

A-Engrossed
Senate Bill 862

Ordered by the Senate October 1
Including Senate Amendments dated October 1

Sponsored by JOINT COMMITTEE ON SPECIAL SESSION

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.

Excludes certain increases in salary made by employer to pay for insurance coverage from calculation of final average salary for members of Oregon Public Service Retirement Plan.

Provides that retirement allowance or other distribution payable to member of Public Employees Retirement System who is convicted of felony is subject to execution, garnishment, attachment or other process to collect **portion of** money award included in judgment in criminal action.

Modifies options available to members of Legislative Assembly under Public Employees Retirement System.

Provides for expedited review by Supreme Court upon petition by adversely affected party.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 237.650, 237.655, 238A.050, 238A.130, 238A.245, 238A.350 and 243.163; and declaring an emergency.

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

**EXCLUSION OF PAYMENTS FOR INSURANCE FROM
FINAL AVERAGE SALARY**

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

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

(a) The average salary per calendar year paid to an active member in the three consecutive calendar years of membership that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is three or less, the final average salary for the member is the average salary per calendar year paid to the member in all of those years, without regard to whether the member was employed for full calendar years.

(b) One-third of the total salary paid to an active member in the last 36 calendar months of membership before the effective date of retirement of the member.

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

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

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

3 (c) Exclude any salary for any pay period before the first full pay period that is included in the
4 last 36 calendar months of membership under subsection (1)(b) of this section.

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

8 (a) The average salary per calendar year earned by an active member in the three consecutive
9 calendar years of membership that produce the highest average salary, including calendar years in
10 which the member was employed for less than a full calendar year. If the number of consecutive
11 calendar years of active membership before the effective date of retirement of the member is three
12 or less, the final average salary for the member is the average salary per calendar year earned by
13 the member in all of those years, without regard to whether the member was employed for full cal-
14 endar years.

15 (b) One-third of the total salary earned by an active member in the last 36 calendar months of
16 membership before the effective date of retirement of the member.

17 (4) For the purposes of calculating the final average salary of a member under this section, the
18 salary of the member does not include:

19 (a) Any amounts attributable to hours of overtime that exceed the average number of hours of
20 overtime for the same class of employees as established by rule of the Public Employees Retirement
21 Board. The Oregon Department of Administrative Services shall establish by rule more than one
22 overtime average for a class of state employees based on the geographic placement of the employees.

23 (b) **Any increases in salary during the last 36 calendar months of membership before the**
24 **effective date of retirement of the member that:**

25 (A) **Are made by an employer to pay for insurance coverage previously paid for by the**
26 **employer; and**

27 (B) **Are not offered to all employees in the same class of employees as established by rule**
28 **of the board under paragraph (a) of this subsection.**

29 **SECTION 2. The amendments to ORS 238A.130 by section 1 of this 2013 special session**
30 **Act apply only to increases in salary paid to a member of the pension program of the Oregon**
31 **Public Service Retirement Plan on or after the effective date of this 2013 special session Act.**

32
33 **EXECUTION, GARNISHMENT AND ATTACHMENT**
34 **OF DISTRIBUTIONS**
35

36 **SECTION 3. Section 4 of this 2013 special session Act is added to and made a part of ORS**
37 **chapter 238.**

38 **SECTION 4. (1) Notwithstanding ORS 238.445, any retirement allowance, pension pay-**
39 **ment, lump sum payment or other distribution payable under this chapter or ORS chapter**
40 **238A to a person convicted of a felony is subject to execution, garnishment, attachment or**
41 **other process to collect, and may be assigned to satisfy, the portion of a money award de-**
42 **scribed in subsection (2) of this section that is included in a judgment entered in the criminal**
43 **action as provided in ORS 18.048.**

44 (2) **Subsection (1) of this section applies only to the amount of a money award attribut-**
45 **able to restitution ordered under ORS 137.106 or a compensatory fine ordered under ORS**

1 **137.101.**

2 **SECTION 5.** ORS 238A.050 is amended to read:

3 238A.050. (1) The Oregon Public Service Retirement Plan is part of the Public Employees Re-
4 tirement System and is administered by the Public Employees Retirement Board.

5 (2) ORS 238.008, 238.225, 238.229, 238.231, 238.285, 238.410, 238.445, 238.450, 238.455, 238.458,
6 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630, 238.635, 238.640,
7 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696, 238.698, 238.700,
8 238.705, 238.710 and 238.715 **and section 4 of this 2013 special session Act** apply to the Oregon
9 Public Service Retirement Plan.

10 (3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement
11 Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4)
12 of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the
13 provisions of ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the indi-
14 vidual account program and pension program differently than the other assets of the Public Em-
15 ployees Retirement System.

16 (4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the
17 limitations imposed by ORS 293.726 (6).

18 (5) The board may contract with a private provider for the administration of the individual ac-
19 count program. The board is not subject to the provisions of ORS chapter 279A or 279B in awarding
20 a contract under the provisions of this subsection. The board shall establish procedures for inviting
21 proposals and awarding contracts under this subsection.

22 **SECTION 6. Section 4 of this 2013 special session Act and the amendments to ORS**
23 **238A.050 by section 5 of this 2013 special session Act apply only to conduct resulting in a**
24 **conviction of a felony that is committed on or after the effective date of this 2013 special**
25 **session Act.**

26
27 **STATUS OF LEGISLATORS IN PUBLIC EMPLOYEES**
28 **RETIREMENT SYSTEM**
29

30 **SECTION 7. (1) A person who is appointed or elected as a member of the Legislative**
31 **Assembly and who is not a member of the Public Employees Retirement System at the time**
32 **of the appointment or election:**

33 (a) **May not become a member of the Public Employees Retirement System for the pur-**
34 **pose of service in the Legislative Assembly.**

35 (b) **May elect to become a legislator member of the state deferred compensation plan**
36 **under ORS 237.655 for the purpose of service in the Legislative Assembly.**

37 (2) **An election under this section does not affect the ability of a person appointed or**
38 **elected as a member of the Legislative Assembly to participate in the state deferred com-**
39 **penetration plan in the manner provided by ORS 243.401 to 243.507 as other than a legislator**
40 **member under ORS 237.655.**

41 **SECTION 8.** ORS 237.650 is amended to read:

42 237.650. (1) Except as provided in this section, a person **who is** appointed or elected as a mem-
43 ber of the Legislative Assembly **and who is a member of the Public Employees Retirement**
44 **System at the time of the appointment or election** may make a retirement plan election in the
45 manner provided by this section. If a person [*appointed or elected as a member of the Legislative*

1 *Assembly*] **who is permitted to make an election under this section** does not make a retirement
2 plan election under subsection [(2), (3) or (4)] **(2), (3), (4) or (5)** of this section, the person is deemed
3 to have elected a retirement plan as provided in subsection [(7)] **(6)** of this section.

4 (2) An active or inactive member of the Public Employees Retirement System who is appointed
5 or elected as a member of the Legislative Assembly, and who established membership in the system
6 before August 29, 2003, as described in ORS 238A.025, may:

7 (a) Elect to remain a member of the system under ORS chapter 238 for the purpose of service
8 in the Legislative Assembly;

9 (b) Decline to remain a member of the system under ORS chapter 238 and elect to become a
10 legislator member of the state deferred compensation plan under ORS 237.655 for the purpose of
11 service in the Legislative Assembly; or

12 (c) Decline to remain a member of the system under ORS chapter 238 or to become a legislator
13 member of the state deferred compensation plan under ORS 237.655 for the purpose of service in the
14 Legislative Assembly.

15 (3) A retired member of the Public Employees Retirement System who is appointed or elected
16 as a member of the Legislative Assembly, and who established membership in the system before
17 August 29, 2003, as described in ORS 238A.025, may:

18 (a) Elect to become an active member of the system under ORS chapter 238 for the purpose of
19 service in the Legislative Assembly;

20 (b) Decline to become an active member of the system under ORS chapter 238 and elect to be-
21 come a legislator member of the state deferred compensation plan under ORS 237.655 for the purpose
22 of service in the Legislative Assembly; or

23 (c) Decline to become an active member of the system under ORS chapter 238 or to become a
24 legislator member of the state deferred compensation plan under ORS 237.655 for the purpose of
25 service in the Legislative Assembly.

26 [(4) A person who is appointed or elected as a member of the Legislative Assembly and who is not
27 a member of the Public Employees Retirement System at the time the person takes office may:]

28 [(a) Elect to become a member of the Oregon Public Service Retirement Plan established under
29 ORS chapter 238A for the purpose of service in the Legislative Assembly;]

30 [(b) Decline to become a member of the Oregon Public Service Retirement Plan and elect to become
31 a legislator member of the state deferred compensation plan under ORS 237.655 for the purpose of
32 service in the Legislative Assembly; or]

33 [(c) Decline to become a member of the Oregon Public Service Retirement Plan or to become a
34 legislator member of the state deferred compensation plan under ORS 237.655 for the purpose of service
35 in the Legislative Assembly.]

36 [(5)] (4) An active or inactive member of the Public Employees Retirement System who is ap-
37 pointed or elected as a member of the Legislative Assembly, and who established membership in the
38 system on or after August 29, 2003, as described in ORS 238A.025, may [*not make an election under*
39 *this section and is an active member of the system under ORS chapter 238A for the purpose of service*
40 *in the Legislative Assembly.*]:

41 (a) **Elect to remain a member of the system under ORS chapter 238A for the purpose of**
42 **service in the Legislative Assembly;**

43 (b) **Decline to remain a member of the system under ORS chapter 238A and elect to be-**
44 **come a legislator member of the state deferred compensation plan under ORS 237.655 for the**
45 **purpose of service in the Legislative Assembly; or**

1 **(c) Decline to remain a member of the system under ORS chapter 238A or to become a**
2 **legislator member of the state deferred compensation plan under ORS 237.655 for the purpose**
3 **of service in the Legislative Assembly.**

4 [(6)] (5) A retired member of the Public Employees Retirement System who is appointed or
5 elected as a member of the Legislative Assembly, and who established membership in the system on
6 or after August 29, 2003, as described in ORS 238A.025, may *[not make an election under this section*
7 *and remains a retired member of the system under ORS chapter 238A during the person's service in*
8 *the Legislative Assembly.]*:

9 **(a) Elect to become an active member of the system under ORS chapter 238A for the**
10 **purpose of service in the Legislative Assembly;**

11 **(b) Decline to become an active member of the system under ORS chapter 238A and elect**
12 **to become a legislator member of the state deferred compensation plan under ORS 237.655**
13 **for the purpose of service in the Legislative Assembly; or**

14 **(c) Decline to become an active member of the system under ORS chapter 238A or to**
15 **become a legislator member of the state deferred compensation plan under ORS 237.655 for**
16 **the purpose of service in the Legislative Assembly.**

17 [(7)] (6) Written notice of an election under subsection [(2), (3) or (4)] (2), (3), (4) or (5) of this
18 section must be given to the Public Employees Retirement Board not more than 30 days after the
19 person takes office. If the board does not receive written notice of the election within 30 days after
20 the person takes office:

21 (a) A person described in subsection (2) of this section is deemed to have elected to remain a
22 member of the Public Employees Retirement System under ORS chapter 238 for the purpose of ser-
23 vice in the Legislative Assembly.

24 (b) A person described in subsection (3) of this section is deemed to have declined to become
25 an active member of the system under ORS chapter 238[,] or to become a legislator member of the
26 state deferred compensation plan under ORS 237.655, and remains a retired member of the system
27 under ORS chapter 238 for the purpose of service in the Legislative Assembly.

28 (c) A person described in subsection (4) of this section is deemed to have elected to *[become a*
29 *member of the system under ORS chapter 238A for the purpose of service in the Legislative*
30 *Assembly.]* **remain a member of the Public Employees Retirement System under ORS chapter**
31 **238A for the purpose of service in the Legislative Assembly.**

32 **(d) A person described in subsection (5) of this section is deemed to have declined to be-**
33 **come an active member of the system under ORS chapter 238A or to become a legislator**
34 **member of the state deferred compensation plan under ORS 237.655, and remains a retired**
35 **member of the system under ORS chapter 238A for the purpose of service in the Legislative**
36 **Assembly.**

37 [(8)] (7) An election under subsection (3)(b) or (c) or (5)(b) or (c) of this section does not affect
38 the status of a person as a retired member of the system and a recipient of retirement benefits under
39 ORS chapter 238 **or 238A.**

40 [(9)] (8) An election under this section does not affect the ability of a person appointed or
41 elected as a member of the Legislative Assembly to participate in the state deferred compensation
42 plan in the manner provided by ORS 243.401 to 243.507 as other than a legislator member under ORS
43 237.655.

44 **SECTION 9.** ORS 237.655 is amended to read:

45 237.655. (1)(a) If a person appointed or elected as a member of the Legislative Assembly elects

1 under ORS 237.650 or section 7 of this 2013 special session Act to become a legislator member
 2 of the state deferred compensation plan for the purpose of service in the Legislative Assembly, the
 3 Legislative Assembly shall make employer contributions to the plan in an amount that is equal to
 4 six percent of the member's salary plus the percentage of the member's salary that would have
 5 been contributed to the Public Employees Retirement Board for the member's normal cost
 6 under ORS 238A.220, as determined by the actuary under ORS 238.605.

7 (b) Notwithstanding paragraph (a) of this subsection, contributions made to the plan by
 8 the Legislative Assembly under this subsection may not exceed the maximum allowed by
 9 federal law.

10 (2) If a person appointed or elected as a member of the Legislative Assembly elects under ORS
 11 237.650 or section 7 of this 2013 special session Act to become a legislator member of the state
 12 deferred compensation plan for the purpose of service in the Legislative Assembly, and the person
 13 also participates in the state deferred compensation plan in the manner provided by ORS 243.401 to
 14 243.507 as other than a legislator member, the total contributions made to the plan by the person
 15 and by the employer under subsection (1) of this section may not exceed the maximum allowed by
 16 federal law governing the plan's tax qualification.

17 (3) Except for the contributions required by subsection (1) of this section, the Legislative As-
 18 sembly may not "pick-up," assume or pay any contributions on behalf of a legislator member of the
 19 state deferred compensation plan.

20 **SECTION 10.** Section 11 of this 2013 special session Act is added to and made a part of
 21 ORS 238A.100 to 238A.245.

22 **SECTION 11.** Notwithstanding any other provision of this chapter:

23 (1) A retired member who has retired as other than a member of the Legislative As-
 24 sembly and who is thereafter appointed or elected as a member of the Legislative Assembly
 25 may elect, by giving the Public Employees Retirement Board written notice, to receive the
 26 pension provided by this chapter for service as other than a member of the Legislative As-
 27 sembly, and be an active member as a member of the Legislative Assembly for the purpose
 28 of service in the Legislative Assembly. A person may make an election under this subsection
 29 only if the person becomes an active member for the purpose of service in the Legislative
 30 Assembly as provided in ORS 237.650 (5). Notice of an election under this subsection must
 31 be given by the person not more than 30 days after the person takes office.

32 (2) A member of the Legislative Assembly who is a member of the Public Employees
 33 Retirement System under this chapter as a member of the Legislative Assembly and who
 34 becomes eligible to retire by reason of service as other than a member of the Legislative
 35 Assembly, without regard to when that service was performed, may elect, by giving the board
 36 written notice, to retire and receive the pension provided by this chapter for service as other
 37 than a member of the Legislative Assembly, and to continue, for the purpose of service in
 38 the Legislative Assembly, as an active member as a member of the Legislative Assembly.

39 (3) Upon receipt of the notice provided for in subsection (1) or (2) of this section, the
 40 board shall determine the member's pension for nonlegislative service based on the number
 41 of years of nonlegislative service, and shall determine any additional pension to be received
 42 after the member subsequently retires based on the number of years of service in the Leg-
 43 islative Assembly.

44 **SECTION 12.** ORS 238A.245 is amended to read:

45 238A.245. (1) Except as provided in [subsection (3) of this section] ORS 237.650 and section 11

1 **of this 2013 special session Act**, the Public Employees Retirement Board shall cease making pen-
 2 sion payments to a retired member of the pension program who is reemployed by a participating
 3 public employer in a qualifying position. A retired member of the pension program who is employed
 4 in a qualifying position becomes an active member of the pension program without serving the
 5 probationary period provided for in ORS 238A.100.

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

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

13 **SECTION 13.** ORS 238A.350 is amended to read:

14 238A.350. (1) Upon any contributions being made to the individual account program by or on
 15 behalf of a member of the program, the Public Employees Retirement Board shall create the account
 16 or accounts described in this section. Each account shall be adjusted at least annually in accordance
 17 with rules adopted by the board to reflect any net earnings or losses on those contributions and to
 18 pay the reasonable administrative costs of maintaining the program to the extent the earnings on
 19 the assets of the program are insufficient to pay those costs. The adjustments described in this
 20 subsection shall continue until the account is distributed to the member or forfeited.

21 (2)(a) The board shall establish an employee account, which shall consist of the employee con-
 22 tributions made by or on behalf of the member as adjusted under subsection (1) of this section.

23 **(b) The board shall create a separate employee account for a member who becomes an**
 24 **active member for the purpose of service in the Legislative Assembly under ORS 237.650,**
 25 **which shall consist of the employee contributions made by or on behalf of the member that**
 26 **are attributable to the member's legislative service, as adjusted under subsection (1) of this**
 27 **section.**

28 (3) If the public employer agrees to make employer contributions under ORS 238A.340, the board
 29 shall establish an employer account, which shall consist of the employer contributions made on be-
 30 half of the member as adjusted under subsection (1) of this section.

31 (4) If the board accepts rollover contributions on behalf of the member, the board shall establish
 32 a rollover account, which shall consist of the rollover contributions made by the member as adjusted
 33 under subsection (1) of this section. Contributions and the earnings attributable to the contributions
 34 must be accounted for separately.

35 (5) The board shall provide an annual statement to each active and inactive member of the
 36 program that reflects the amount credited to the accounts established under this section. The
 37 statement shall reflect whether the member is vested in the employer account under the provisions
 38 of ORS 238A.320.

39 **SECTION 14.** ORS 243.163 is amended to read:

40 243.163. A member of the Legislative Assembly who is receiving a pension or annuity under ORS
 41 238.092 (1)(a) **or section 11 (1) of this 2013 special session Act** shall be eligible to participate as
 42 a retired state officer in one of the group benefit plans described in ORS 243.135 after the member
 43 ceases to be a member of the Legislative Assembly if the member applies to the Public Employees'
 44 Benefit Board within 60 days after the member ceases to be a member of the Legislative Assembly.

45

JUDICIAL REVIEW

SECTION 15. (1) Jurisdiction is conferred on the Supreme Court to determine in the manner provided by this section whether this 2013 special session Act breaches any contract between members of the Public Employees Retirement System and their employers, violates any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under Article I, section 21, of the Oregon Constitution, or Article I, section 10, clause 1, of the United States Constitution, or is invalid for any other reason.

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

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

(b) The petition must include the following:

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

(B) A statement and supporting affidavit showing how the petitioner is adversely affected.

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

(4) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

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

(6) In the event the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.

CAPTIONS

SECTION 16. The unit captions used in this 2013 special session Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2013 special session Act.

EMERGENCY CLAUSE

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

