

Senate Bill 664

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**.

Modifies calculation of final average salary for members of Oregon Public Service Retirement Plan.

Applies to all active and inactive members of plan.

Provides for direct review by Supreme Court.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon Public Service Retirement Plan; creating new provisions; amending ORS
3 238A.130; and declaring an emergency.

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

5 **SECTION 1.** ORS 238A.130 is amended to read:

6 238A.130. (1) Except as provided in subsection (3) of this section, for purposes of the computa-
7 tion of pension program benefits under ORS 238A.125, "final average salary" means whichever of the
8 following is greater:

9 (a) The average salary per calendar year paid to an active member in the [*three*] **five** consec-
10 utive calendar years of membership that produce the highest average salary, including calendar
11 years in which the member was employed for less than a full calendar year. If the number of con-
12 secutive calendar years of active membership before the effective date of retirement of the member
13 is [*three*] **five** or less, the final average salary for the member is the average salary per calendar
14 year paid to the member in all of those years, without regard to whether the member was employed
15 for full calendar years.

16 (b) [*One-third*] **One-fifth** of the total salary paid to an active member in the last [*36*] **60** calendar
17 months of membership before the effective date of retirement of the member.

18 (2) For the purposes of calculating the final average salary of a member under subsection (1)
19 of this section, the Public Employees Retirement Board shall:

20 (a) Include any salary paid in or for the calendar month of separation from employment;

21 (b) Exclude any salary for any pay period before the first full pay period that is included in the
22 [*three*] **five** consecutive calendar years of membership under subsection (1)(a) of this section; and

23 (c) Exclude any salary for any pay period before the first full pay period that is included in the
24 last [*36*] **60** calendar months of membership under subsection (1)(b) of this section.

25 (3) For purposes of the computation of pension program benefits under ORS 238A.125 of a person
26 employed by a local government as defined in ORS 174.116, "final average salary" means whichever
27 of the following is greater:

28 (a) The average salary per calendar year earned by an active member in the [*three*] **five** con-
29 secutive calendar years of membership that produce the highest average salary, including calendar
30 years in which the member was employed for less than a full calendar year. If the number of con-

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 secutive calendar years of active membership before the effective date of retirement of the member
 2 is [three] **five** or less, the final average salary for the member is the average salary per calendar
 3 year earned by the member in all of those years, without regard to whether the member was em-
 4 ployed for full calendar years.

5 (b) [One-third] **One-fifth** of the total salary earned by an active member in the last [36] **60** cal-
 6 endar months of membership before the effective date of retirement of the member.

7 (4) For the purposes of calculating the final average salary of a member under this section, the
 8 salary of the member does not include any amounts attributable to hours of overtime that exceed
 9 **five percent of the member's salary when amounts attributable to hours of overtime are not**
 10 **included.** [the average number of hours of overtime for the same class of employees as established by
 11 rule of the Public Employees Retirement Board. The Oregon Department of Administrative Services
 12 shall establish by rule more than one overtime average for a class of state employees based on the ge-
 13 ographic placement of the employees.]

14 **SECTION 2. (1) The amendments to ORS 238A.130 by section 1 of this 2013 Act apply to**
 15 **all active and inactive members of the Oregon Public Service Retirement Plan.**

16 (2) **If application of this 2013 Act to all active and inactive members of the Oregon Public**
 17 **Service Retirement Plan is found to breach any contract between members of the Public**
 18 **Employees Retirement System and their employers or violate any constitutional provision,**
 19 **including but not limited to impairment of contract rights of members of the Public Em-**
 20 **ployees Retirement System under Article I, section 21, of the Oregon Constitution, or Article**
 21 **I, section 10, clause 1, of the United States Constitution, it is the intent of the Legislative**
 22 **Assembly that this 2013 Act apply to members of the Oregon Public Service Retirement Plan**
 23 **hired on and after the effective date of this 2013 Act.**

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

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

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

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

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

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

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

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

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

44 (6)(a) **The Supreme Court shall allow members of the Legislative Assembly to intervene**
 45 **in any proceeding under this section. After a member intervenes in a proceeding under this**

1 section, the member has standing to participate in the proceeding even if the member ceases
2 to be a member of the Legislative Assembly.

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

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

9 (8) The court may not award attorney fees to a petitioner in a proceeding under this
10 section.

11 **SECTION 4.** This 2013 Act being necessary for the immediate preservation of the public
12 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
13 on its passage.

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