

D R A F T

SUMMARY

Modifies law providing increased retirement benefits to members of Public Employees Retirement System in compensation for income taxation of retirement benefits. Provides that increased retirement benefits enacted in 1995 not be paid to retired member who does not pay Oregon income tax on benefits, without regard to person's date of retirement.

Imposes similar prohibition for certain public employers that provide retirement benefits to 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
3 are not subject to Oregon income tax; creating new provisions; amending
4 ORS 237.637 and 238.372; and declaring an emergency.

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

6 **SECTION 1.** ORS 238.372 is amended to read:

7 238.372. (1) Except as provided in ORS 238.372 to 238.384, the Public Em-
8 ployees Retirement Board may not pay the increased benefit provided by
9 chapter 569, Oregon Laws 1995, if the board receives notice under ORS
10 238.372 to 238.384 that the payments made to the person under this chapter
11 are not subject to Oregon personal income tax under ORS 316.127 (9).

12 *[(2) The provisions of ORS 238.372 to 238.384 do not apply to:]*

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

15 *[(b) A person who is receiving payments under this chapter by reason of the*

1 *retirement of a member whose effective date of retirement is before January 1,*
2 *2012; and]*

3 *[(c) Any other person who receives payments under this chapter that began*
4 *before January 1, 2012.]*

5 [(3)] (2) The board shall give written notification of the provisions of ORS
6 238.372 to 238.384 to all persons applying for or receiving payments under
7 this chapter.

8 [(4)] (3) A person receiving payments under this chapter that are not in-
9 creased under chapter 569, Oregon Laws 1995, by reason of ORS 238.372 to
10 238.384 has no right or claim to the increased benefit provided by chapter
11 569, Oregon Laws 1995, except as provided in ORS 238.372 to 238.384.

12 **SECTION 2. Section 3 of this 2013 Act is added to and made a part**
13 **of ORS 238.372 to 238.384.**

14 **SECTION 3. (1) On or before October 31, 2013, each person receiving**
15 **payments under this chapter shall provide the Public Employees Re-**
16 **tirement Board with a written statement that indicates whether the**
17 **payments received by the person are subject to Oregon personal in-**
18 **come tax under ORS 316.127 (9).**

19 **(2) If a person receiving payments under this chapter does not no-**
20 **tify the board on or before October 31, 2013, that the payments are**
21 **subject to Oregon personal income tax, or notifies the board that the**
22 **payments are not subject to Oregon personal income tax, the board**
23 **shall reduce any benefits payable to the person by the amount by**
24 **which the benefits were increased under chapter 569, Oregon Laws**
25 **1995.**

26 **(3) The reduction in benefits first applies to an allowance payable**
27 **on February 1, 2014, for the month of January 2014.**

28 **SECTION 4. Section 3 of this 2013 Act is repealed on December 31,**
29 **2014.**

30 **SECTION 5. ORS 237.637 is amended to read:**

31 **237.637. (1) Any public employer that provides retirement benefits to its**

1 police officers and firefighters other than by participation in the Public
2 Employees Retirement System pursuant to the provisions of ORS 237.620
3 shall provide increases to the police officers and firefighters of the public
4 employer, both active and retired, that are equal to the increases in retire-
5 ment benefits that are provided for in chapter 569, Oregon Laws 1995, for
6 active and retired police officers or firefighters who are members of the
7 Public Employees Retirement System, or the public employer shall provide
8 to those police officers and firefighters increases in retirement benefits that
9 are the actuarial equivalent of the increases in retirement benefits that are
10 provided for in chapter 569, Oregon Laws 1995, for police officers or fire-
11 fighters who are members of the Public Employees Retirement System. In-
12 creases provided under this section shall be reduced by the amount of any
13 benefit increase provided by ORS 237.635 in the same manner that increases
14 in retirement benefits that are provided for in chapter 569, Oregon Laws
15 1995, for active and retired police officers or firefighters who are members
16 of the Public Employees Retirement System are reduced to reflect amounts
17 paid to those members under the provisions of chapter 796, Oregon Laws
18 1991. No other retirement benefit or other benefit provided by those public
19 employers shall be decreased by the employer by reason of the increases
20 mandated by this section.

21 (2) A public employer that is subject to the requirements of this section
22 shall cease paying increased **retirement** benefits under this section if the
23 payments made to the person are not subject to Oregon personal income tax
24 under ORS 316.127 (9). A public employer that is subject to the requirements
25 of this section shall adopt procedures similar to those described in ORS
26 238.372 to 238.384 for the purpose of implementing this subsection. The De-
27 partment of Revenue shall provide to a public employer that is subject to the
28 requirements of this section [*such*] **the** information regarding Oregon per-
29 sonal income tax returns [*as*] **that** the public employer deems necessary to
30 determine whether the retirement benefits paid to the person by the public
31 employer are subject to Oregon personal income tax under ORS 316.127 (9).

- 1 *[(3) The provisions of subsection (2) of this section do not apply to:]*
2 *[(a) A retired police officer or firefighter who is receiving payments under*
3 *the public employer's plan and whose effective date of retirement is before*
4 *January 1, 2012;]*
5 *[(b) A person who is receiving payments under the public employer's plan*
6 *by reason of the retirement of a police officer or firefighter whose effective date*
7 *of retirement is before January 1, 2012; and]*
8 *[(c) Any other person who receives payments under the public employer's*
9 *plan that began before January 1, 2012.]*

10 **SECTION 6. (1) Jurisdiction is conferred on the Supreme Court to**
11 **determine in the manner provided by this section whether the pro-**
12 **visions of section 3 of this 2013 Act and the amendments to ORS 237.637**
13 **and 238.372 by sections 1 and 5 of this 2013 Act breach any contract**
14 **between members of the Public Employees Retirement System and**
15 **their employers, violate the terms of the settlement agreement entered**
16 **into in the case of Stovall v. State of Oregon, 324 Or. 92 (1996), or vi-**
17 **olate any constitutional provision, including but not limited to**
18 **impairment of contract rights of members of the Public Employees**
19 **Retirement System under Article I, section 21, of the Oregon Consti-**
20 **tution, or Article I, section 10, clause 1, of the United States Consti-**
21 **tution.**

22 **(2) A person who is or who will be adversely affected by section 3**
23 **of this 2013 Act or the amendments to ORS 237.637 and 238.372 by**
24 **sections 1 and 5 of this 2013 Act may institute a proceeding for review**
25 **by filing with the Supreme Court a petition that meets the following**
26 **requirements:**

- 27 **(a) The petition must be filed within 60 days after the effective date**
28 **of this 2013 Act.**
29 **(b) The petition must include the following:**
30 **(A) A statement of the basis of the challenge; and**
31 **(B) A statement and supporting affidavit showing how the**

1 petitioner is adversely affected.

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

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

7 (5) The Supreme Court shall allow public employers participating
8 in the Public Employees Retirement System to intervene in any pro-
9 ceeding under this section.

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

13 SECTION 7. (1) Section 3 of this 2013 Act and the amendments to
14 ORS 237.637 and 238.372 by sections 1 and 5 of this 2013 Act do not af-
15 fect any benefit paid under chapter 569, Oregon Laws 1995, before
16 January 2, 2014.

17 (2) Section 3 of this 2013 Act and the amendments to ORS 237.637
18 and 238.372 by sections 1 and 5 of this 2013 Act do not affect any benefit
19 provided by chapter 796, Oregon Laws 1991.

20 SECTION 8. (1) The amendments to ORS 237.637 and 238.372 by
21 sections 1 and 5 of this 2013 Act become operative on January 1, 2014.

22 (2) The Public Employees Retirement Board may take any action
23 before the operative date specified in subsection (1) of this section to
24 enable the board to exercise, on and after the operative date specified
25 in subsection (1) of this section, all the duties, functions and powers
26 conferred on the board by the amendments to ORS 237.637 and 238.372
27 by sections 1 and 5 of this 2013 Act.

28 SECTION 9. This 2013 Act being necessary for the immediate pres-
29 ervation of the public peace, health and safety, an emergency is de-
30 clared to exist, and this 2013 Act takes effect on its passage.

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