

Senate Bill 674

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**.

Prohibits members of Legislative Assembly, judges and statewide elected officials from becoming members of Public Employees Retirement System or acquiring credit under system.

Applies to members of Legislative Assembly, judges and statewide elected officials who are first appointed or elected on or after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public officials; creating new provisions; amending ORS 238.015, 238.092, 238.505 and 238A.245; repealing ORS 237.650, 237.655 and 238A.475; and declaring an emergency.

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

LEGISLATORS

SECTION 1. A person who is appointed or elected as a member of the Legislative Assembly may not become a member of the Public Employees Retirement System for service as a member of the Legislative Assembly that is performed by reason of that appointment or election.

SECTION 2. ORS 238.092 is amended to read:

238.092. (1) Notwithstanding any other provision of this chapter:

(a) A retired member of the Public Employees Retirement System who has retired as other than a member of the Legislative Assembly and who is thereafter appointed or elected as a member of the Legislative Assembly may elect, by giving the Public Employees Retirement Board written notice, to receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and be an active member of the system as a member of the Legislative Assembly for the purpose of service in the Legislative Assembly. A person may make an election under this paragraph only if the person becomes an active member of the system **as a member of the Legislative Assembly as a result of an appointment or election to the Legislative Assembly that occurred before the effective date of this 2013 Act.** [*under this chapter for the purpose of service in the Legislative Assembly as provided in ORS 237.650 (3). Notice of an election under this paragraph must be given by the person not more than 30 days after the person takes office.*]

(b) A member of the Legislative Assembly who is a member of the system as a member of the Legislative Assembly and who becomes eligible to retire by reason of service as other than a member of the Legislative Assembly, without regard to when that service was performed, may elect, by giving the board written notice, to retire and receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and to continue, for the purpose of service in the Legislative Assembly, as an active member of the system as a member of

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 the Legislative Assembly. **A person may make an election under this paragraph only if the**
 2 **person becomes an active member of the system as a member of the Legislative Assembly**
 3 **as a result of an appointment or election to the Legislative Assembly that occurred before**
 4 **the effective date of this 2013 Act.**

5 (c) Upon receipt of the notice provided for in paragraphs (a) and (b) of this subsection, the board
 6 shall determine that portion of the accumulated contributions, if any, of the member and interest
 7 thereon attributable to service as other than a member of the Legislative Assembly, which shall be
 8 used in determining the amount of the annuity the member shall receive for that service. The por-
 9 tion of the accumulated contributions, if any, of the member and interest thereon attributable to
 10 service as a member of the Legislative Assembly shall remain in the member account of the member
 11 and, together with any subsequent contributions and interest thereon, be used in determining the
 12 amount of the additional annuity the member shall receive for that service upon subsequent retire-
 13 ment. If the member does not have a member account, the board shall determine the member's re-
 14 tirement allowance for nonlegislative service based on the number of years of nonlegislative service,
 15 and shall determine any additional benefit to be received after the member subsequently retires
 16 based on the number of years of service in the Legislative Assembly.

17 (2) If a retired member of the system is employed by the Legislative Assembly, or by the Oregon
 18 State Police, for the purpose of service during a regular or special session of the Legislative As-
 19 sembly, the hours worked during the session shall not be counted for the purpose of the limitations
 20 on employment imposed by ORS 238.082 (2) and (3).

21 **SECTION 3.** ORS 238A.245 is amended to read:

22 238A.245. (1) Except as provided in subsection (3) of this section, the Public Employees Retirement
 23 Board shall cease making pension payments to a retired member of the pension program who
 24 is reemployed by a participating public employer in a qualifying position. A retired member of the
 25 pension program who is employed in a qualifying position becomes an active member of the pension
 26 program without serving the probationary period provided for in ORS 238A.100.

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

31 (3) A retired member of the pension program who becomes a member of the Legislative Assem-
 32 bly shall continue to receive the pension elected by the member. A retired member of the pension
 33 program who becomes a member of the Legislative Assembly may not [*make an election under ORS*
 34 *237.650*] **become an active member of the Oregon Public Service Retirement Plan for service**
 35 **as a member of the Legislative Assembly.**

36 **SECTION 4.** ORS 237.650, 237.655 and 238A.475 are repealed.

37 **SECTION 5.** (1) **Except as provided in subsection (2) of this section, section 1 of this 2013**
 38 **Act, the amendments to ORS 238.092 and 238A.245 by sections 2 and 3 of this 2013 Act and**
 39 **the repeal of ORS 237.650, 237.655 and 238A.475 by section 4 of this 2013 Act apply only to**
 40 **service as a member of the Legislative Assembly that is a result of an appointment or**
 41 **election to the Legislative Assembly that occurs on or after the effective date of this 2013**
 42 **Act.**

43 (2) **A member of the Legislative Assembly who is serving on the effective date of this 2013**
 44 **Act shall continue to accrue benefits under ORS 237.650, 237.655 and 238A.475, as in effect**
 45 **immediately before the effective date of this 2013 Act, for so long as the member continues**

1 **uninterrupted service as a member of the Legislative Assembly. A member of the Legislative**
 2 **Assembly continues uninterrupted service as a member of the Legislative Assembly for the**
 3 **purposes of this subsection until the person resigns or otherwise leaves office.**

4 5 **JUDGES**

6
7 **SECTION 6.** ORS 238.505 is amended to read:

8 238.505. (1) Except as provided in [subsection (2)] **subsections (2) and (3)** of this section, a
 9 person who is not a judge on December 31, 1983, and who is elected or appointed to the office of
 10 judge on or after January 1, 1984, shall become a judge member on the date the person takes the
 11 office.

12 (2) A person who, by reason of the age at which becoming a judge, could not make contributions
 13 to the Public Employees Retirement Fund during each of five calendar years as a judge member at
 14 or before attaining the age of 75 years shall not become a judge member.

15 (3) **A person who is elected or appointed to the office of judge who takes office on or after**
 16 **the effective date of this 2013 Act may not become a member of the Public Employees Re-**
 17 **irement System or acquire retirement credit under the system.**

18 (4) **This section does not apply to a person who is serving as a judge on the effective date**
 19 **of this 2013 Act so long as that person continues uninterrupted service in the office held by**
 20 **the person on the effective date of this 2013 Act, including any period of service attributable**
 21 **to reelection to the same office on or after the effective date of this 2013 Act.**

22 23 **STATEWIDE ELECTED OFFICERS**

24
25 **SECTION 7.** ORS 238.015 is amended to read:

26 238.015. (1) No person may become a member of the system unless that person is in the service
 27 of a public employer and has completed six months' service uninterrupted by more than 30 consec-
 28 utive working days during the six months' period. Every employee of a participating employer shall
 29 become a member of the system at the beginning of the first full pay period of the employee fol-
 30 lowing the six months' period. Contributions for new members shall first be made for those wages
 31 that are attributable to services performed by the employee during the first full pay period following
 32 the six months' period, without regard to when those wages are considered earned for other pur-
 33 poses under this chapter. All public employers participating in the Public Employees Retirement
 34 System established by chapter 401, Oregon Laws 1945, as amended, at the time of repeal of that
 35 chapter, and all school districts of the state, shall participate in, and their employees shall be
 36 members of, the system, except as otherwise specifically provided by law.

37 (2) Any active member of the Public Employees Retirement System who, through the annexation
 38 of a political subdivision employing the member or by change of employment, becomes the employee
 39 of another political subdivision which is participating in the Public Employees Retirement System
 40 and has also a separate retirement system for its employees, shall remain an active member of the
 41 Public Employees Retirement System unless, within 60 days after the effective date of the
 42 annexation or change of employment or April 8, 1953, the member shall by written notice to the
 43 Public Employees Retirement Board and to the administrative body of the new public employer elect
 44 to relinquish membership in the Public Employees Retirement System and become a member of the
 45 separate retirement system of the employer, if eligible for membership in that retirement system, and

1 the member shall be so carried by the new employer. Immediately upon such annexation of any
 2 political subdivision or such change of employment, the new public employer shall inform such em-
 3 ployee in writing of the right of the employee to exercise an election as in this section provided.

4 (3) A political subdivision (other than a school district) not participating in the retirement sys-
 5 tem established by chapter 401, Oregon Laws 1945, as amended, which employs one or more em-
 6 ployees, each of whose position requires 600 hours of service per year, or an agency created by two
 7 or more political subdivisions to provide themselves governmental services, which employs one or
 8 more employees, each of whose position requires 600 hours of service per year, may, through its
 9 governing body, notify the board in writing, that it elects to include its employees in the system
 10 hereby established. Such public employer may request the board to make a study and estimate of the
 11 cost of including it and its eligible employees, other than volunteer firefighters, in the system, which
 12 the board thereupon shall cause to be made and the cost of which the employer shall bear. Upon
 13 completion of the study and estimate the employer may apply for admission to the system, where-
 14 upon it shall begin to participate therein and its eligible employees other than volunteer firefighters
 15 shall become members of the system. If the employer is an agency created by two or more political
 16 subdivisions to provide themselves governmental services and ceases thereafter to transmit to the
 17 board contributions for any of its eligible employees, the benefits based upon employer contributions
 18 to which such employees would otherwise be entitled shall be reduced accordingly.

19 (4) No inmate of a state institution or an alien on a training or educational visa working for
 20 any participating employer, even though the inmate or alien received compensation from a partic-
 21 ipating employer, shall be eligible to become a member of the system. No person employed by a
 22 participating employer and defined by such employer as a student employee is eligible to become a
 23 member of the system for such student employment.

24 (5) **Except as provided in subsection (6) of this section,** a person holding an elective office
 25 or an appointive office with a fixed term or *[an]* **a person holding** office as head of a department
 26 to which the person is appointed by the Governor may become a member of the system by giving
 27 the board written notice of desire to do so within 30 days after taking *[the]* office or, in the event
 28 that the officer is not eligible to become a member of the system at the time of taking *[the]* office,
 29 within 30 days after becoming so eligible. Membership so established *[shall]* **may** not be discontinued
 30 during the appointive or elective term of the *[officer]* **person** except upon separation of the *[officer]*
 31 **person** from service.

32 (6)(a) **A person who is elected as a statewide elected official on or after the effective date**
 33 **of this 2013 Act may not become a member of the Public Employees Retirement System or**
 34 **acquire retirement credit under the system.**

35 (b) **Paragraph (a) of this subsection does not apply to a person who is serving in a**
 36 **statewide elective office on the effective date of this 2013 Act so long as that person contin-**
 37 **ues uninterrupted service in the office held by the person on the effective date of this 2013**
 38 **Act, including any period of service attributable to reelection to the same office on or after**
 39 **the effective date of this 2013 Act.**

40 *[(6)]* (7) A public employer employing volunteer firefighters may apply to the board at any time
 41 for them to become members of the system. Upon receiving the application the board shall fix a
 42 wage at which, for purposes of this chapter only, they shall be considered to be employed and which
 43 shall be the basis for computing the amounts of the contributions, if any, which they pay into, and
 44 of the benefits which they and their beneficiaries receive from, the fund; and if the wage so fixed
 45 is satisfactory to the employer, shall include the firefighters in the system.

1 [(7)(a)] **(8)(a)** In the event that an employee enters the service of a public employer which is
2 participating in or later begins to participate in the system and in the event that at the time of
3 entering that service or at the time that the employer begins to participate in the system the em-
4 ployee has commenced to purchase and is continuing to purchase a retirement annuity, if the em-
5 ployer deems the annuity adequate for the purposes of this chapter, it may enter into an agreement
6 with the employee and the board pursuant to which the employee may be exempted from contribut-
7 ing to the Public Employees Retirement Fund, and, if no public funds are being used to purchase the
8 annuity or a corresponding pension, the employer, in lieu of the contributions which it otherwise
9 would make to the fund on account of the employee, may make contributions toward the cost of
10 purchasing the annuity. Such employee otherwise shall be subject to the provisions of this chapter,
11 except that neither the employee nor any person claiming under the employee shall receive any
12 payments from the retirement fund as service or disability allowance.

13 (b) An employee who enters into an agreement under paragraph (a) of this subsection may elect
14 at any time thereafter to start to participate in the system by giving written notice of desire to
15 participate to the board and to the employer. The employee shall receive no retirement credit for
16 the period during which the employee was exempted from contributing to the fund under the
17 agreement, but the employee shall be considered to have completed the six months' service required
18 for membership in the system. When the employee starts to participate in the system the employer
19 shall start to contribute to the fund on account of the employee in the same manner as the employer
20 contributes on account of other employees who are active members of the system and the employer
21 shall stop making contributions toward the cost of purchasing the retirement annuity.

22 [(8)(a)] **(9)(a)** All new appointees in the Federal Cooperative Extension Service or in any other
23 service in which participation in the Federal Civil Service retirement program is mandatory, who
24 receive a federal appointment on or after July 1, 1955, may participate in the Public Employees
25 Retirement System only by giving written notice of their election to so participate to the Public
26 Employees Retirement Board within six months after the effective date of their appointment.

27 (b) All persons employed by the Federal Cooperative Extension Service or by any other service
28 in which participation in the Federal Civil Service retirement program is mandatory, who are under
29 federal appointment as of July 1, 1955, and who are members of the state retirement system, shall
30 continue such membership unless, prior to February 1, 1956, they give written notice to the Public
31 Employees Retirement Board of their desire to cancel their membership.

32 (c) Any person who is an active member of the Public Employees Retirement System, who, on
33 or after July 1, 1955, is employed by the Federal Cooperative Extension Service or by any other
34 service in which participation in the Federal Civil Service retirement program is mandatory, and
35 who is given a federal appointment, shall continue such membership in the Public Employees Re-
36 tirement System unless, within six months after the effective date of the appointment, the person
37 gives written notice to the Public Employees Retirement Board of the desire to cancel membership.

38 (d) A cancellation of membership under paragraph (b) or (c) of this subsection terminates mem-
39 bership in the Public Employees Retirement System and cancels the right to any benefits from, or
40 claims against, that system. Such cancellation prevents the withdrawing member from claiming
41 thereafter any retirement credit for any period of employment before the cancellation. Upon receipt
42 of a notice of cancellation, the Public Employees Retirement Board shall refund the member account
43 of the withdrawing member, regardless of the age of the withdrawing member.

44 [(9)] **(10)** Employees, including managers, of foreign trade offices of the Oregon Business Devel-
45 opment Department who live and perform services in foreign countries under the provisions of ORS

1 285A.075 (1)(g) shall not be members of the system. However, any person who is an active member
 2 of the system immediately before becoming an employee of a foreign trade office shall continue to
 3 be a member of the system during the period of time the person serves as an employee of the foreign
 4 trade office.

5 [(10)] (11) An employee who is participating in an alternative retirement program established
 6 pursuant to ORS 353.250 or an optional retirement plan established pursuant to ORS 341.551 may
 7 not be an active member of the Public Employees Retirement System.

8
 9 **REVIEW BY SUPREME COURT**

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

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

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

21 (b) The petition must include the following:

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

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

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

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

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

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

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

38 (7) 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.

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

43
 44 **CAPTIONS**

