

Enrolled
House Bill 2873

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 238.082, 238.380 and 238.385; repealing section 7, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 112); and declaring an emergency.

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

SECTION 1. ORS 238.380 is amended to read:

238.380. (1)(a) Upon retirement of an employee who is a member of the Public Employees Retirement System and computation of that member's service retirement allowance under ORS 238.300, 238.305 or 238.425, or computation of any disability retirement allowance under ORS 238.320, 238.325, 238.330, 238.345 or 238.425, the Public Employees Retirement Board shall add to the amount of the allowance, including amounts attributable to prior service credit and the amount of any refund of accumulated employee contributions, the greater of the percentage increase calculated under ORS 238.385 or a percentage increase calculated under subsection (4) of this section. No benefit shall be paid to a member or beneficiary under ORS 238.385 if the benefit payable to the member or beneficiary under this section is larger than the benefit payable under ORS 238.385.

(b) The percentage increase provided for in this section shall be adjusted by the board to reflect increases or decreases in a member's retirement allowance that are attributable to the member's participation in the Variable Annuity Account established by ORS 238.260, that are attributable to a change in the member's beneficiary or payment option under ORS 238.305 or 238.325, or that are attributable to corrections to the member's retirement allowance calculation.

(c) The percentage increase provided for in this section shall be applied to any lump sum payment made to a member or a beneficiary of a member on or after January 1, 1991, that is attributable to a retroactive correction or adjustment of the amount payable to the member or beneficiary as a retirement allowance or that is attributable to a retroactive correction or adjustment to any other benefit that entitles a member or beneficiary to an increased benefit under this section. The percentage increase payable under this paragraph applies only to the principal amounts included in the lump sum payment as a retroactive correction or adjustment and does not apply to any interest on the retroactive correction or adjustment paid as part of the lump sum payment.

(2) The amount of any death benefit under ORS 238.390, 238.395, 238.400 or 238.405, including the amount of any monthly payments, shall be increased by the greater of the percentage provided for in ORS 238.385 or the percentage calculated under subsection (4) of this section.

(3)(a) A member of the system who elects to receive a lump sum in lieu of a retirement allowance or other benefit under ORS 238.315 shall receive an increase based on the greater of the percentage provided for in ORS 238.385 or the percentage calculated under subsection (4) of this section.

(b) A member of the system who withdraws the amount credited to the member account, if any, of the member in the fund under the provisions of ORS 238.265, or whose member account is returned to the employee after the membership of the employee is terminated under the provisions of ORS 238.095, shall receive an additional amount calculated by multiplying the amount of the member account of the member by the greater of the percentage provided for in ORS 238.385 or the percentage calculated under subsection (4) of this section. If a member thereafter elects to obtain restoration of creditable service by repaying the amount of the withdrawn member account pursuant to the provisions of ORS 238.105, the member must also repay all amounts paid under this section, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.105. If a member repays only part of the withdrawn member account pursuant to the provisions of ORS 238.115, the member must repay that part of the amount paid under this section that is proportionate to the portion of the withdrawn member account that is repaid under ORS 238.115, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.115. All amounts paid to the member that are subsequently repaid under ORS 238.105 or 238.115 shall be deposited by the board to the employer reserve for pension accounts in the fund.

(4)(a) The Public Employees Retirement Board shall calculate a multiplier for the purposes of this section equal to the percentage produced by the following formula:

1

$$\frac{[1 - \textit{the maximum Oregon}]}{[\textit{personal income tax rate}]}$$

.91

(b) Upon the retirement or death of a member of the system, the board shall determine the fraction of the member's retirement allowance or death benefit, including any refund or lump sum payment, that is attributable to service rendered by the member before October 1, 1991. The board shall then calculate a percentage that is equal to that fraction multiplied by the multiplier determined by the board under paragraph (a) of this subsection. The percentage so calculated shall be used to determine the amount of the increase in benefits provided to a member, if any, under this section.

(5) For the purpose of determining that portion of a retirement allowance or death benefit attributable to service rendered before October 1, 1991, the board shall divide the number of years of creditable service performed before October 1, 1991, by the total number of years of creditable service during which the pension income was earned. For the purposes of this subsection:

(a) The number of years of creditable service does not include any period of employment for which a benefit is paid for prior service credit.

(b) Except as provided in subsection [(8)(a)] (7) of this section, the number of years of creditable service includes all retirement credit of the member, and any retirement credit of a member that is attributable to periods of service, employment or other activity performed before October 1, 1991, shall be considered creditable service performed before October 1, 1991.

(6) The increased benefits provided for in this section shall be funded by employer contributions.

[(7) *If the maximum Oregon income tax rate is changed for any taxable year, the board shall utilize the new rate for the purposes of calculating the benefit provided for in this section for all members of the system who retire or die after the change in rates takes effect. In addition, the board shall recalculate the benefits payable to all retired members of the Public Employees Retirement System, or to the beneficiaries of those members, using the new tax rate. The benefit so recalculated shall be applicable to the first full month after the recalculation is made, and be payable the first day of the month immediately following. If by reason of the calculation or recalculation of the benefit under this subsection the amount of the benefit provided for in this section is decreased, any benefits paid after the change in the tax rate takes effect and before the calculation or recalculation is made shall not be recoverable by the system, but the Public Employees Retirement Board shall ensure that only the amount of the benefit so calculated or recalculated shall be paid after the calculation or recalculation is made.*]

[(8)(a)] (7) The increased benefits provided by this section apply only to members who establish membership in the Public Employees Retirement System before July 14, 1995, and whose effective date of retirement or date of death is on or after January 1, 1991. The increased benefits provided by this section do not apply to any creditable service or prior service credit acquired by a member under the terms of a contract of integration entered into pursuant to ORS 238.035, 238.680 or 238.690 on or after October 1, 1991.

[(b) The recalculation of benefits provided for in subsection (7) of this section applies to all retired members, without regard to the date of the member's retirement or death.]

[(9)] (8) If a member is entitled to receive an increased benefit under the provisions of this section, and any portion of the member's retirement allowance or other benefit payable under the system is payable to an alternate payee under the provisions of ORS 238.465, the increased benefits payable under this section shall be divided between the member and the alternate payee in proportion to the share of the total benefit received by each person. If an alternate payee elects to begin receiving benefits under ORS 238.465 (1) before the member's effective date of retirement, the alternate payee may not begin receiving the increased benefit provided for in this section until benefits are first paid from the system on behalf of the member.

[(10)] (9) A person establishes membership in the system before July 14, 1995, for the purposes of subsection [(8)] (7) of this section if:

(a) The person is a member of the system, or a judge member of the system, on July 14, 1995;

(b) The person was a member of the system before July 14, 1995, ceased to be a member of the system under the provisions of ORS 238.095, 238.265 or 238.545 before July 14, 1995, but restores part or all of the forfeited creditable service from before July 14, 1995, under the provisions of ORS 238.105 or 238.115 after July 14, 1995; or

(c) The person performed any period of service for a participating public employer before July 14, 1995, that is credited to the six-month period of employment required of an employee under ORS 238.015 before an employee may become a member of the system.

SECTION 2. ORS 238.385 is amended to read:

238.385. (1)(a) Upon retirement of an employee who is a member of the Public Employees Retirement System and computation of that member's service retirement allowance under ORS 238.300, 238.305 or 238.425, or computation of any disability retirement allowance under ORS 238.320, 238.325, 238.330, 238.345 or 238.425, the Public Employees Retirement Board shall add to the amount of the allowance, including amounts attributable to prior service credit and the amount of any refund of accumulated member contributions, an additional amount equal to the percentage increase provided in subsection (4) of this section.

(b) The percentage increase provided for in this section shall be adjusted by the board to reflect increases or decreases in a member's retirement allowance that are attributable to the member's participation in the Variable Annuity Account established by ORS 238.260, that are attributable to a change in the member's beneficiary or payment option under ORS 238.305 or 238.325, or that are attributable to corrections to the member's retirement allowance calculation.

(c) The percentage increase provided for in this section shall be applied to any lump sum payment made to a member or a beneficiary of a member on or after January 1, 1991, that is attributable to a retroactive correction or adjustment of the amount payable to the member or beneficiary as a retirement allowance or that is attributable to a retroactive correction or adjustment to any other benefit that entitles a member or beneficiary to an increased benefit under this section. The percentage increase payable under this paragraph applies only to the principal amounts included in the lump sum payment as a retroactive correction or adjustment and does not apply to any interest on the retroactive correction or adjustment paid as part of the lump sum payment.

(2) The amount of any death benefit under ORS 238.390, 238.395, 238.400 or 238.405, including the amount of any monthly payments, shall be increased by an amount equal to the percentage increase provided in subsection (4) of this section.

(3)(a) A member of the system who receives a lump sum under ORS 238.315 in lieu of a retirement allowance or other benefit shall receive an additional amount equal to the percentage increase provided in subsection (4) of this section.

(b) A member of the system who withdraws the amount credited to the member account, if any, of the member under the provisions of ORS 238.265, or whose member account is returned to the employee after the membership of the employee is terminated under the provisions of ORS 238.095, shall receive an additional amount calculated by multiplying the amount of the member account of the member by the percentage increase provided for under subsection (4) of this section. If a member thereafter elects to obtain restoration of creditable service by repaying the amount of the withdrawn member account pursuant to the provisions of ORS 238.105, the member must also repay all amounts paid under this section, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.105. If a member repays only part of the withdrawn member account pursuant to the provisions of ORS 238.115, the member must repay that part of the amount paid under this section that is proportionate to the portion of the withdrawn member account that is repaid under ORS 238.115, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.115. All amounts paid to the member that are subsequently repaid under ORS 238.105 or 238.115 shall be deposited by the board to the employer reserve for pension accounts in the fund.

(4)(a) The percentage increases provided for in this section to the benefits payable to or on account of a member of the system who is serving as other than a police officer or firefighter at the time of death or retirement shall be:

(A) For a member with a combined total of 10 or more years of creditable service in the system and prior service credit but less than a combined total of 20 years, one percent.

(B) For a member with a combined total of 20 or more years of creditable service in the system and prior service credit but less than a combined total of 25 years, two percent.

(C) For a member with a combined total of 25 or more years of creditable service in the system and prior service credit but less than a combined total of 30 years, three percent.

(D) For a member with a combined total of 30 or more years of creditable service in the system and prior service credit, four percent.

(b) The percentage increases provided for in this section to the benefits payable to or on account of a member of the system who is serving as a police officer or firefighter at the time of death or retirement shall be:

(A) For a member with a combined total of 10 or more years of creditable service in the system and prior service credit but less than a combined total of 20 years, one percent.

(B) For a member with a combined total of 20 or more years of creditable service in the system and prior service credit but less than a combined total of 25 years, two and one-half percent.

(C) For a member with a combined total of 25 or more years of creditable service in the system and prior service credit, four percent.

(c) The benefits payable to or on account of a member with less than a combined total of 10 years of creditable service in the system and prior service credit at the time of death or retirement shall not be increased under the provisions of this section.

(5) The increased benefits provided for in this section shall be funded by employer contributions.

(6) This section applies only to a member who establishes membership in the Public Employees Retirement System before July 14, 1995, as described in ORS 238.380 [(10)] (9), and whose effective date of retirement or date of death is on or after January 1, 1991. The increased benefits provided by this section do not apply to any creditable service or prior service credit acquired by a member under the terms of a contract of integration entered into pursuant to ORS 238.035, 238.680 or 238.690 on or after October 1, 1991.

(7) If a member is entitled to receive an increased benefit under the provisions of this section, and any portion of the member's retirement allowance or other benefit payable under the system is payable to an alternate payee under the provisions of ORS 238.465, the increased benefits payable under this section shall be divided between the member and the alternate payee in proportion to the

share of the total benefit received by each person. If an alternate payee elects to begin receiving benefits under ORS 238.465 (1) before the member's effective date of retirement, the alternate payee may not begin receiving the increased benefit provided for in this section until benefits are first paid from the system on behalf of the member.

SECTION 3. If Senate Bill 112 becomes law, ORS 238.082, as amended by section 1, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 112), is amended to read:

238.082. (1) Subject to the limitations in subsection (2) of this section, any public employer may employ any person receiving a service retirement allowance if the administrative head of such employer is satisfied that such employment is in the public interest.

(2) The period or periods of employment by one or more public employers of any person receiving a service retirement allowance may not total 1,040 hours or more in any calendar year; but if the person is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the person may be employed for the number of hours for which the salary equals the maximum allowed for receipt of the full amount of those benefits to which the person is entitled.

(3) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member who is employed as a teacher or as an administrator, as those terms are defined in ORS 342.120, if the retired member is employed by a school district or community college district located within a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census, or is employed by an education service district and the retired member's primary work duties are performed in a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census. A retired member who is employed under this subsection as a teacher, as defined in ORS 342.120, by the same public employer that employed the member at the time of retirement remains in the same collective bargaining unit that included the member before retirement.

(4) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member who is employed:

(a) By the sheriff of a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

(b) By the municipal police department of a city with a population of fewer than 15,000 inhabitants, according to the latest federal decennial census;

(c) By the state or a county for work in a correctional institution located in a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

(d) By the Black Butte Ranch Rural Fire Protection District, the Black Butte Ranch Service District or the Sunriver Service District;

(e) By the Oregon State Police for work in a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census; or

(f) As a deputy director or assistant director of the Department of Human Services, if the Governor approves the exemption for the person from the limitations on employment imposed in subsection (2) of this section.

(5) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member who is employed to temporarily replace an employee who serves in the National Guard or in a reserve component of the Armed Forces of the United States and who is called to federal active duty.

(6) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member who is employed by a road assessment district organized under ORS 371.405 to 371.535.

(7) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member who is a nurse and is employed by a public employer as a nurse or for the purpose of teaching nursing during the period in which a nursing workforce shortage declared by the Legislative Assembly or the Governor is in effect.

(8)(a) Except as provided in paragraph (b) of this subsection, subsections (3) to (7) of this section do not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3).

(b) Subsection (3) of this section applies to a person who retires under the provisions of ORS 238.280 (1) or (3) as long as the person's date of retirement is more than six months before the date the person is employed under subsection (3) of this section.

(9) Employment under this section does not affect the status of a person as a retired member of the system and a recipient of retirement benefits under this chapter.

(10) Hours worked by a person employed under subsections [(4) to (8)] (3) to (7) of this section shall not be counted for the purpose of the limitations on employment imposed by subsection (2) of this section.

SECTION 4. The amendments to ORS 238.082 by section 3 of this 2009 Act apply to all hours of work or service by a retired member of the Public Employees Retirement System performed on or after January 1, 2004.

SECTION 5. If Senate Bill 112 becomes law, section 7, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 112) (amending ORS 238.082), is repealed and ORS 238.082, as amended by section 1, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 112), and section 3 of this 2009 Act, is amended to read:

238.082. (1) Subject to the limitations in [subsection (2) of] this section, any public employer may employ any [person receiving a service retirement allowance] **member who is retired for service** if the administrative head of [such] **the public** employer is satisfied that such employment is in the public interest.

[(2) The period or periods of employment by one or more public employers of any person receiving a service retirement allowance may not total 1,040 hours or more in any calendar year; but if the person is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the person may be employed for the number of hours for which the salary equals the maximum allowed for receipt of the full amount of those benefits to which the person is entitled.]

(2) Except as provided in this section, the period or periods of employment by one or more public employers of a retired member who is reemployed under this section may not total 1,040 hours or more in any calendar year.

(3) A retired member who is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act may be employed under this section for the number of hours permitted by subsection (2) of this section, or for the number of hours for which the salary equals the maximum allowed for receipt of the full amount of those benefits to which the person is entitled, whichever is greater.

[(3)] (4) Except as provided in subsection (9) of this section, the limitations on employment imposed by [subsection (2)] subsections (2) and (3) of this section do not apply to a retired member who is employed as a teacher or as an administrator, as those terms are defined in ORS 342.120, if the retired member is employed by a school district or community college district located within a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census, or is employed by an education service district and the retired member's primary work duties are performed in a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census. A retired member who is employed under this subsection as a teacher, as defined in ORS 342.120, by the same public employer that employed the member at the time of retirement remains in the same collective bargaining unit that included the member before retirement.

[(4)] (5) Except as provided in subsection (9) of this section, the limitations on employment imposed by [subsection (2)] subsections (2) and (3) of this section do not apply to a retired member who is employed:

(a) By the sheriff of a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

(b) By the municipal police department of a city with a population of fewer than 15,000 inhabitants, according to the latest federal decennial census;

(c) By the state or a county for work in a correctional institution located in a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

(d) By the Black Butte Ranch Rural Fire Protection District, the Black Butte Ranch Service District or the Sunriver Service District;

(e) By the Oregon State Police for work in a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census; or

(f) As a deputy director or assistant director of the Department of Human Services, if the Governor approves the exemption for the person from the limitations on employment imposed in [subsection (2)] **subsections (2) and (3)** of this section.

[(5)] **(6) Except as provided in subsection (9) of this section**, the limitations on employment imposed by [subsection (2)] **subsections (2) and (3)** of this section do not apply to a retired member who is employed to temporarily replace an employee who serves in the National Guard or in a reserve component of the Armed Forces of the United States and who is called to federal active duty.

[(6)] **(7) Except as provided in subsection (9) of this section**, the limitations on employment imposed by [subsection (2)] **subsections (2) and (3)** of this section do not apply to a retired member who is employed by a road assessment district organized under ORS 371.405 to 371.535.

[(7)] **(8) Except as provided in subsection (9) of this section**, the limitations on employment imposed by [subsection (2)] **subsections (2) and (3)** of this section do not apply to a retired member who is a nurse and is employed by a public employer as a nurse or for the purpose of teaching nursing during the period in which a nursing workforce shortage declared by the Legislative Assembly or the Governor is in effect.

[(8)(a)] **(9)(a) Except as provided in paragraph (b) of this subsection**, subsections [(3) to (7)] **(4) to (8)** of this section do not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3).

(b) Subsection [(3)] **(4)** of this section applies to a person who retires under the provisions of ORS 238.280 (1), (2) or (3) as long as the person's date of retirement is more than six months before the date the person is employed under subsection [(3)] **(4)** of this section.

[(9)] **(10)** Employment under this section does not affect the status of a person as a retired member of the system and a recipient of retirement benefits under this chapter.

[(10)] **(11)** Hours worked by a person employed under subsections [(3) to (7)] **(4) to (8)** of this section shall not be counted for the purpose of the limitations on employment imposed by subsections (2) **and (3)** of this section.

SECTION 6. (1) The amendments to ORS 238.082 by section 5 of this 2009 Act become operative January 1, 2010.

(2) The amendments to 238.082 by section 5 of this 2009 Act apply to any retired member of the Public Employees Retirement System who is employed by a participating public employer before January 1, 2010, and who is an employee of the employer on January 1, 2010, and to any retired member who is employed by a participating public employer on or after January 1, 2010.

SECTION 7. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House June 17, 2009

Repassed by House June 24, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 23, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State