

House Bill 3351

Sponsored by Representative JOHNSON

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**.

Removes exceptions that allow retired member of Public Employees Retirement System to be reemployed by public employer and continue to receive pension payments.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to reemployment of retired members of Public Employees Retirement System; creating new
3 provisions; amending ORS 238.088, 238.580, 238A.245 and 399.075 and section 2, chapter 50,
4 Oregon Laws 2012; repealing ORS 238.082, 238.092 and 243.163 and sections 2 and 3, chapter 499,
5 Oregon Laws 2007, and sections 3 and 4, chapter 774, Oregon Laws 2007; and declaring an
6 emergency.

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

8 **SECTION 1. (1) ORS 238.082, 238.092 and 243.163 are repealed.**

9 **(2) Section 2, chapter 499, Oregon Laws 2007, as amended by sections 3 and 10, chapter**
10 **390, Oregon Laws 2009, is repealed.**

11 **(3) Section 3, chapter 499, Oregon Laws 2007, is repealed.**

12 **(4) Section 3, chapter 774, Oregon Laws 2007, as amended by sections 4 and 11, chapter**
13 **390, Oregon Laws 2009, is repealed.**

14 **(5) Section 4, chapter 774, Oregon Laws 2007, is repealed.**

15 **SECTION 2.** ORS 238A.245 is amended to read:

16 238A.245. (1) [*Except as provided in subsection (3) of this section,*] The Public Employees Retirement
17 Board shall cease making pension payments to a retired member of the pension program who
18 is reemployed by a participating public employer in a qualifying position. A retired member of the
19 pension program who is employed in a qualifying position becomes an active member of the pension
20 program without serving the probationary period provided for in ORS 238A.100.

21 (2) If a retired member of the pension program is reemployed under the provisions of this sec-
22 tion, any option chosen by the member under ORS 238A.190 is canceled, and upon retiring thereafter
23 the member may elect any option provided for in ORS 238A.180 and 238A.190. The board shall re-
24 calculate the pension of the member upon subsequent retirement.

25 [*(3) A retired member of the pension program who becomes a member of the Legislative Assembly*
26 *shall continue to receive the pension elected by the member. A retired member of the pension program*
27 *who becomes a member of the Legislative Assembly may not make an election under ORS 237.650.]*

28 **SECTION 3.** ORS 238.580 is amended to read:

29 238.580. (1) ORS 238.005 (4) and (26), 238.025, 238.078, [238.082, 238.092,] 238.115 (1), 238.250,
30 238.255, 238.260, 238.350, 238.364, 238.410, 238.415, 238.420, 238.445, 238.458, 238.460, 238.465, 238.475,
31 238.600, 238.605, 238.610, 238.618, 238.630, 238.635, 238.645, 238.650, 238.655, 238.660, 238.665, 238.670

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 and 238.705 and the increases provided by ORS 238.366 for members of the system who are serving
 2 as other than police officers or firefighters apply in respect to service as a judge member.

3 (2) This chapter applies in respect to persons described in ORS 238.505 (1) and in respect to
 4 service as a judge member only as specifically provided in ORS 238.500 to 238.585.

5 **SECTION 4.** ORS 238.088 is amended to read:

6 238.088. *[(1) Except as provided in subsection (2) of this section,]* A person who is elected to a
 7 full-time salaried office of the state or one of the participating political subdivisions thereof, or who
 8 is appointed to a full-time salaried office having a term fixed by statute or charter, whether or not
 9 the person has been retired, does not forfeit any rights accrued or accruing to the person under this
 10 chapter. However, for the period that such person holds such office the person is not entitled to any
 11 pension or annuity provided by this chapter. Upon ceasing to hold such office, benefits shall be
 12 computed or recomputed by the Public Employees Retirement Board on the basis of age then at-
 13 tained.

14 *[(2) If a person is elected or appointed to the office of sheriff or county judge or commissioner in*
 15 *a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial*
 16 *census, and the person does not elect to become an active member of the system under ORS 238.015 (5),*
 17 *the person shall continue to be a retired member and to receive retirement benefits for as long as the*
 18 *person holds the office.]*

19 *[(3) Subsection (2) of this section does not apply to any member who retires under the provisions*
 20 *of ORS 238.280 (1), (2) or (3).]*

21 **SECTION 5.** ORS 399.075 is amended to read:

22 399.075. (1) The Adjutant General, with the approval of the Governor, may order members of the
 23 organized militia to active state duty. Members, while on active state duty, shall receive not less
 24 than the pay and allowances of their corresponding grades in the Armed Forces of the United States
 25 in accordance with a schedule approved by the Adjutant General for the period of time in active
 26 state duty. Active state duty under this subsection includes, but is not limited to, support of federal,
 27 state and local drug eradication, interdiction and other counterdrug operations under a counterdrug
 28 support plan approved by the Governor, and reasons related to homeland security. When partic-
 29 ipating in such support operations, and to the extent authorized by 32 U.S.C. 112, applicable regu-
 30 lations of the National Guard Bureau and the Oregon Counterdrug Support Plan, the Oregon
 31 Military Department is designated as a law enforcement agency for the purpose of carrying out
 32 federal asset forfeiture laws only.

33 (2) Members of the organized militia serving on courts-martial, courts of inquiry, efficiency
 34 boards, medical boards or other special duty requiring absence from their stations or business under
 35 competent orders may be reimbursed for necessary expenses incurred at the rate established for
 36 state employees under appropriate travel regulations issued by the Oregon Department of Adminis-
 37 trative Services.

38 (3) In lieu of other provisions of this chapter, a medical examiner may be paid for services and
 39 necessary disbursements and a properly appointed judge advocate may be paid for legal services and
 40 necessary disbursements in any suit, action or proceeding, such amounts as shall be approved by the
 41 Governor.

42 (4) Members of the organized militia shall not receive from the state the pay or the pay and
 43 allowances provided for by this section when eligible for such pay and allowances from federal
 44 funds.

45 (5) Notwithstanding any of the provisions of this chapter, members of the organized militia may

1 with their consent perform without pay or without pay and allowances any of the types of military
 2 duty prescribed in this chapter and ORS chapters 396 and 398 pursuant to orders issued by compe-
 3 tent military authority; provided however, that necessary traveling expenses, subsistence and per
 4 diem allowances may be furnished such members within the discretion of the Adjutant General and
 5 within the amount appropriated therefor.

6 (6) All pay and allowances provided for by this chapter, except per diem, mileage and expenses
 7 while traveling under orders shall be subject to be applied to the payment of penalties and fines
 8 imposed by military courts, and to the payment of any shortage of or injury to state or United States
 9 property or funds for which a member of the organized militia is responsible or accountable where
 10 such responsibility has been fixed by competent authority.

11 (7)(a) Except as provided in paragraph (b) of this subsection, members of the organized militia
 12 who are ordered to active state duty shall be considered temporary employees of the military de-
 13 partment.

14 (b) Members of the organized militia who are ordered to active state duty are not subject to
 15 ORS chapter 240 and ORS 243.650 to 243.782.

16 *[(8) The limitations on employment imposed by ORS 238.082 (2) and (3) do not apply to a retired*
 17 *member of the Public Employees Retirement System who has attained normal retirement age and is on*
 18 *active state duty. Hours served by a person under this subsection shall not be counted for the purpose*
 19 *of the limitations on employment imposed by ORS 238.082 (2) and (3).]*

20 **SECTION 6.** Section 2, chapter 50, Oregon Laws 2012, is amended to read:

21 **Sec. 2.** (1) As used in this section, “tobacco products” has the meaning given that term in ORS
 22 431.840.

23 (2) The Oregon Health Authority may apply for and accept moneys from the United States
 24 Government or other public or private sources for utilization of those moneys by the Department
 25 of State Police in accordance with any federal restrictions or other funding source restrictions to
 26 carry out the duties, functions and powers of the department under this section. Moneys received
 27 as provided under this subsection shall be deposited into the State Treasury to the credit of the
 28 State Police Tobacco Law Enforcement Fund. Moneys that are subject to funding source conditions
 29 or restrictions shall be placed in separate subaccounts of the fund and accounted for separately from
 30 other fund moneys.

31 (3) The department shall establish and administer a program employing retired state police of-
 32 ficers who are active reserve officers for the purpose of enforcing laws designed to discourage the
 33 use of tobacco products by persons under 18 years of age. The department shall periodically consult
 34 with the authority to maximize program qualification for federal funds to enforce laws designed to
 35 discourage the use of tobacco products by persons under 18 years of age, including but not limited
 36 to grants under P.L. 102-321, section 1926 (42 U.S.C. 300x-26). *[Service by a retired state police mem-*
 37 *ber under this section is subject to ORS 238.082.]* The department may not use the services of a re-
 38 tired state police officer under this section to displace an active state police member from the
 39 enforcement of laws concerning tobacco products.

40 (4) The department shall adopt rules for carrying out subsection (3) of this section.

41 **SECTION 7.** **The amendments to ORS 238.088, 238.580, 238A.245 and 399.075 and section**
 42 **2, chapter 50, Oregon Laws 2012, by sections 2 to 6 of this 2013 Act and the repeal of ORS**
 43 **238.082, 238.092 and 243.163 and sections 2 and 3, chapter 499, Oregon Laws 2007, and sections**
 44 **3 and 4, chapter 774, Oregon Laws 2007, by section 1 of this 2013 Act apply to all hours of**
 45 **work or service by a retired member of the Public Employees Retirement System performed**

1 on or after January 1, 2014.

2 **SECTION 8.** (1) Jurisdiction is conferred on the Supreme Court to determine in the
3 manner provided by this section whether this 2013 Act breaches any contract between
4 members of the Public Employees Retirement System and their employers or violates any
5 constitutional provision, including but not limited to impairment of contract rights of mem-
6 bers of the Public Employees Retirement System under Article I, section 21, of the Oregon
7 Constitution, or Article I, section 10, clause 1, of the United States Constitution.

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

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

12 (b) The petition must include the following:

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

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

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

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

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

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

25 **SECTION 9.** 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.