

Senate Bill 657

Sponsored by Senator WHITSETT

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 employee to pay 50 percent of contributions to Public Employees Retirement System required to fund benefits.

Eliminates employer pick-up of employee contribution to individual account program. Requires public employer and public employee to each contribute three percent of salary to individual account program.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; and amending ORS 238.225, 238.229,
3 238.660, 238A.005, 238A.220, 238A.330, 238A.335 and 238A.340.

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

5 **SECTION 1.** ORS 238.225 is amended to read:

6 238.225. (1) *[A participating public employer shall, at intervals designated by the Public Employees*
7 *Retirement Board, transmit to the board those amounts the board determines to be]* **Each year, the**
8 **Public Employees Retirement Board shall determine the amounts that are** actuarially neces-
9 sary to adequately fund the benefits to be provided *[by the contributions of the employer]* under this
10 chapter and the benefits to be provided under the pension program established by ORS 238A.100 to
11 238A.245, except for the disability benefit for which funding is provided under ORS 238A.240. *[From*
12 *time to time]* **Each year,** the board shall determine the liabilities of the system and shall set the
13 amount of contributions to be made *[by participating public employers, and by other public employers*
14 *who are required to make contributions on behalf of members,]* to ensure that those liabilities will be
15 funded no more than 40 years after the date on which the determination is made.

16 **(2) At intervals designated by the board:**

17 **(a) A public employer shall make contributions totaling 50 percent of the amount of**
18 **contributions set under subsection (1) of this section.**

19 **(b) An active member shall make employee contributions totaling 50 percent of the**
20 **amount set under subsection (1) of this section.**

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

22 238A.330. (1) A member of the individual account program must make employee contributions
23 to the individual account program of *[six]* **three** percent of the member's salary.

24 (2) Employee contributions made by a member of the individual account program under this
25 section shall be credited by the **Public Employees Retirement** Board to the employee account es-
26 tablished for the member under ORS 238A.350 (2).

27 **SECTION 3.** ORS 238A.335 is amended to read:

28 238A.335. (1) A participating public employer **shall make employer contributions of three**
29 **percent of the member's salary for a member of the individual account program employed**
30 **by the employer.** *[may agree, by a written employment policy or by a collective bargaining agreement,*

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 *to pay the employee contribution required under ORS 238A.330. The policy or agreement need not in-*
 2 *clude all members of the individual account program employed by the employer.]*

3 *[(2) An agreement under this section to pay the required employee contribution may provide that:]*

4 *[(a) Employee compensation be reduced to generate the funds needed to make the employee contri-*
 5 *butions; or]*

6 *[(b) Additional amounts be paid by the employer for the purpose of making the employee contri-*
 7 *butions, and employee compensation not be reduced for the purpose of generating the funds needed to*
 8 *make the employee contributions.]*

9 *[(3) A participating public employer must give written notice to the Public Employees Retirement*
 10 *Board at the time that a written employment policy or collective bargaining agreement described in*
 11 *subsection (1) of this section is adopted or changed. The notice must specifically indicate whether the*
 12 *agreement is as described in subsection (2)(a) or (b) of this section. Any change in the manner in which*
 13 *employee contributions are to be paid applies only to employee contributions made on and after the date*
 14 *the notice is received by the board.]*

15 **SECTION 4.** ORS 238.229 is amended to read:

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

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

38 (3) The board may charge a participating public employer expenses for administration of an ac-
 39 count established under subsection (2) of this section in an amount not to exceed \$2,500 for the
 40 calendar year in which the account is established and for the immediately following two calendar
 41 years, and in an amount not to exceed \$1,000 per year for all subsequent years.

42 (4) If a participating public employer has any liabilities that are attributable to creditable ser-
 43 vice by employees of the employer before the participating public employer was grouped with other
 44 public employers under ORS 238.227, whether under this section or pursuant to board rule, any lump
 45 sum payment made under this section must be applied first against those liabilities, with the oldest

1 liability being paid first. Any amounts remaining after application under this subsection must be
2 deposited in a separate account established under subsection (2) of this section.

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

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

20 **SECTION 5.** ORS 238.660 is amended to read:

21 238.660. (1) The Public Employees Retirement Fund is declared to be a trust fund, separate and
22 distinct from the General Fund, for the uses and purposes set forth in this chapter and ORS chapter
23 238A and ORS 237.950 to 237.980, and for no other use or purpose, except that this provision shall
24 not be deemed to amend or impair the force or effect of any law of this state specifically authorizing
25 the investment of moneys from the fund. Interest earned by the fund shall be credited to the fund.
26 Except as otherwise specifically provided by law, the Public Employees Retirement Board estab-
27 lished by ORS 238.630 is declared to be the trustee of the fund. Consistent with the legislative intent
28 expressed in ORS 238.601, and to the extent it is consistent with the board's fiduciary duties, the
29 board shall give equal consideration to the interests of participating public employers and the in-
30 terests of members. Nothing in this subsection shall be construed to impose a fiduciary duty on the
31 board to consider the interests of public employers, and the board shall consider the interests of
32 public employers only with respect to matters unrelated to the board's fiduciary duties as trustee
33 of the fund.

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

39 (3) The State of Oregon and other public employers that make contributions to the fund have
40 no proprietary interest in the fund or in the contributions made to the fund by them. The state and
41 other public employers disclaim any right to reclaim those contributions and waive any right of
42 reclamation they may have in the fund. This subsection does not prohibit alteration or refund of
43 employer contributions if the alteration or refund is authorized under this chapter or ORS chapter
44 238A and is due to erroneous payment or decreased liability for employer contributions under the
45 system. *[This subsection does not prohibit the offset of contributions to the individual account program*

1 *under ORS 238.229 (5).]*

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

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

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

24 (7) All references in this chapter to checks or warrants are subject to the provisions of ORS
25 291.001.

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

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

39 (10) The board shall appoint a committee to advise the board on legislative proposals for
40 changes in the benefits provided under this chapter and ORS chapter 238A. The committee must
41 have an equal number of members representing labor and management. No costs of reviewing leg-
42 islative proposals and making recommendations under this subsection may be charged to the fund.
43 Any member of the committee who is an active member of the system shall be released by the par-
44 ticipating public employer who employs the member for the purpose of conducting the official busi-
45 ness of the committee, and the wages or salary of the member may not be reduced by the employer

1 during periods that the member is released from duty for the purpose of conducting the official
2 business of the committee.

3 **SECTION 6.** ORS 238A.005, as amended by section 1, chapter 31, Oregon Laws 2012, is amended
4 to read:

5 238A.005. For the purposes of this chapter:

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

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

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

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

14 (a) Persons engaged as independent contractors;

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

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

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

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

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

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

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

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

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

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

32 (L) Judges.

33 (5) "Firefighter" means:

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

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

38 (c) An employee of the State Forestry Department who is certified by the State Forester as a
39 professional wildland firefighter and whose primary duties include the abatement of uncontrolled
40 fires as described in ORS 477.064.

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

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

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

45 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave

1 during which an employee does not perform duties but for which the employee is directly or indi-
2 rectly paid or entitled to payment by a participating public employer for services in a qualifying
3 position, as long as the hour is within the number of hours regularly scheduled for the performance
4 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-
5 thorized leave.

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

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

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

14 (10) "Institution of higher education" means a public university listed in ORS 352.002, the
15 Oregon Health and Science University or a community college, as defined in ORS 341.005.

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

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

21 (13) "Pension program" means the defined benefit pension program of the Oregon Public Service
22 Retirement Plan established under ORS 238A.025.

23 (14) "Police officer" means a police officer as described in ORS 238.005.

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

28 (16) "Retired member" means a pension program member who is receiving a pension as provided
29 in ORS 238A.180 to 238A.195.

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

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

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

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

41 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit
42 plan by the employer at the election of the employee and that is not includable in the taxable in-
43 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2011.

44 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
45 election of the employee and that is not included in the taxable income of the employee by reason

1 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2011.

2 (E) Retroactive payments described in ORS 238.008.

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

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

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

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

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

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

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

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

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

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

21 (G) Payments for instructional services rendered to public universities of the Oregon University
22 System or the Oregon Health and Science University when those services are in excess of full-time
23 employment subject to this chapter. A person employed under a contract for less than 12 months is
24 subject to this subparagraph only for the months covered by the contract.

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

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

33 (18) "System" means the Public Employees Retirement System.

34 **SECTION 7.** ORS 238A.220 is amended to read:

35 238A.220. (1) [A] Participating public [*employer*] **employers and active members** shall make
36 [*employer*] contributions to the Public Employees Retirement Board at intervals designated by the
37 board in the amounts determined by the board under ORS 238.225. All participating public em-
38 ployers shall be considered to be a single employer for the purposes of the employer contributions
39 under ORS 238.225 that are required for funding the pension program established under ORS
40 238A.025.

41 (2) For the purpose of the actuarial computation required under ORS 238.225, the board shall
42 separately establish the liability of participating public employers for police officers and firefighters
43 under the pension program and shall require that public employers that employ police officers and
44 firefighters who are members of the pension program make contributions for those employees based
45 on the liability established under this subsection.

1 **SECTION 8.** ORS 238A.340 is amended to read:

2 238A.340. (1) A participating public employer may agree, by a written employment policy or
3 agreement, to make employer contributions for members of the individual account program employed
4 by the employer. The percentage of salary paid as employer contributions may not be less than one
5 percent of salary or more than six percent of salary, and must be a whole number. A participating
6 public employer may make an agreement under this section for specific groups of employees em-
7 ployed by the public employer.

8 (2) If a participating public employer makes employer contributions under this section and the
9 member for [which] **whom** the contributions are made fails to vest in the employer account under
10 the provisions of ORS 238A.320, the Public Employees Retirement Board shall apply the contribu-
11 tions in the employer account against other obligations of the employer under the Oregon Public
12 Service Retirement Plan.

13 **(3) A participating public employer may not make employer contributions under this
14 section on or after the effective date of this 2013 Act.**

15 **SECTION 9.** The amendments to ORS 238.225, 238.229, 238.660, 238A.005, 238A.220,
16 238A.330, 238A.335 and 238A.340 by sections 1 to 8 of this 2013 Act do not affect any collective
17 bargaining agreement entered into before the effective date of this 2013 Act.

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

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

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

28 (b) The petition must include the following:

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

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

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

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

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

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