

House Bill 3203

Sponsored by Representative CONGER

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**.

Requires Public Employees Retirement Board to establish rate of return for crediting member accounts. Provides that rate of return may be lower than assumed interest rate.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; amending ORS 238.255 and 238.670;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 238.255 is amended to read:

6 238.255. (1) **Each year, the Public Employees Retirement Board shall establish a rate of**
7 **return for member accounts. The rate of return may be lower than the assumed interest**
8 **rate determined by the board for purposes of the Public Employees Retirement Fund.**

9 [(1)] (2) The regular account for an active or inactive member of the Public Employees Retirement
10 System shall be examined each year. If the regular account is credited with earnings for the
11 previous year in an amount less than the earnings that would have been credited pursuant to the
12 [assumed interest rate] **rate of return** for that year [determined by the Public Employees Retirement
13 Board] **established under subsection (1) of this section**, the amount of the difference shall be
14 credited to the regular account and charged to a reserve account in the Public Employees Retirement
15 Fund established for the purpose. A reserve account [so] established **under this subsection**
16 may not be maintained on a deficit basis for a period of more than five years. Earnings in excess
17 of the [assumed interest rate] **rate of return established under subsection (1) of this section** for
18 years following the year for which a charge is made to the reserve account shall first be applied to
19 reduce or eliminate the amount of a deficit.

20 [(2)] (3) The regular account for an active or inactive member who established membership in
21 the system before January 1, 1996, as described in ORS 238.430, may not be credited with earnings
22 in excess of the [assumed interest rate] **rate of return established under subsection (1) of this**
23 **section** until:

24 (a) The reserve account established under subsection [(1)] (2) of this section no longer has a
25 deficit;

26 (b) The reserve account established under subsection [(1)] (2) of this section is fully funded with
27 amounts determined by the board, after consultation with the actuary employed by the board, to be
28 necessary to ensure a zero balance in the account when all members who established membership
29 in the system before January 1, 1996, as described in ORS 238.430, have retired; and

30 (c) The reserve account established under subsection [(1)] (2) of this section has been fully
31 funded as described in paragraph (b) of this subsection in each of the three immediately preceding

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 years.

2 **SECTION 2.** ORS 238.670 is amended to read:

3 238.670. (1) At the close of each calendar year in which the earnings on the Public Employees
4 Retirement Fund equal or exceed the [*assumed interest rate*] **rate of return** established by the
5 Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and
6 other income received through investment of the Public Employees Retirement Fund during that
7 calendar year, such part of the income as the board may deem advisable, not exceeding seven and
8 one-half percent of the combined total of such income, which moneys so segregated shall remain in
9 the fund and constitute therein a reserve account. The board shall continue to credit the reserve
10 account in the manner required by this subsection until the board determines that the reserve ac-
11 count is adequately funded for the purposes specified in this subsection. Such reserve account shall
12 be maintained and used by the board to prevent any deficit of moneys available for the payment of
13 retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided
14 in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be
15 used by the board for the following purposes:

16 (a) To prevent any deficit in the fund by reason of the insolvency of a participating public em-
17 ployer. Reserves under this paragraph may be funded only from the earnings on employer contribu-
18 tions made under ORS 238.225.

19 (b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudi-
20 cating an individual member's benefits or an individual employer's liabilities.

21 (c) To provide for any other contingency that the board may determine to be appropriate.

22 (2) At the close of each calendar year, the board shall set aside, out of interest and other income
23 received during the calendar year, after deducting the amounts provided by law and to the extent
24 that such income is available, a sufficient amount to credit to the reserves for pension accounts and
25 annuities varying percentage amounts adopted by the board as a result of periodic actuarial inves-
26 tigations. If total income available for distribution exceeds those percentages of the total accumu-
27 lated contributions of employees and employers, the reserves for pensions and annuities shall
28 participate in such excess.

29 (3) The board may set aside, out of interest and other income received through investment of
30 the fund, such part of the income as the board considers necessary, which moneys so segregated
31 shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall
32 be maintained and used by the board to offset gains and losses of invested capital. The board, from
33 time to time, may cause to be transferred from the reserve account provided for in subsection (1)
34 of this section to a reserve account provided for in this subsection such amount as the board de-
35 termines to be unnecessary for the purposes set forth in subsection (1) of this section and to be
36 necessary for the purposes set forth in this subsection.

37 (4) The board may provide for amortizing gains and losses of invested capital in such instances
38 as the board determines that amortization is preferable to a reserve account provided for in sub-
39 section (3) of this section.

40 (5) At least 30 days before crediting any interest and other income received through investment
41 of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit
42 a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS
43 291.371 (1), for its review and comment.

44 **SECTION 3. (1) Jurisdiction is conferred on the Supreme Court to determine in the**
45 **manner provided by this section whether this 2013 Act breaches any contract between**

1 members of the Public Employees Retirement System and their employers or violates any
2 constitutional provision, including but not limited to impairment of contract rights of mem-
3 bers of the Public Employees Retirement System under Article I, section 21, of the Oregon
4 Constitution, or Article I, section 10, clause 1, of the United States Constitution.

5 (2) A person who is adversely affected by this 2013 Act or who will be adversely affected
6 by this 2013 Act may institute a proceeding for review by filing with the Supreme Court a
7 petition that meets the following requirements:

8 (a) The petition must be filed within 60 days after the effective date of this 2013 Act.

9 (b) The petition must include the following:

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

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

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

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

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

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

22 SECTION 4. The amendments to ORS 238.255 and 238.670 by sections 1 and 2 of this 2013
23 Act apply to the crediting of earnings for calendar year 2013 and all subsequent calendar
24 years.

25 SECTION 5. This 2013 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
27 on its passage.