House Bill 4115

Sponsored by Representatives NOBLE, BUEHLER; Representatives BARRETO, ESQUIVEL, HELFRICH, LEWIS, NEARMAN, POST, RESCHKE, SMITH DB, SOLLMAN, STARK, VIAL, WHISNANT, WILSON; Senators BOQUIST, JOHNSON (Presession filed.)

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 statewide elected official, judge of Supreme Court or Court of Appeals or legislator from becoming member of Public Employees Retirement System on or after July 1, 2018, for purpose of service as statewide elected official, judge or legislator.

Provides that statewide elected official, judge of Supreme Court or Court of Appeals or legislator may not accrue benefits under Public Employees Retirement System for purpose of service as statewide elected official, judge or legislator on or after July 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the retirement benefits of state officers; creating new provisions; amending ORS 237.645, 237.655, 238.092, 238.505, 238A.115, 238A.245 and 238A.350; repealing ORS 237.650, 238A.250 and 243.163; and declaring an emergency.

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

STATEWIDE ELECTED OFFICIALS

SECTION 1. (1) As used in this section and section 2 of this 2018 Act, “statewide elected official” means the Governor, the Secretary of State, the State Treasurer, the Attorney General and the Commissioner of the Bureau of Labor and Industries.

(2) On or after July 1, 2018, a person elected or appointed as a statewide elected official may not become a member of the Public Employees Retirement System for the purpose of service as a statewide elected official.

(3) On or after July 1, 2018, a statewide elected official is not employed in a qualifying position, as defined in ORS 238.005, for purposes of ORS chapter 238 or 238A.

(4) A statewide elected official who has performed any period of service for a participating public employer before July 1, 2018, that is credited to the period of active membership required for vesting under ORS 238.005 (30) is vested for purposes of ORS chapter 238 on July 1, 2018.

(5) A statewide elected official may elect to become a statewide elected official member of the state deferred compensation plan under section 2 of this 2018 Act for the purpose of service as a statewide elected official on and after July 1, 2018.

(6) An election under this section does not affect the ability of a person elected or appointed as a statewide elected official to participate in the state deferred compensation plan in the manner provided by ORS 243.401 to 243.507 as other than a statewide elected official member under section 2 of this 2018 Act.

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.

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SECTION 2. (1)(a) If a person appointed or elected as a statewide elected official elects under section 1 of this 2018 Act to become a statewide elected official member of the state deferred compensation plan for the purpose of service as a statewide elected official, the state shall make employer contributions to the plan in an amount that is equal to six percent of the official’s salary, as defined in ORS 238.005, plus the percentage of the official’s salary that would have been contributed to the Public Employees Retirement Board for the official’s normal cost under ORS 238A.220, as determined by the actuary under ORS 238.605.

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

(2) If a person appointed or elected as a statewide elected official elects under section 1 of this 2018 Act to become a statewide elected official member of the state deferred compensation plan for the purpose of service as a statewide elected official, and the official also participates in the state deferred compensation plan in the manner provided by ORS 243.401 to 243.507 as other than a statewide elected official member, the total contributions made to the plan by the official and by the state under subsection (1) of this section may not exceed the maximum allowed by federal law governing the plan's tax qualification.

(3) Except for the contributions required by subsection (1) of this section, the state may not pick-up, assume or pay any contributions on behalf of a statewide elected official member of the state deferred compensation plan.

JUDGES

SECTION 3. ORS 238.505 is amended to read:

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

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

(3)(a) Notwithstanding any other provision of ORS chapter 238 or 238A, on or after July 1, 2018, a person elected or appointed to the office of judge of the Supreme Court or judge of the Court of Appeals may not become a member or judge member of the Public Employees Retirement System for the purpose of service as a judge.

(b) A judge of the Supreme Court or a judge of the Court of Appeals may not accrue creditable service or years of service as a judge on or after July 1, 2018.

(c) Salary paid to a judge of the Supreme Court or a judge of the Court of Appeals on or after July 1, 2018, may not be included in the calculation of final average salary for purposes of ORS 238.535.

(d) Notwithstanding ORS 238.535 (1), a judge of the Supreme Court or a judge of the Court of Appeals who was a judge member before July 1, 2018, and whose effective date of retirement is on or after July 1, 2018, need not make contributions to the Public Employees Retirement Fund during each of five calendar years to receive a service retirement allowance under ORS 238.535.

(e) A judge of the Supreme Court or judge of the Court of Appeals is not employed in a
qualified position for purposes of this chapter or ORS chapter 238A.

(f) A judge of the Supreme Court or judge of the Court of Appeals may elect to become
a judge member of the state deferred compensation plan under section 5 of this 2018 Act for
the purpose of service as a judge on and after July 1, 2018.

(g) An election under paragraph (f) of this subsection does not affect the ability of a
person elected or appointed as a judge to participate in the state deferred compensation plan
in the manner provided by ORS 243.401 to 243.507 as other than a judge member under sec-

SECTION 4. Section 5 of this 2018 Act is added to and made a part of ORS 238.500 to
238.585.

SECTION 5. (1)(a) If a person appointed or elected as a judge of the Supreme Court or
judge of the Court of Appeals elects under ORS 238.505 to become a judge member of the
state deferred compensation plan for the purpose of service as a judge, the state shall make
employer contributions to the plan in an amount that is equal to seven percent of the judge's
salary plus the percentage of the judge's salary that would have been contributed to the
Public Employees Retirement Board for the judge's normal cost under ORS 238A.220, as de-
determined by the actuary under ORS 238.605.

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

(2) If a person appointed or elected as a judge of the Supreme Court or judge of the Court
of Appeals elects under ORS 238.505 to become a judge member of the state deferred com-
pensation plan for the purpose of service as a judge, and the judge also participates in the
state deferred compensation plan in the manner provided by ORS 243.401 to 243.507 as other
than a judge member, the total contributions made to the plan by the judge and by the state
under subsection (1) of this section may not exceed the maximum allowed by federal law
governing the plan's tax qualification.

(3) Except for the contributions required by subsection (1) of this section, the state may
not pick-up, assume or pay any contributions on behalf of a judge member of the state de-
ferred compensation plan.

SECTION 6. ORS 238.515 is amended to read:

238.515. (1)(a) Each judge member shall contribute monthly to the Public Employees Retirement
Fund seven percent of the monthly salary of the judge member. The contributions of a judge member
and earnings on the contributions shall be credited to the member account of the judge member.

(b) The state shall pick-up, assume or pay the full amount of contributions to the fund required
of judge members. The full amount of required judge member contributions picked-up, assumed or
paid by the state on behalf of judge members shall be considered salary only for the purpose of
computing a judge member's final average salary within the meaning of ORS 238.535 (2) and not for
any other purpose. The full amount of required judge member contributions picked-up, assumed or
paid by the state on behalf of judge members shall be added to the member account of the judge
members and shall be considered judge member contributions for all other purposes of ORS 238.500
to 238.585.

(2) The state shall make employer contributions to the fund in respect to judge members as
provided in ORS 238.225. Notwithstanding ORS 238.227, for the purposes of actuarial computation
and contributions of the state under ORS 238.225, judge members shall be considered a separate
group of employees.
(3) A judge member who is a judge of the Supreme Court or judge of the Court of Appeals may not make contributions under this section on or after July 1, 2018. The state may not make contributions for a judge member who is a judge of the Supreme Court or judge of the Court of Appeals on or after July 1, 2018.

LEGISLATORS

SECTION 7. ORS 237.645 is amended to read:

237.645. [(1) A person who is appointed or elected as a member of the Legislative Assembly and who is not a member of the Public Employees Retirement System at the time of the appointment or election:

[(a) May not become a member of the Public Employees Retirement System for the purpose of service in the Legislative Assembly.]

(1) On or after July 1, 2018, a member of the Legislative Assembly may not become a member of the Public Employees Retirement System for the purpose of service in the Legislative Assembly.

(2) On or after July 1, 2018, a member of the Legislative Assembly is not employed in a qualifying position for purposes of ORS chapter 238 or 238A.

(3) A member of the Legislative Assembly who has performed any period of service for a participating public employer before July 1, 2018, that is credited to the period of active membership required for vesting under ORS 238.005 (30) is vested for purposes of ORS chapter 238 on July 1, 2018.

[(4) A member of the Legislative Assembly may elect to become a legislator member of the state deferred compensation plan under ORS 237.655 for the purpose of service in the Legislative Assembly.

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

SECTION 8. ORS 237.655 is amended to read:

237.655. (1)(a) If a person appointed or elected as a member of the Legislative Assembly elects under ORS 237.645 [or 237.650] to become a legislator member of the state deferred compensation plan for the purpose of service in the Legislative Assembly, the Legislative Assembly shall make employer contributions to the plan in an amount that is equal to six percent of the member's salary plus the percentage of the member's salary that would have been contributed to the Public Employees Retirement Board for the member's normal cost under ORS 238A.220, as determined by the actuary under ORS 238.605.

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

(2) If a person appointed or elected as a member of the Legislative Assembly elects under ORS 237.645 [or 237.650] to become a legislator member of the state deferred compensation plan for the purpose of service in the Legislative Assembly, and the person also participates in the state deferred compensation plan in the manner provided by ORS 243.401 to 243.507 as other than a legislator member, the total contributions made to the plan by the person and by the employer under subsection (1) of this section may not exceed the maximum allowed by federal law governing the plan's
tax qualification.

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

SECTION 9. 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 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 the Legislative Assembly.]

[(c) Upon receipt of the notice provided for in paragraphs (a) and (b) of this subsection, the board shall determine that portion of the accumulated contributions, if any, of the member and interest thereon attributable to service as other than a member of the Legislative Assembly, which shall be used in determining the amount of the annuity the member shall receive for that service. The portion of the accumulated contributions, if any, of the member and interest thereon attributable to service as a member of the Legislative Assembly shall remain in the member account of the member and, together with any subsequent contributions and interest thereon, be used in determining the amount of the additional annuity the member shall receive for that service upon subsequent retirement. If the member does not have a member account, the board shall determine the member's retirement allowance for nonlegislative service based on the number of years of nonlegislative service, and shall determine any additional benefit to be received after the member subsequently retires based on the number of years of service in the Legislative Assembly.]

[(2) If a retired member of the Public Employees Retirement System is employed by the Legislative Assembly, or by the Oregon State Police, for the purpose of service during a regular or special session of the Legislative Assembly, the hours worked during the session shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) and (3).]

SECTION 10. ORS 238A.245 is amended to read:

238A.245. (1) [Except as provided in ORS 237.650 and 238A.250,] The Public Employees Retirement Board shall cease making pension payments to a retired member of the pension program who is reemployed by a participating public employer in a qualifying position. A retired member of the pension program who is employed in a qualifying position becomes an active member of the pension program without serving the probationary period provided for in ORS 238A.100.

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

SECTION 11. ORS 238A.350 is amended to read:

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

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

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

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

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

VESTING IN OREGON PUBLIC SERVICE RETIREMENT PLAN

SECTION 12. ORS 238A.115 is amended to read:

238A.115. (1) Except as provided in subsection (2) of this section, a member of the pension program becomes vested in the pension program on the earliest of the following dates:

(a) The date on which the member completes at least 600 hours of service in each of five calendar years. The five calendar years need not be consecutive, but are subject to the provisions of subsection (3) of this section.

(b) The date on which an active member reaches the normal retirement age for the member under ORS 238A.160.

(c) If the pension program is terminated, the date on which termination becomes effective, but only to the extent the pension program is then funded.

(d) July 1, 2018, for a statewide elected official, as defined in section 1 of this 2018 Act, or member of the Legislative Assembly who was a member of the pension program before July 1, 2018.

(2) If on the date that a person becomes an active member the person has already reached the
normal retirement age for the person under ORS 238A.160, the person is vested in the pension pro-
gram on that date.

(3) If a member of the pension program who is not vested in the pension program performs fewer
than 600 hours of service in each of five consecutive calendar years, hours of service performed
before the first calendar year of the period of five consecutive calendar years shall be disregarded
for purposes of determining whether the member is vested under subsection (1)(a) of this section.

(4) Solely for purposes of determining whether a member is vested under this section, hours of
service include creditable service, as defined in ORS 238.005, performed by the person before the
person became an eligible employee, as long as the membership of the person under ORS chapter
238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes
an eligible employee.

REPEALS

SECTION 13. ORS 237.650, 238A.250 and 243.163 are repealed.

REVIEW BY SUPREME COURT

SECTION 14. (1) Jurisdiction is conferred upon the Supreme Court to determine in the
manner provided by this section whether this 2018 Act breaches any contract between
members of the Public Employees Retirement System and their employers or violates any
provision of the Oregon Constitution or of the United States Constitution, 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.

(2) A person who is adversely affected by this 2018 Act or who will be adversely affected
by this 2018 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 2018 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 af-

(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 mat-
ters 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)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene
in any proceeding relating to this 2018 Act. After a member intervenes in a proceeding re-
lating to this 2018 Act, the member has standing to participate in the proceeding even if the
member ceases to be a member of the Legislative Assembly.

(b) A member of the Senate or the House of Representatives who intervenes in or par-
ticipates in a proceeding under this subsection may not use public funds to pay legal ex-
penses incurred in intervening in or participating in the proceeding.

(7) 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.

OPERATIVE DATE

SECTION 15. (1) Sections 1, 2 and 5 of this 2018 Act, the amendments to ORS 237.645, 237.655, 238.092, 238.505, 238.515, 238A.115, 238A.245 and 238A.350 by sections 3 and 6 to 12 of this 2018 Act and the repeal of ORS 237.650, 238A.250 and 243.163 by section 13 of this 2018 Act become operative on July 1, 2018.

(2) The Public Employees Retirement Board and the State Treasurer may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board and the State Treasurer to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board and the State Treasurer by sections 1, 2 and 5 of this 2018 Act, the amendments to ORS 237.645, 237.655, 238.092, 238.505, 238.515, 238A.115, 238A.245 and 238A.350 by sections 3 and 6 to 12 of this 2018 Act and the repeal of ORS 237.650, 238A.250 and 243.163 by section 13 of this 2018 Act.

CAPTIONS

SECTION 16. The unit captions used in this 2018 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 2018 Act.

EFFECTIVE DATE

SECTION 17. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.