

B-Engrossed Senate Bill 1566

Ordered by the Senate March 2
Including Senate Amendments dated February 15 and March 2

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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.

Establishes Employer Incentive Fund. Appropriates moneys in fund to Public Employees Retirement Board for purpose of matching portions of certain lump sum payments of employer contributions to Public Employees Retirement System.

Allows participating public employer that makes **certain** lump sum payment of employer contributions to system in amount equal to or greater than \$10 million to choose amortization period for use of lump sum payment to offset employer contributions otherwise owed.

[Directs transfer of certain proceeds from debt collection, capital gains tax, estate tax, marijuana tax, wine, cider and malt beverage privilege tax and lawsuit settlements to Public Employees Retirement Fund to be credited to side account for school districts.]

[Directs transfer of certain proceeds from lottery revenues to Public Employees Retirement Fund to be credited to side accounts for school districts, community colleges and public universities.]

[Provides that Department of State Lands shall transfer from Common School Fund Account all or part of interest earned from certain unclaimed property to Public Employees Retirement Fund to be credited to side account for school districts.]

Establishes School Districts Unfunded Liability Fund. Appropriates moneys in fund to Public Employees Retirement Board for purpose of establishing and funding pooled account to be applied against liabilities of participating public employers that are school districts. Directs transfer of certain proceeds from debt collection, capital gains tax and estate tax and all or part of interest from certain unclaimed property to fund.

Directs Public Employees Retirement Board to establish Unfunded Actuarial Liability Resolution Program to assist participating public employers in developing plans to improve funded status and manage employer contribution rate changes.

Requires board to report to Joint Committee on Ways and Means during each regular session on status of funds and program.

Directs State Treasurer to study feasibility and prudence of borrowing moneys in Oregon Short Term Fund to be redeployed into investments. Directs State Treasurer to report to Legislative Assembly on results of study no later than September 30, 2019.

Directs Department of Revenue to distribute estimated amount of increased corporate tax revenue attributable to treatment of post-1986 deferred foreign income to Employer Incentive Fund and to School Districts Unfunded Liability Fund on or before July 1, 2021.

Provides for direct review by Supreme Court.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to employer contributions to the Public Employees Retirement System; creating new provisions; amending section 31, chapter ___, Oregon Laws 2018 (Enrolled Senate Bill 1529); repealing sections 31a and 31b, chapter ___, Oregon Laws 2018 (Enrolled Senate Bill 1529); and prescribing an effective date.

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

EMPLOYER INCENTIVE FUND

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 **SECTION 1.** (1) The Employer Incentive Fund is established in the State Treasury, sep-
2 arate and distinct from the General Fund. Interest earned by the Employer Incentive Fund
3 shall be credited to the fund, but interest earned may not be used under section 2 of this 2018
4 Act to match lump sum payments made under ORS 238.229.

5 (2) Moneys in the fund are continuously appropriated to the Public Employees Retirement
6 Board for the purposes described in sections 2 and 26 of this 2018 Act.

7 **SECTION 2.** (1)(a) The Public Employees Retirement Board shall establish a process for
8 distributing the moneys in the Employer Incentive Fund established under section 1 of this
9 2018 Act.

10 (b) The process must allow a participating public employer to apply to reserve matching
11 amounts in the Employer Incentive Fund by committing to make a qualifying lump sum
12 payment of at least \$25,000 to an account established under ORS 238.229.

13 (2) The board shall adopt rules establishing:

14 (a) The percentage of a lump sum payment that may be matched by distributions from
15 the fund, not to exceed 25 percent of a qualifying lump sum payment.

16 (b) The maximum matching amount that may be reserved by a participating public em-
17 ployer, not to exceed the greater of:

18 (A) Five percent of the unfunded actuarial liability attributable to the employer, as de-
19 termined in the most recent report prepared under ORS 238.605; or

20 (B) \$300,000.

21 (c) The qualifications for lump sum payments that may be matched under this section.
22 The qualifications must include the following requirements:

23 (A) The participating public employer must apply to reserve matching funds no later than
24 December 31, 2019.

25 (B) The participating public employer must make the qualifying lump sum payment no
26 later than July 1, 2023.

27 (C) A qualifying lump sum payment may not be a payment from moneys borrowed by the
28 employer.

29 (d) A requirement that the participating public employer participate in the Unfunded
30 Actuarial Liability Resolution Program to develop a plan under section 26 of this 2018 Act.

31 (3)(a) The board may begin accepting applications under subsection (1) of this section on
32 the date on which the board determines that there are sufficient moneys in the Employer
33 Incentive Fund.

34 (b) For 180 days after the board begins accepting applications under subsection (1) of this
35 section, a participating public employer may apply to reserve matching amounts from the
36 Employer Incentive Fund under subsection (1) of this section only if the unfunded actuarial
37 liability attributable to the employer, as determined in the most recent report prepared un-
38 der ORS 238.605, is more than 200 percent of the employer's payroll for members of the
39 Public Employees Retirement System.

40 (c) After the 180-day period described in paragraph (b) of this subsection, any partic-
41 ipating public employer may apply to reserve matching funds from the Employer Incentive
42 Fund under subsection (1) of this section.

43 (4) The board shall approve applications that meet the qualifications established under
44 subsection (2) of this section in the order in which the applications are submitted. The board
45 shall continue approving applications as long as moneys in the Employer Incentive Fund are

1 available.

2 (5) The board shall transfer matching amounts approved under subsection (4) of this
3 section from the Employer Incentive Fund to the approved employers' accounts established
4 under ORS 238.229.

5 (6) The board may transfer moneys from the Employer Incentive Fund to the Public
6 Employees Retirement Fund established under ORS 238.660 for crediting to the reserves for
7 pension accounts and annuities as provided in ORS 238.670 (2).

8 (7) The board may use moneys in the Employer Incentive Fund for reasonable adminis-
9 trative costs incurred under this section.

10 **SECTION 3.** (1) Section 2 of this 2018 Act is repealed January 2, 2025.

11 (2)(a) The Employer Incentive Fund established under section 1 of this 2018 Act is abol-
12 ished on January 2, 2025.

13 (b) The unexpended moneys remaining in the Employer Incentive Fund on January 2,
14 2025, shall be transferred to the General Fund.

15
16 **AMORTIZATION PERIOD FOR LUMP SUM PAYMENTS**

17
18 **SECTION 3a.** Section 3b of this 2018 Act is added to and made a part of ORS chapter 238.

19 **SECTION 3b.** If a participating public employer makes a lump sum payment from moneys
20 not borrowed by the employer to an account established under ORS 238.229 in an amount
21 equal to or greater than \$10 million, the Public Employees Retirement Board shall allow the
22 participating public employer to choose an amortization period of six years, 10 years, 16 years
23 or 20 years for the use of the lump sum payment to offset contributions to the system that
24 the public employer would otherwise be required to make for the liabilities against which the
25 lump sum payment is applied.

26 **NOTE:** Sections 4 through 11 were deleted by amendment. Subsequent sections were not re-
27 numbered.

28
29 **PROCEEDS FROM DEBT COLLECTION**

30
31 **SECTION 12.** (1) Not later than January 31 of each year, the Oregon Department of Ad-
32 ministrative Services shall calculate:

33 (a) The average amount per fiscal year collected by or on behalf of state agencies re-
34 quired to report under ORS 293.229 for liquidated and delinquent accounts owed to the Gen-
35 eral Fund during the three fiscal years preceding the immediately preceding fiscal year; and

36 (b) The amount collected by or on behalf of state agencies required to report under ORS
37 293.229 for liquidated and delinquent accounts owed to the General Fund during the imme-
38 diately preceding fiscal year, as reported under ORS 293.229.

39 (2) If the amount calculated under subsection (1)(b) of this section exceeds the average
40 calculated under subsection (1)(a) of this section, the department shall coordinate the
41 transfer from the General Fund of an amount equal to the excess, less any amount required
42 to be returned to taxpayers under ORS 291.349, to the School Districts Unfunded Liability
43 Fund established in section 24 of this 2018 Act. The department shall coordinate the transfer
44 of amounts required under this section at least once in each biennium.

45 **SECTION 12a.** (1) The Oregon Department of Administrative Services shall make the

1 first calculation under section 12 (1)(a) of this 2018 Act no later than January 31, 2019, for
2 the three fiscal years beginning July 1, 2014.

3 (2) Notwithstanding section 12 (2) of this 2018 Act, the department shall coordinate the
4 first transfer of amounts required under section 12 (2) of this 2018 Act no later than January
5 31, 2020.

6 SECTION 12b. Section 12 of this 2018 Act is repealed on December 31, 2024.

7
8 **PROCEEDS FROM CAPITAL GAINS TAX**

9
10 SECTION 13. (1) Not earlier than July 1 and not later than October 1 of the years 2019,
11 2021 and 2023, the division of the Oregon Department of Administrative Services that serves
12 as office of economic analysis shall:

13 (a) Calculate the rate of change in the tax liability from personal income taxes on taxable
14 capital gains during the five preceding biennia; and

15 (b) Use the rate of change calculated under paragraph (a) of this subsection to forecast
16 the tax liability from personal income taxes on taxable capital gains for the biennium begin-
17 ning on July 1 of the year in which the calculation is made.

18 (2) Not later than November 1 of the odd-numbered year following each calculation under
19 subsection (1) of this section, the Oregon Department of Administrative Services, in consul-
20 tation with the Department of Revenue, shall estimate the tax liability from personal income
21 taxes on taxable capital gains for the previous biennium.

22 (3) Not later than November 30 of the odd-numbered year in which the estimate is made
23 under subsection (2) of this section, the Oregon Department of Administrative Services, in
24 consultation with the Department of Revenue, shall determine whether the tax liability from
25 personal income taxes on capital gains estimated under subsection (2) of this section, less
26 any amount required to be returned to taxpayers under ORS 291.349, exceeds the tax liability
27 from personal income taxes on taxable capital gains forecasted under subsection (1) of this
28 section.

29 (4) Except as provided in subsection (5) of this section, the Department of Revenue shall
30 transfer an amount equal to 25 percent of any excess calculated under subsection (3) of this
31 section to the School Districts Unfunded Liability Fund established in section 24 of this 2018
32 Act.

33 (5) The Department of Revenue may not make a transfer under subsection (4) of this
34 section if:

35 (a) The Legislative Assembly has appropriated moneys from the Oregon Rainy Day Fund
36 under ORS 293.144 on or after the effective date of this 2018 Act; or

37 (b) The Public Employees Retirement System is more than 90 percent funded as deter-
38 mined in accordance with rules adopted by the Public Employees Retirement Board.

39 (6) The Department of Revenue shall retain unreceipted revenue from the tax imposed
40 under ORS chapter 316 in an amount necessary to make the transfer required under sub-
41 section (4) of this section. The department shall make the transfer out of the unreceipted
42 revenue in lieu of paying the revenue over to the State Treasurer for deposit in the General
43 Fund.

44 SECTION 14. The division of the Oregon Department of Administrative Services that
45 serves as office of economic analysis shall make the first calculation required under section

1 13 (1) of this 2018 Act not later than October 1, 2019. The calculation shall be for the five
2 biennia beginning July 1, 2009.

3
4 **PROCEEDS FROM ESTATE TAXES**

5
6 **SECTION 15.** (1) Not earlier than July 1 and not later than October 1 of the years 2019,
7 2021 and 2023, the division of the Oregon Department of Administrative Services that serves
8 as office of economic analysis shall:

9 (a) Calculate the rate of change in collections from estate taxes during the five preceding
10 biennia; and

11 (b) Use the rate of change calculated under paragraph (a) of this subsection to forecast
12 the collections from estate taxes for the biennium beginning on July 1 of the year in which
13 the calculation is made.

14 (2) Not later than November 1 of the odd-numbered year following each calculation under
15 subsection (1) of this section, the Oregon Department of Administrative Services, in consul-
16 tation with the Department of Revenue, shall estimate the collections from estate taxes for
17 the previous biennium.

18 (3) Not later than November 30 of the odd-numbered year in which the estimate is made
19 under subsection (2) of this section, the Oregon Department of Administrative Services, in
20 consultation with the Department of Revenue, shall determine whether the collections from
21 estate taxes estimated under subsection (2) of this section exceed the collections from estate
22 taxes forecasted under subsection (1) of this section.

23 (4) The Department of Revenue shall transfer an amount equal to the amount of any
24 excess calculated under subsection (3) of this section, less any amount required to be re-
25 turned to taxpayers under ORS 291.349, to the School Districts Unfunded Liability Fund es-
26 tablished in section 24 of this 2018 Act.

27 (5) The Department of Revenue shall retain unreceipted revenue from estate taxes im-
28 posed under ORS 118.005 to 118.540 in an amount necessary to make the transfer required
29 under subsection (4) of this section. The department shall make the transfer out of the un-
30 receipted revenue in lieu of paying the revenue over to the State Treasurer for deposit in the
31 General Fund.

32 **SECTION 16.** The division of the Oregon Department of Administrative Services that
33 serves as office of economic analysis shall make the first calculation required under section
34 15 (1) of this 2018 Act not later than October 1, 2019. The calculation shall be for the five
35 biennia beginning January 1, 2009.

36 **NOTE:** Sections 17 through 21 were deleted by amendment. Subsequent sections were not re-
37 numbered.

38
39 **INTEREST FROM UNCLAIMED PROPERTY**

40
41 **SECTION 22.** (1) On January 1 of each year, the Department of State Lands shall transfer
42 from the Common School Fund Account to the School Districts Unfunded Liability Fund es-
43 tablished in section 24 of this 2018 Act all or part of the interest earned in the previous cal-
44 endar year from the cumulative unclaimed property deposited in the Common School Fund
45 Account under ORS 98.386 to which the state has not taken title, as described in subsection

1 (2) of this section.

2 (2) The amount made available under subsection (1) of this section may not exceed an
3 amount equal to the proceeds from unclaimed property received by the department in the
4 previous calendar year, minus:

5 (a) The amount paid for unclaimed property claims under ORS 98.396 in the previous
6 calendar year;

7 (b) The department's investment expenses related to the Common School Fund for the
8 previous calendar year; and

9 (c) Operating expenses that the department is entitled to recover for the previous cal-
10 endar year.

11 SECTION 23. Section 22 of this 2018 Act is repealed on January 2, 2027.

12
13 **SCHOOL DISTRICTS UNFUNDED LIABILITY FUND**

14
15 SECTION 24. (1) The School Districts Unfunded Liability Fund is established in the State
16 Treasury, separate and distinct from the General Fund. Interest earned by the School Dis-
17 tricts Unfunded Liability Fund shall be credited to the fund. The fund consists of moneys
18 transferred to the fund under sections 12, 13, 15 and 22 of this 2018 Act and other moneys
19 transferred, allocated or appropriated to the fund.

20 (2) Moneys in the fund are continuously appropriated to the Public Employees Retirement
21 Board for the purpose of establishing and funding a pooled account to be applied against the
22 liabilities of participating public employers, as defined in ORS 238.005, that are school dis-
23 tricts.

24 (3) The board shall establish an account in the Public Employees Retirement Fund for
25 the moneys in the School Districts Unfunded Liability Fund.

26 (4) The board shall adopt rules providing for:

27 (a) Proportional distribution to school districts of the moneys in the account established
28 under subsection (3) of this section;

29 (b) Amortization of the moneys distributed; and

30 (c) Administration of the account established under subsection (3) of this section in the
31 same manner as accounts established under ORS 238.229 (2).

32 (5) No later than February 1 of each odd-numbered year, the board shall report to the
33 Oregon Department of Administrative Services and the Legislative Fiscal Officer an estimate
34 of how moneys will be distributed under this section in the following biennium.

35
36 **UNFUNDED ACTUARIAL LIABILITY RESOLUTION PROGRAM**

37
38 SECTION 25. Section 26 of this 2018 Act is added to and made a part of ORS chapter 238.

39 SECTION 26. (1) The Public Employees Retirement Board shall establish an Unfunded
40 Actuarial Liability Resolution Program. Under the program, the board shall provide techni-
41 cal expertise to participating public employers in developing plans to improve the employers'
42 funded status and to manage projected employer contribution rate changes. Participating
43 public employers are not required to participate in the program.

44 (2) The board may use moneys in the Employer Incentive Fund established in section 1
45 of this 2018 Act for reasonable administrative costs incurred under this section.

1 **REPORTING BY PUBLIC EMPLOYEES RETIREMENT BOARD**

2
3 **SECTION 27.** Section 28 of this 2018 Act is added to and made a part of ORS chapter 238.

4 **SECTION 28.** During each regular session of the Legislative Assembly, the Public Em-
5 ployees Retirement Board shall report to the Joint Committee on Ways and Means on the
6 status of the Employer Incentive Fund established in section 1 of this 2018 Act, the School
7 Districts Unfunded Liability Fund established in section 24 of this 2018 Act and the Unfunded
8 Actuarial Liability Resolution Program established under section 26 of this 2018 Act.

9 **SECTION 29.** Section 28 of this 2018 Act is repealed on January 2, 2027.

10
11 **STUDY BY STATE TREASURER**

12
13 **SECTION 30.** (1) The State Treasurer shall study the feasibility and prudence of borrow-
14 ing moneys currently deposited by state agencies and other state entities into the Oregon
15 Short Term Fund created by ORS 293.728 to be redeployed by the Oregon Investment Council
16 into investments in the Public Employees Retirement Fund created in ORS 238.660, that
17 would generate a higher rate of return sufficient to repay the borrowing and make supple-
18 mental deposits targeted at reducing the unfunded actuarial liability of the Public Employees
19 Retirement System. The study must include an examination of recent similar actions in
20 other states.

21 (2) The State Treasurer shall report to the Legislative Assembly in the manner provided
22 in ORS 192.245 on the results of the study performed under subsection (1) of this section no
23 later than September 30, 2019.

24
25 **REVIEW BY SUPREME COURT**

26
27 **SECTION 31.** (1) Jurisdiction is conferred upon the Supreme Court to determine in the
28 manner provided by this section whether this 2018 Act violates any provision of the Oregon
29 Constitution or of the United States Constitution.

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

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

34 (b) The petition must include the following:

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

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

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

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

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

44 (6)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene
45 in any proceeding relating to this 2018 Act. After a member intervenes in a proceeding re-

1 **lating to this 2018 Act, the member has standing to participate in the proceeding even if the**
2 **member ceases to be a member of the Legislative Assembly.**

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

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

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

11
12 **RECONCILIATION WITH ENROLLED SENATE BILL 1529**
13

14 **SECTION 32.** Section 31, chapter ___, Oregon Laws 2018 (Enrolled Senate Bill 1529), is
15 amended to read:

16 **Sec. 31.** On or before July 1, 2021, the Department of Revenue shall:

17 (1) Estimate the increase, if any, of corporate tax revenue received by the department and at-
18 tributable to the treatment of post-1986 deferred foreign income under An Act to Provide for Re-
19 conciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year
20 2018 (P.L. 115-97); and

21 (2) Notwithstanding ORS 317.853, distribute an amount equal to the estimate required under
22 subsection (1) of this section as follows:

23 (a) 18 percent shall be transferred to the Employer Incentive Fund established under [*section 31a*
24 *of this 2018 Act*] **section 1 of this 2018 Act.**

25 (b) 82 percent shall be transferred to the School Districts Unfunded Liability Fund established
26 under [*section 31b of this 2018 Act*] **section 24 of this 2018 Act.**

27 **SECTION 33.** Sections 31a and 31b, chapter ___, Oregon Laws 2018 (Enrolled Senate Bill
28 **1529), are repealed.**

29
30 **CAPTIONS**
31

32 **SECTION 34.** The unit captions used in this 2018 Act are provided only for the conven-
33 **ience of the reader and do not become part of the statutory law of this state or express any**
34 **legislative intent in the enactment of this 2018 Act.**

35
36 **EFFECTIVE DATE**
37

38 **SECTION 35.** This 2018 Act takes effect on the 91st day after the date on which the 2018
39 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**