

# D R A F T

## SUMMARY

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

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

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

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

Declares emergency, effective on passage.

## A BILL FOR AN ACT

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

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

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

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

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

(a) The average salary per calendar year paid to an active member in the

1 three consecutive calendar years of membership that produce the highest  
2 average salary, including calendar years in which the member was employed  
3 for less than a full calendar year. If the number of consecutive calendar  
4 years of active membership before the effective date of retirement of the  
5 member is three or less, the final average salary for the member is the av-  
6 erage salary per calendar year paid to the member in all of those years,  
7 without regard to whether the member was employed for full calendar years.

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

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

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

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

19 (c) Exclude any salary for any pay period before the first full pay period  
20 that is included in the last 36 calendar months of membership under sub-  
21 section (1)(b) of this section.

22 (3) For purposes of the computation of pension program benefits under  
23 ORS 238A.125 of a person employed by a local government as defined in ORS  
24 174.116, "final average salary" means whichever of the following is greater:

25 (a) The average salary per calendar year earned by an active member in  
26 the three consecutive calendar years of membership that produce the highest  
27 average salary, including calendar years in which the member was employed  
28 for less than a full calendar year. If the number of consecutive calendar  
29 years of active membership before the effective date of retirement of the  
30 member is three or less, the final average salary for the member is the av-  
31 erage salary per calendar year earned by the member in all of those years,

1 without regard to whether the member was employed for full calendar years.

2 (b) One-third of the total salary earned by an active member in the last  
3 36 calendar months of membership before the effective date of retirement of  
4 the member.

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

7 (a) Any amounts attributable to hours of overtime that exceed the aver-  
8 age number of hours of overtime for the same class of employees as estab-  
9 lished by rule of the Public Employees Retirement Board. The Oregon  
10 Department of Administrative Services shall establish by rule more than one  
11 overtime average for a class of state employees based on the geographic  
12 placement of the employees.

13 (b) **Any increases in salary during the last 36 calendar months of**  
14 **membership before the effective date of retirement of the member that**  
15 **are made by an employer to pay for insurance coverage previously paid**  
16 **for by the employer.**

17 **SECTION 2. The amendments to ORS 238A.130 by section 1 of this**  
18 **2013 special session Act apply only to increases in salary paid to a**  
19 **member of the pension program of the Oregon Public Service Retire-**  
20 **ment Plan on or after the effective date of this 2013 special session**  
21 **Act.**

22

23 **EXECUTION, GARNISHMENT AND ATTACHMENT OF PENSIONS**

24

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

27 **SECTION 4. Notwithstanding ORS 238.445, a lump sum payment or**  
28 **retirement allowance payable under this chapter or ORS chapter 238A**  
29 **to a person convicted of a crime is subject to execution, garnishment,**  
30 **attachment or other process to collect, and may be assigned to satisfy,**  
31 **a money award included in a judgment entered in the criminal action**

1 as provided in ORS 18.048.

2 **SECTION 5.** Section 4 of this 2013 special session Act applies only  
3 to judgments entered in a criminal action on or after the effective date  
4 of this 2013 special session Act.

5

6 **STATUS OF LEGISLATORS IN PUBLIC EMPLOYEES**  
7 **RETIREMENT SYSTEM**

8

9 **SECTION 6.** (1) A person who is appointed or elected as a member  
10 of the Legislative Assembly and who is not a member of the Public  
11 Employees Retirement System at the time of the appointment or  
12 election:

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

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

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

23 **SECTION 7.** ORS 237.650 is amended to read:

24 237.650. (1) Except as provided in this section, a person **who is** appointed  
25 or elected as a member of the Legislative Assembly **and who is a member**  
26 **of the Public Employees Retirement System at the time of the ap-**  
27 **pointment or election** may make a retirement plan election in the manner  
28 provided by this section. If a person [*appointed or elected as a member of the*  
29 *Legislative Assembly*] **who is permitted to make an election under this**  
30 **section** does not make a retirement plan election under subsection [(2), (3)  
31 *or (4)*] **(2), (3), (4) or (5)** of this section, the person is deemed to have elected

1 a retirement plan as provided in subsection [(7)] **(6)** of this section.

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

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

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

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

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

19 (a) Elect to become an active member of the system under ORS chapter  
20 238 for the purpose of service in the Legislative Assembly;

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

25 (c) Decline to become an active member of the system under ORS chapter  
26 238 or to become a legislator member of the state deferred compensation plan  
27 under ORS 237.655 for the purpose of service in the Legislative Assembly.

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

31 [(a) *Elect to become a member of the Oregon Public Service Retirement Plan*

1 *established under ORS chapter 238A for the purpose of service in the Legis-*  
2 *lative Assembly;]*

3 *[(b) Decline to become a member of the Oregon Public Service Retirement*  
4 *Plan and elect to become a legislator member of the state deferred compen-*  
5 *sation plan under ORS 237.655 for the purpose of service in the Legislative*  
6 *Assembly; or]*

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

10 **[(5)] (4)** An active or inactive member of the Public Employees Retirement  
11 System who is appointed or elected as a member of the Legislative Assembly,  
12 and who established membership in the system on or after August 29, 2003,  
13 as described in ORS 238A.025, may *[not make an election under this section*  
14 *and is an active member of the system under ORS chapter 238A for the purpose*  
15 *of service in the Legislative Assembly.]:*

16 **(a) Elect to remain a member of the system under ORS chapter**  
17 **238A for the purpose of service in the Legislative Assembly;**

18 **(b) Decline to remain a member of the system under ORS chapter**  
19 **238A and elect to become a legislator member of the state deferred**  
20 **compensation plan under ORS 237.655 for the purpose of service in the**  
21 **Legislative Assembly; or**

22 **(c) Decline to remain a member of the system under ORS chapter**  
23 **238A or to become a legislator member of the state deferred compen-**  
24 **sation plan under ORS 237.655 for the purpose of service in the Legis-**  
25 **lative Assembly.**

26 **[(6)] (5)** A retired member of the Public Employees Retirement System  
27 who is appointed or elected as a member of the Legislative Assembly, and  
28 who established membership in the system on or after August 29, 2003, as  
29 described in ORS 238A.025, may *[not make an election under this section and*  
30 *remains a retired member of the system under ORS chapter 238A during the*  
31 *person's service in the Legislative Assembly.]:*

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

3 (b) Decline to become an active member of the system under ORS  
4 chapter 238A and elect to become a legislator member of the state de-  
5 ferred compensation plan under ORS 237.655 for the purpose of service  
6 in the Legislative Assembly; or

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

11 [(7)] (6) Written notice of an election under subsection [(2), (3) or (4)] (2),  
12 (3), (4) or (5) of this section must be given to the Public Employees Retire-  
13 ment Board not more than 30 days after the person takes office. If the board  
14 does not receive written notice of the election within 30 days after the per-  
15 son takes office:

16 (a) A person described in subsection (2) of this section is deemed to have  
17 elected to remain a member of the Public Employees Retirement System un-  
18 der ORS chapter 238 for the purpose of service in the Legislative Assembly.

19 (b) A person described in subsection (3) of this section is deemed to have  
20 declined to become an active member of the system under ORS chapter  
21 238[,] or to become a legislator member of the state deferred compensation  
22 plan under ORS 237.655, and remains a retired member of the system under  
23 ORS chapter 238 for the purpose of service in the Legislative Assembly.

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

29 (d) A person described in subsection (5) of this section is deemed  
30 to have declined to become an active member of the system under ORS  
31 chapter 238A or to become a legislator member of the state deferred

1 **compensation plan under ORS 237.655, and remains a retired member**  
2 **of the system under ORS chapter 238A for the purpose of service in the**  
3 **Legislative Assembly.**

4 [(8)] (7) An election under subsection (3)(b) or (c) **or (5)(b) or (c)** of this  
5 section does not affect the status of a person as a retired member of the  
6 system and a recipient of retirement benefits under ORS chapter 238 **or**  
7 **238A.**

8 [(9)] (8) An election under this section does not affect the ability of a  
9 person appointed or elected as a member of the Legislative Assembly to  
10 participate in the state deferred compensation plan in the manner provided  
11 by ORS 243.401 to 243.507 as other than a legislator member under ORS  
12 237.655.

13 **SECTION 8.** ORS 237.655 is amended to read:

14 237.655. (1)(a) If a person appointed or elected as a member of the Legis-  
15 lative Assembly elects under ORS 237.650 **or section 6 of this 2013 special**  
16 **session Act** to become a legislator member of the state deferred compen-  
17 sation plan for the purpose of service in the Legislative Assembly, the Leg-  
18 islative Assembly shall make employer contributions to the plan in an  
19 amount that is equal to six percent of the member's salary **plus the per-**  
20 **centage of the member's salary that would have been contributed to**  
21 **the Public Employees Retirement Board for the member's normal cost**  
22 **under ORS 238A.220, as determined by the actuary under ORS 238.605.**

23 **(b) Notwithstanding paragraph (a) of this subsection, contributions**  
24 **made to the plan by the Legislative Assembly under this subsection**  
25 **may not exceed the maximum allowed by federal law governing the**  
26 **plan's tax qualification.**

27 (2) If a person appointed or elected as a member of the Legislative As-  
28 sembly elects under ORS 237.650 **or section 6 of this 2013 special session**  
29 **Act** to become a legislator member of the state deferred compensation plan  
30 for the purpose of service in the Legislative Assembly, and the person also  
31 participates in the state deferred compensation plan in the manner provided



1 by ORS 243.401 to 243.507 as other than a legislator member, the total con-  
2 tributions made to the plan by the person and by the employer under sub-  
3 section (1) of this section may not exceed the maximum allowed by federal  
4 law governing the plan's tax qualification.

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

8 **SECTION 9. Section 10 of this 2013 special session Act is added to**  
9 **and made a part of ORS 238A.100 to 238A.245.**

10 **SECTION 10. Notwithstanding any other provision of this chapter:**

11 (1) **A retired member who has retired as other than a member of**  
12 **the Legislative Assembly and who is thereafter appointed or elected**  
13 **as a member of the Legislative Assembly may elect, by giving the**  
14 **Public Employees Retirement Board written notice, to receive the**  
15 **pension provided by this chapter for service as other than a member**  
16 **of the Legislative Assembly, and be an active member as a member**  
17 **of the Legislative Assembly for the purpose of service in the Legisla-**  
18 **tive Assembly. A person may make an election under this subsection**  
19 **only if the person becomes an active member for the purpose of service**  
20 **in the Legislative Assembly as provided in ORS 237.650 (5). Notice of**  
21 **an election under this subsection must be given by the person not**  
22 **more than 30 days after the person takes office.**

23 (2) **A member of the Legislative Assembly who is a member of the**  
24 **Public Employees Retirement System under this chapter as a member**  
25 **of the Legislative Assembly and who becomes eligible to retire by**  
26 **reason of service as other than a member of the Legislative Assembly,**  
27 **without regard to when that service was performed, may elect, by**  
28 **giving the board written notice, to retire and receive the pension pro-**  
29 **vided by this chapter for service as other than a member of the Leg-**  
30 **islative Assembly, and to continue, for the purpose of service in the**  
31 **Legislative Assembly, as an active member as a member of the Legis-**

1 **lative Assembly.**

2 **(3) Upon receipt of the notice provided for in subsection (1) or (2)**  
 3 **of this section, the board shall determine the member's pension for**  
 4 **nonlegislative service based on the number of years of nonlegislative**  
 5 **service, and shall determine any additional pension to be received after**  
 6 **the member subsequently retires based on the number of years of**  
 7 **service in the Legislative Assembly.**

8 **SECTION 11.** ORS 238A.245 is amended to read:

9 238A.245. (1) Except as provided in [*subsection (3) of this section*] **ORS**  
 10 **237.650 and section 10 of this 2013 special session Act**, the Public Em-  
 11 ployees Retirement Board shall cease making pension payments to a retired  
 12 member of the pension program who is reemployed by a participating public  
 13 employer in a qualifying position. A retired member of the pension program  
 14 who is employed in a qualifying position becomes an active member of the  
 15 pension program without serving the probationary period provided for in  
 16 ORS 238A.100.

17 (2) If a retired member of the pension program is reemployed under the  
 18 provisions of this section, any option chosen by the member under ORS  
 19 238A.190 is canceled, and upon retiring thereafter the member may elect any  
 20 option provided for in ORS 238A.180 and 238A.190. The board shall recalcu-  
 21 late the pension of the member upon subsequent retirement.

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

26 **SECTION 12.** ORS 238A.350 is amended to read:

27 238A.350. (1) Upon any contributions being made to the individual ac-  
 28 count program by or on behalf of a member of the program, the Public Em-  
 29 ployees Retirement Board shall create the account or accounts described in  
 30 this section. Each account shall be adjusted at least annually in accordance  
 31 with rules adopted by the board to reflect any net earnings or losses on those

1 contributions and to pay the reasonable administrative costs of maintaining  
2 the program to the extent the earnings on the assets of the program are in-  
3 sufficient to pay those costs. The adjustments described in this subsection  
4 shall continue until the account is distributed to the member or forfeited.

5 (2)(a) The board shall establish an employee account, which shall consist  
6 of the employee contributions made by or on behalf of the member as ad-  
7 justed under subsection (1) of this section.

8 **(b) The board shall create a separate employee account for a mem-**  
9 **ber who becomes an active member for the purpose of service in the**  
10 **Legislative Assembly under ORS 237.650, which shall consist of the**  
11 **employee contributions made by or on behalf of the member that are**  
12 **attributable to the member's legislative service, as adjusted under**  
13 **subsection (1) of this section.**

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

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

23 (5) The board shall provide an annual statement to each active and inac-  
24 tive member of the program that reflects the amount credited to the accounts  
25 established under this section. The statement shall reflect whether the  
26 member is vested in the employer account under the provisions of ORS  
27 238A.320.

28 **SECTION 13.** ORS 243.163 is amended to read:

29 243.163. A member of the Legislative Assembly who is receiving a pension  
30 or annuity under ORS 238.092 (1)(a) **or section 10 (1) of this 2013 special**  
31 **session Act** shall be eligible to participate as a retired state officer in one

1 of the group benefit plans described in ORS 243.135 after the member ceases  
2 to be a member of the Legislative Assembly if the member applies to the  
3 Public Employees' Benefit Board within 60 days after the member ceases to  
4 be a member of the Legislative Assembly.

5

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## JUDICIAL REVIEW

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8 **SECTION 14. (1) Jurisdiction is conferred on the Supreme Court to**  
9 **determine in the manner provided by this section whether this 2013**  
10 **special session Act breaches any contract between members of the**  
11 **Public Employees Retirement System and their employers, violates**  
12 **any constitutional provision, including but not limited to impairment**  
13 **of contract rights of members of the Public Employees Retirement**  
14 **System under Article I, section 21, of the Oregon Constitution, or Ar-**  
15 **ticle I, section 10, clause 1, of the United States Constitution, or is**  
16 **invalid for any other reason.**

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

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

23 **(b) The petition must include the following:**

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

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

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

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

1       **(5) The Supreme Court shall allow public employers participating**  
2 **in the Public Employees Retirement System to intervene in any pro-**  
3 **ceeding under this section.**

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

7

8

### **CAPTIONS**

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10       **SECTION 15. The unit captions used in this 2013 special session Act**  
11 **are provided only for the convenience of the reader and do not become**  
12 **part of the statutory law of this state or express any legislative intent**  
13 **in the enactment of this 2013 special session Act.**

14

15

### **EMERGENCY CLAUSE**

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17       **SECTION 16. This 2013 special session Act being necessary for the**  
18 **immediate preservation of the public peace, health and safety, an**  
19 **emergency is declared to exist, and this 2013 special session Act takes**  
20 **effect on its passage.**

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