata**
 17 **reduction of the adjustment based on the number of months that the pension or benefit was**
 18 **received before July 1 of the year. The adjustment shall be made for the payments payable**
 19 **on August 1 and thereafter.**

20 [(2)] (4) An increase or decrease in the benefit payments under this section may not exceed two
 21 percent in any year. A pension or death benefit may not be adjusted to an amount that is less than
 22 the amount that would have been payable if no cost-of-living adjustment had been made since the
 23 pension or death benefit first became payable.

24 **SECTION 15. The amendments to ORS 238.360 and 238A.210 by sections 13 and 14 of this**
 25 **2011 Act apply to cost-of-living adjustments made under ORS 238.360 and 238A.210 on or after**
 26 **the effective date of this 2011 Act.**

27 **SECTION 16. (1) Jurisdiction is conferred on the Supreme Court to determine, in the**
 28 **manner provided by this section, whether the amendments to ORS 238.360 and 238A.210 by**
 29 **sections 13 and 14 of this 2011 Act breach any contract between members of the Public Em-**
 30 **ployees Retirement System and their employers or violates any constitutional provision, in-**
 31 **cluding but not limited to impairment of contract rights of members of the Public Employees**
 32 **Retirement System under section 21, Article I of the Oregon Constitution, or clause 1, sec-**
 33 **tion 10, Article I of the United States Constitution.**

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

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

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

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

40 **(B) A statement and supporting affidavit showing how the petitioner is or will be ad-**
 41 **versely affected.**

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

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

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

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

6 **SECTION 17.** **This 2011 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
8 **July 1, 2011.**

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