

Senate Bill 662

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**.

Permits employer to pay all or part of employee contribution to individual account program of Public Employees Retirement System. Requires employer's payment of employee contribution to be percentage of salary, be not less than one percent of salary or more than six percent of salary, and be whole number. Permits employer to specify percentage by agreement with all or some employees.

Reduces maximum payment of employee contribution by employer to three percent of employee's salary on and after January 1, 2016.

Specifies that requirements do not apply to collective bargaining agreements entered into before effective date of Act.

Provides for direct review to Supreme Court.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the individual account program; creating new provisions; amending ORS 238A.005,
3 238A.330 and 238A.335; and declaring an emergency.

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

5 **SECTION 1.** ORS 238A.330 is amended to read:

6 238A.330. (1) A member of the individual account program must make **an** employee
7 [*contributions*] **contribution** to the individual account program of six percent of the member's salary.

8 (2) **The** employee [*contributions*] **contribution** made by a member of the individual account
9 program under this section shall be credited by the **Public Employees Retirement** Board to the
10 employee account established for the member under ORS 238A.350 (2).

11 (3) **The employee contribution required by this section, whether made by the member or**
12 **by the employer pursuant to an agreement under ORS 238A.335, must be remitted by the**
13 **employer to the board in the manner established by the board.**

14 **SECTION 2.** ORS 238A.335 is amended to read:

15 238A.335. (1) A participating public employer may agree, by a written employment policy or by
16 a collective bargaining agreement, to pay **all or part of** the employee contribution required under
17 ORS 238A.330. [*The policy or agreement need not include all members of the individual account pro-*
18 *gram employed by the employer.*] **The amount of the employee contribution that is paid by the**
19 **employer must be equal to a percentage of the member's salary that is not less than one**
20 **percent, and the percentage must be a whole number. The employer may enter into an**
21 **agreement under this section with all or some of the employees employed by the employer.**

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

23 (a) **Amounts be deducted from** employee compensation [*be reduced*] to generate the funds
24 needed to make [*the*] employee contributions; [*or*]

25 (b) Additional amounts be paid by the employer for the purpose of making [*the*] employee
26 contributions[, *and employee compensation not be reduced for the purpose of generating the funds*
27 *needed to make the employee contributions.*]; **or**

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 (c) Amounts be deducted from employee compensation under paragraph (a) of this sub-
 2 section to generate the funds needed to make a portion of the employee contributions, and
 3 additional amounts be paid by the employer under paragraph (b) of this subsection to gen-
 4 erate the funds needed to make a portion of the employee contributions.

5 (3) A participating public employer must give written notice to the Public Employees Retirement
 6 Board at the time that *[a written employment policy or collective bargaining agreement described in*
 7 *subsection (1) of]* **an agreement under** this section is adopted or changed. The notice must specif-
 8 ically *[indicate whether the agreement is as described in subsection (2)(a) or (b) of this section.]* **de-**
 9 **scribe the apportionment of the employee contribution between the members and the**
 10 **employer.** *[Any change in the manner in which employee contributions are to be paid applies only to*
 11 *employee contributions made on and after the date the notice is received by the board.]* **An agreement**
 12 **under this section and any change to an agreement under this section apply only to employee**
 13 **contributions for pay periods beginning on or after the date that the board receives the no-**
 14 **tice.**

15 **SECTION 3.** ORS 238A.335, as amended by section 2 of this 2013 Act, is amended to read:

16 238A.335. (1) A participating public employer may agree, by a written employment policy or by
 17 a collective bargaining agreement, to pay *[all or]* part of the employee contribution required under
 18 ORS 238A.330. The amount of the employee contribution that is paid by the employer must be equal
 19 to a percentage of the member's salary that is **not more than three percent and** not less than one
 20 percent, and the percentage must be a whole number. The employer may enter into an agreement
 21 under this section with all or some of the employees employed by the employer.

22 (2) An agreement under this section may provide that:

23 (a) Amounts be deducted from employee compensation to generate the funds needed to make
 24 employee contributions;

25 (b) Additional amounts be paid by the employer for the purpose of making employee contribu-
 26 tions; or

27 (c) Amounts be deducted from employee compensation under paragraph (a) of this subsection to
 28 generate the funds needed to make a portion of the employee contributions, and additional amounts
 29 be paid by the employer under paragraph (b) of this subsection to generate the funds needed to make
 30 a portion of the employee contributions.

31 (3) A participating public employer must give written notice to the Public Employees Retirement
 32 Board at the time that an agreement under this section is adopted or changed. The notice must
 33 specifically describe the apportionment of the employee contribution between the members and the
 34 employer. An agreement under this section and any change to an agreement under this section apply
 35 only to employee contributions for pay periods beginning on or after the date that the board re-
 36 ceives the notice.

37 **SECTION 4. The amendments to ORS 238A.335 by section 3 of this 2013 Act become op-**
 38 **erative on January 1, 2016.**

39 **SECTION 5.** ORS 238A.005, as amended by section 1, chapter 31, Oregon Laws 2012, is amended
 40 to read:

41 238A.005. For the purposes of this chapter:

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

44 (2) "Actuarial equivalent" means a payment or series of payments having the same value as the
 45 payment or series of payments replaced, computed on the basis of interest rate and mortality as-

1 sumptions adopted by the board.

2 (3) “Board” means the Public Employees Retirement Board.

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

5 (a) Persons engaged as independent contractors;

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

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

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

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

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

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

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

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

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

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

23 (L) Judges.

24 (5) “Firefighter” means:

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

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

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

32 (6) “Fund” means the Public Employees Retirement Fund.

33 (7)(a) “Hour of service” means:

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

36 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave
37 during which an employee does not perform duties but for which the employee is directly or indi-
38 rectly paid or entitled to payment by a participating public employer for services in a qualifying
39 position, as long as the hour is within the number of hours regularly scheduled for the performance
40 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-
41 thorized leave.

42 (b) “Hour of service” does not include any hour for which payment is made or due under a plan
43 maintained solely for the purpose of complying with applicable workers’ compensation laws or un-
44 employment compensation laws.

45 (8) “Inactive member” means a member of the pension program or the individual account pro-

1 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who
2 is not a retired member and who is not employed in a qualifying position.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
36 election of the employee and that is not included in the taxable income of the employee by reason
37 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2011.

38 (E) Retroactive payments described in ORS 238.008.

39 (F) The amount of an employee contribution to the individual account program that is [*paid by*
40 *the employer and*] deducted from the compensation of the employee[, *as provided*] under ORS
41 238A.335 [(1) and (2)(a)].

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

44 [(H)] (G) Wages of a deceased member paid to a surviving spouse or dependent children under
45 ORS 652.190.

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

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

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

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

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

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

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

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

16 (H) The amount of an employee contribution to the individual account program that is paid by
17 the employer and is not deducted from the compensation of the employee[, *as provided*] under ORS
18 238A.335 [(1) and (2)(b)].

19 (I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is
20 determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a
21 fraction, the numerator of which is the number of months in the determination period and the de-
22 nominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate
23 cost-of-living adjustments authorized by the Internal Revenue Service.

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

25 **SECTION 6. The amendments to ORS 238A.005, 238A.330 and 238A.335 by sections 1 to 3**
26 **and 5 of this 2013 Act do not apply to a collective bargaining agreement entered into before**
27 **the effective date of this 2013 Act. Any collective bargaining agreement entered into on or**
28 **after the effective date of this 2013 Act must be in conformance with ORS 238A.005, 238A.330**
29 **and 238A.335 as amended by sections 1 to 3 and 5 of this 2013 Act.**

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

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

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

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

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

42 **(B) A statement and supporting affidavit showing how the petitioner is adversely af-**
43 **ected.**

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

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

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

5 **(6)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene**
6 **in any proceeding under this section. After a member intervenes in a proceeding under this**
7 **section, the member has standing to participate in the proceeding even if the member ceases**
8 **to be a member of the Legislative Assembly.**

9 **(b) A member of the Senate or House of Representatives who intervenes in a proceeding**
10 **under this subsection may not use public funds to pay legal expenses incurred in intervening**
11 **or participating in the proceeding.**

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

15 **(8) The court may not award attorney fees to a petitioner in a proceeding under this**
16 **section.**

17 **SECTION 8.** **This 2013 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
19 **on its passage.**

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