

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

1
2 Relating to the retirement benefits of state officers; creating new provisions; amending ORS 237.645,
3 237.655, 238.092, 238.505, 238.515, 238A.115, 238A.245 and 238A.350; repealing ORS 237.650,
4 238A.250 and 243.163; and declaring an emergency.

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

STATEWIDE ELECTED OFFICIALS

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

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

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

17 (4) **A statewide elected official who has performed any period of service for a participat-**
18 **ing public employer before July 1, 2018, that is credited to the period of active membership**
19 **required for vesting under ORS 238.005 (30) is vested for purposes of ORS chapter 238 on July**
20 **1, 2018.**

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

24 (6) **An election under this section does not affect the ability of a person elected or ap-**
25 **pointed as a statewide elected official to participate in the state deferred compensation plan**
26 **in the manner provided by ORS 243.401 to 243.507 as other than a statewide elected official**
27 **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.

1 **qualified position for purposes of this chapter or ORS chapter 238A.**

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

5 **(g) An election under paragraph (f) of this subsection does not affect the ability of a**
 6 **person elected or appointed as a judge to participate in the state deferred compensation plan**
 7 **in the manner provided by ORS 243.401 to 243.507 as other than a judge member under sec-**
 8 **tion 5 of this 2018 Act.**

9 **SECTION 4. Section 5 of this 2018 Act is added to and made a part of ORS 238.500 to**
 10 **238.585.**

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

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

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

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

30 **SECTION 6. ORS 238.515 is amended to read:**

31 **238.515. (1)(a) Each judge member shall contribute monthly to the Public Employees Retirement**
 32 **Fund seven percent of the monthly salary of the judge member. The contributions of a judge member**
 33 **and earnings on the contributions shall be credited to the member account of the judge member.**

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

42 **(2) The state shall make employer contributions to the fund in respect to judge members as**
 43 **provided in ORS 238.225. Notwithstanding ORS 238.227, for the purposes of actuarial computation**
 44 **and contributions of the state under ORS 238.225, judge members shall be considered a separate**
 45 **group of employees.**

1 tax qualification.

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

5 **SECTION 9.** ORS 238.092 is amended to read:

6 238.092. *[(1) Notwithstanding any other provision of this chapter:]*

7 *[(a) A retired member of the Public Employees Retirement System who has retired as other than*
8 *a member of the Legislative Assembly and who is thereafter appointed or elected as a member of the*
9 *Legislative Assembly may elect, by giving the Public Employees Retirement Board written notice, to*
10 *receive the pension and annuity provided by this chapter for service as other than a member of the*
11 *Legislative Assembly, and be an active member of the system as a member of the Legislative Assembly*
12 *for the purpose of service in the Legislative Assembly. A person may make an election under this par-*
13 *agraph only if the person becomes an active member of the system under this chapter for the purpose*
14 *of service in the Legislative Assembly as provided in ORS 237.650 (3). Notice of an election under this*
15 *paragraph must be given by the person not more than 30 days after the person takes office.]*

16 *[(b) A member of the Legislative Assembly who is a member of the system as a member of the*
17 *Legislative Assembly and who becomes eligible to retire by reason of service as other than a member*
18 *of the Legislative Assembly, without regard to when that service was performed, may elect, by giving*
19 *the board written notice, to retire and receive the pension and annuity provided by this chapter for*
20 *service as other than a member of the Legislative Assembly, and to continue, for the purpose of service*
21 *in the Legislative Assembly, as an active member of the system as a member of the Legislative Assem-*
22 *bly.]*

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

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

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

40 238A.245. (1) *[Except as provided in ORS 237.650 and 238A.250,]* The Public Employees Retire-
41 ment Board shall cease making pension payments to a retired member of the pension program who
42 is reemployed by a participating public employer in a qualifying position. A retired member of the
43 pension program who is employed in a qualifying position becomes an active member of the pension
44 program without serving the probationary period provided for in ORS 238A.100.

45 (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 recalculate 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)[(a)] 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.

[(b) *The board shall create a separate employee account for a member who becomes an active member for the purpose of service in the Legislative Assembly under ORS 237.650, which shall consist of the employee contributions made by or on behalf of the member that are attributable to the member's legislative service, 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

1 normal retirement age for the person under ORS 238A.160, the person is vested in the pension pro-
2 gram on that date.

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

7 (4) Solely for purposes of determining whether a member is vested under this section, hours of
8 service include creditable service, as defined in ORS 238.005, performed by the person before the
9 person became an eligible employee, as long as the membership of the person under ORS chapter
10 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes
11 an eligible employee.

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13 **REPEALS**

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

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17 **REVIEW BY SUPREME COURT**

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19 **SECTION 14. (1) Jurisdiction is conferred upon the Supreme Court to determine in the**
20 **manner provided by this section whether this 2018 Act breaches any contract between**
21 **members of the Public Employees Retirement System and their employers or violates any**
22 **provision of the Oregon Constitution or of the United States Constitution, including but not**
23 **limited to impairment of contract rights of members of the Public Employees Retirement**
24 **System under Article I, section 21, of the Oregon Constitution, or Article I, section 10, clause**
25 **1, of the United States Constitution.**

26 (2) A person who is adversely affected by this 2018 Act or who will be adversely affected
27 by this 2018 Act may institute a proceeding for review by filing with the Supreme Court a
28 petition that meets the following requirements:

29 (a) The petition must be filed within 60 days after the effective date of this 2018 Act.

30 (b) The petition must include the following:

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

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

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

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

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

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

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

1 penses incurred in intervening in or participating in the proceeding.

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

5
6 OPERATIVE DATE
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8 SECTION 15. (1) Sections 1, 2 and 5 of this 2018 Act, the amendments to ORS 237.645,
9 237.655, 238.092, 238.505, 238.515, 238A.115, 238A.245 and 238A.350 by sections 3 and 6 to 12 of
10 this 2018 Act and the repeal of ORS 237.650, 238A.250 and 243.163 by section 13 of this 2018
11 Act become operative on July 1, 2018.

12 (2) The Public Employees Retirement Board and the State Treasurer may take any action
13 before the operative date specified in subsection (1) of this section that is necessary to enable
14 the board and the State Treasurer to exercise, on and after the operative date specified in
15 subsection (1) of this section, all of the duties, functions and powers conferred on the board
16 and the State Treasurer by sections 1, 2 and 5 of this 2018 Act, the amendments to ORS
17 237.645, 237.655, 238.092, 238.505, 238.515, 238A.115, 238A.245 and 238A.350 by sections 3 and 6
18 to 12 of this 2018 Act and the repeal of ORS 237.650, 238A.250 and 243.163 by section 13 of this
19 2018 Act.

20
21 CAPTIONS
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23 SECTION 16. The unit captions used in this 2018 Act are provided only for the conven-
24 ience of the reader and do not become part of the statutory law of this state or express any
25 legislative intent in the enactment of this 2018 Act.

26
27 EFFECTIVE DATE
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29 SECTION 17. This 2018 Act being necessary for the immediate preservation of the public
30 peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect
31 on its passage.
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