

D R A F T

SUMMARY

Modifies cost-of-living adjustment under Public Employees Retirement System.

Directs Public Employees Retirement Board to make annual supplementary payments to members or member's beneficiaries with yearly allowance or yearly pension or benefit of \$20,000 or less. Directs board to develop formula for determining whether it is reasonably prudent to make annual supplementary payments to members and member's beneficiaries with yearly allowance or yearly pension or benefit of more than \$20,000 and not more than \$60,000.

Directs board to report to Legislative Assembly with recommendations relating to cost-of-living adjustment and supplementary payments.

Sunsets supplementary payments on December 31, 2019.

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

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to cost-of-living adjustments under the Public Employees Retirement
3 System; creating new provisions; amending ORS 238.360, 238.465 and
4 238A.210; and declaring an emergency.

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

6 7 COST OF LIVING ADJUSTMENTS

8
9 **SECTION 1.** ORS 238.360, as amended by sections 1 and 3, chapter 53,
10 Oregon Laws 2013, is amended to read:

11 238.360. (1) On July 1 of each year, the Public Employees Retirement
12 Board shall increase the yearly allowance that a member or member's bene-

1 fiary receives or is entitled to receive, as provided in [*subsections (2) and*
 2 *(3)*] **subsection (2)** of this section. The increase is first payable with the
 3 allowance that the member or the member's beneficiary receives or is enti-
 4 tled to receive on August 1.

5 (2)(a) If the member's or member's beneficiary's yearly allowance [*for the*
 6 *previous year totaled \$20,000*] **is \$60,000** or less, the allowance shall be in-
 7 creased by [*two*] **1.25** percent.

8 [*(b) If the member's or member's beneficiary's yearly allowance for the*
 9 *previous year totaled more than \$20,000 but not more than \$40,000, the allow-*
 10 *ance shall be increased by \$400 plus 1.5 percent of the amount of the yearly*
 11 *allowance exceeding \$20,000.*]

12 [*(c) If the member's or member's beneficiary's yearly allowance for the pre-*
 13 *vious year totaled more than \$40,000 but not more than \$60,000, the allowance*
 14 *shall be increased by \$700 plus one percent of the amount of the yearly allow-*
 15 *ance exceeding \$40,000.*]

16 [*(d)*] **(b)** If the member's or member's beneficiary's yearly allowance [*for*
 17 *the previous year totaled*] **is** more than \$60,000, the allowance shall be in-
 18 creased by [*\$900 plus .25*] **\$750 plus 0.15** percent of the amount of the yearly
 19 allowance exceeding \$60,000.

20 [*(3) If a member or member's beneficiary has been receiving an allowance*
 21 *for less than 12 months on July 1 of any year, the board shall calculate the*
 22 *increase under subsection (2) of this section on the basis of the yearly allow-*
 23 *ance the member or member's beneficiary would have received if the member*
 24 *or member's beneficiary had received the monthly allowance for 12 months.*]

25 [(4)] **(3)** Any increase in the allowance shall be paid from contributions
 26 of the public employer under ORS 238.225.

27 **(4) As used in this section, "yearly allowance" means the monthly**
 28 **allowance that a member or member's beneficiary is entitled to on**
 29 **July 1 of the year in which the board is calculating the increase under**
 30 **subsection (1) of this section, multiplied by 12.**

31 **SECTION 2. The amendments to ORS 238.360 by section 1 of this**

1 **2013 special session Act apply to all increases to allowances made un-**
2 **der ORS 238.360 on and after July 1, 2014.**

3 **SECTION 3.** ORS 238A.210, as amended by sections 5 and 7, chapter 53,
4 Oregon Laws 2013, is amended to read:

5 238A.210. (1) On July 1 of each year, the board shall increase every pen-
6 sion payable under ORS 238A.180, 238A.185 and 238A.190, every disability
7 benefit under ORS 238A.235 and every death benefit payable under ORS
8 238A.230 as provided in [*subsections (2) and (3)*] **subsection (2)** of this sec-
9 tion. The increase shall be made for the payments payable on August 1 and
10 thereafter.

11 (2)(a) If a person's yearly pension or benefit [*for the previous year totaled*
12 *\$20,000*] **is \$60,000** or less, the pension or benefit shall be increased by [*two*]
13 **1.25** percent.

14 [*(b) If a person's yearly pension or benefit for the previous year totaled more*
15 *than \$20,000 but not more than \$40,000, the pension or benefit shall be in-*
16 *creased by \$400 plus 1.5 percent of the amount of the yearly pension or benefit*
17 *exceeding \$20,000.*]

18 [*(c) If a person's yearly pension or benefit for the previous year totaled more*
19 *than \$40,000 but not more than \$60,000, the pension or benefit shall be in-*
20 *creased by \$700 plus one percent of the amount of the yearly pension or benefit*
21 *exceeding \$40,000.*]

22 [*(d)*] **(b)** If a person's yearly pension or benefit [*for the previous year to-*
23 *taled*] **is** more than \$60,000, the pension or benefit shall be increased by [*\$900*
24 *plus .25*] **\$750 plus 0.15** percent of the amount of the yearly pension or ben-
25 efit exceeding \$60,000.

26 [*(3) If a person has been receiving a pension or benefit for less than 12*
27 *months on July 1 of any year, the board shall calculate the increase under*
28 *subsection (2) of this section on the basis of the yearly allowance the person*
29 *would have received if the person had received the pension or benefit for 12*
30 *months.*]

31 **(3) As used in this section, "yearly pension or benefit" means the**

1 **monthly pension or benefit that a person is entitled to on July 1 of the**
2 **year in which the board is calculating the increase under subsection**
3 **(1) of this section, multiplied by 12.**

4 **SECTION 4. The amendments to ORS 238A.210 by section 3 of this**
5 **2013 special session Act apply to all increases to pensions or benefits**
6 **made under ORS 238A.210 on and after July 1, 2014.**

7 **SECTION 5. (1) The amendments to ORS 238.360 and 238A.210 by**
8 **sections 1 and 3 of this 2013 special session Act become operative on**
9 **July 1, 2014.**

10 **(2) The Public Employees Retirement Board may take any action**
11 **before the operative date specified in subsection (1) of this section to**
12 **enable the board, on and after the operative date specified in sub-**
13 **section (1) of this section, to exercise all the duties, functions and**
14 **powers conferred on the board by the amendments to ORS 238.360 and**
15 **238A.210 by sections 1 and 3 of this 2013 special session Act.**

16 **SECTION 6. ORS 238.465 is amended to read:**

17 238.465. (1) Notwithstanding ORS 238.445 or any other provision of law,
18 payments under this chapter or ORS chapter 238A of any pension, annuity,
19 retirement allowance, disability benefit, death benefit, refund benefit or
20 other benefit that would otherwise be made to a person entitled thereto un-
21 der this chapter or ORS chapter 238A shall be paid, in whole or in part, by
22 the Public Employees Retirement Board to an alternate payee if and to the
23 extent expressly provided for in the terms of any judgment of annulment or
24 dissolution of marriage or of separation, or the terms of any court order or
25 court-approved property settlement agreement incident to any judgment of
26 annulment or dissolution of marriage or of separation. [*Notwithstanding any*
27 *other provisions of this section*] **Except as provided in subsection (5) of**
28 **this section,** the total value of benefits payable to a member and to an al-
29 ternate payee under this section may not be greater than the value of the
30 benefits the member would otherwise be eligible to receive. Any payment
31 under this subsection to an alternate payee bars recovery by any other per-

1 son.

2 (2) A judgment, order or settlement providing for payment to an alternate
3 payee under subsection (1) of this section may also provide:

4 (a) That payments to the alternate payee may commence, at the election
5 of the alternate payee, at any time after the earlier of:

6 (A) The earliest date the member would be eligible to receive retirement
7 benefits if the member separates from service; or

8 (B) The date the member actually separates from service due to death,
9 disability, retirement or termination of employment.

10 (b) That the alternate payee may elect to receive payment in any form
11 of pension, annuity, retirement allowance, disability benefit, death benefit,
12 refund benefit or other benefit, except a benefit in the form of a joint and
13 survivor annuity, that would be available to the member under this chapter
14 or ORS chapter 238A, or that would be available to the member if the mem-
15 ber retired or separated from service at the time of election by the alternate
16 payee, without regard to the form of benefit elected by the member.

17 (c) That the alternate payee's life is the measuring life for the purpose
18 of measuring payments to the alternate payee under the form of benefit se-
19 lected by the alternate payee and for the purpose of determining necessary
20 employer reserves.

21 (d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person
22 designated by the member as a beneficiary under ORS 238.300, 238.305,
23 238.325, 238A.190 or 238A.400 be changed, even though the member has re-
24 tired and has begun receiving a retirement allowance or pension. If a change
25 of beneficiary is ordered under this paragraph, the board shall adjust the
26 anticipated benefits that would be payable to the member and the beneficiary
27 to ensure that the cost to the system of providing benefits to the member and
28 the new beneficiary does not exceed the cost that the system would have
29 incurred to provide benefits to the member and the original beneficiary. The
30 judgment, order or settlement may not provide for any change to the option
31 selected by the retired member under ORS 238.300, 238.305, 238.320, 238.325,

1 238A.190 or 238A.400 as to the form of the retirement benefit.

2 (3) The board shall adopt rules that provide for:

3 (a) The creation of a separate account in the name of the alternate payee
4 reflecting the judgment's, order's or agreement's distribution of the member's
5 benefits under this chapter or ORS chapter 238A;

6 (b) The establishing of criteria to determine whether domestic relations
7 judgments, orders and agreements comply with this section; and

8 (c) The definitions and procedures for the administration of this section.

9 (4) An alternate payee may designate a beneficiary for the purposes of
10 death benefits payable under ORS 238.390 and 238.395. Subject to ORS
11 238A.410 (2), an alternate payee may designate a beneficiary for the purposes
12 of death benefits payable under ORS 238A.410. If the alternate payee fails to
13 designate a beneficiary for the purposes of death benefits payable under ORS
14 238.390 and 238.395, the benefits shall be paid as provided by ORS 238.390 (2).
15 If the alternate payee fails to designate a beneficiary for the purposes of
16 death benefits payable under ORS 238A.410, the benefits shall be paid as
17 provided by ORS 238A.410 (3). If a judgment, order or agreement awards an
18 interest to an alternate payee, and if the alternate payee predeceases the
19 member before the alternate payee has commenced receiving benefits, the
20 alternate payee shall be considered a member of the system who died before
21 retiring for the purposes of the death benefits provided in ORS 238.390,
22 238.395, 238A.230 and 238A.410, but for purposes of the death benefits pro-
23 vided in ORS 238.395, the alternate payee shall be considered a member of
24 the system who died before retiring only if the member would have been el-
25 igible for death benefits under ORS 238.395 had the member died at the same
26 time as the alternate payee. Payment of the death benefits to the benefi-
27 aries, estate or other persons entitled to receive the benefits under ORS
28 238.390, 238.395, 238A.230 and 238A.410, shall constitute payment in full of
29 the alternate payee's interest under the judgment, order or agreement.

30 (5) Any increase in the retirement allowance provided to the member shall
31 increase the amounts paid to the [*spouse or former spouse of the member*]

1 **alternate payee** in the same proportion, except that:

2 (a) An alternate payee is not entitled to receive cost-of-living adjustments
3 under ORS 238.360 or any other retirement allowance increase until benefits
4 are first paid from the system on behalf of the member[.]; **and**

5 (b) **Cost-of-living adjustments under ORS 238.360 to the retirement**
6 **allowance paid to an alternate payee shall be calculated on the basis**
7 **of the amount of the alternate payee's yearly allowance, as that term**
8 **is defined in ORS 238.360.**

9 (6) An alternate payee under this section is not eligible to receive the
10 benefits provided under ORS 238.410, 238.415, 238.420 and 238.440 by reason
11 of the provisions of this section.

12 (7) An alternate payee who elects to begin receiving payments under
13 subsection (1) of this section before the member's effective date of retirement
14 is not eligible to receive any additional payment by reason of credit in the
15 system acquired by the member after the alternate payee begins to receive
16 payments.

17 (8) Subsection (1) of this section applies only to payments made by the
18 board after the date of receipt by the board of written notice of the judg-
19 ment, order or agreement and such additional information and documenta-
20 tion as the board may prescribe.

21 (9) Whenever the board is required to make payment to an alternate payee
22 under the provisions of this section, the board shall charge and collect out
23 of the benefits payable to the member and the alternate payee actual and
24 reasonable administrative expenses and related costs incurred by the board
25 in obtaining data and making calculations that are necessary by reason of
26 the provisions of this section. The board may not charge more than \$300 for
27 total administrative expenses and related costs incurred in obtaining data
28 or making calculations that are necessary by reason of the provisions of this
29 section. The board shall allocate expenses and costs charged under the pro-
30 visions of this subsection between the member and the alternate payee based
31 on the fraction of the benefit received by the member or alternate payee.

1 (10) Unless otherwise provided by the judgment, order or agreement, a
2 member has no interest in the benefit payable to an alternate payee under
3 this section. Upon the death of an alternate payee, the board shall make such
4 payment to the beneficiary designated by the alternate payee as may be re-
5 quired under the form of benefit elected by the alternate payee. If a death
6 benefit is payable under ORS 238.390 or 238.395 by reason of the death of an
7 alternate payee, payment of the death benefit shall be made to the benefi-
8 cary designated by the alternate payee under ORS 238.390 (1), or as otherwise
9 provided by ORS 238.390 and 238.395.

10 (11) As used in this section, "court" means any court of appropriate ju-
11 risdiction of this or any other state or of the District of Columbia.

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SUPPLEMENTARY PAYMENTS

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15 **SECTION 7. Section 8 of this 2013 special session Act is added to**
16 **and made a part of ORS chapter 238.**

17 **SECTION 8. (1) As used in this section:**

18 **(a) "Yearly allowance" has the meaning given that term in ORS**
19 **238.360.**

20 **(b) "Yearly pension or benefit" has the meaning given that term in**
21 **ORS 238A.210.**

22 **(2) Each year, the Public Employees Retirement Board shall make**
23 **a supplementary payment to each member or member's beneficiary**
24 **with a yearly allowance or yearly pension or benefit of \$20,000 or less.**
25 **The supplementary payment shall be equal to 0.25 percent of the**
26 **member's or member's beneficiary's yearly allowance or yearly pen-**
27 **sion or benefit.**

28 **(3)(a) The board may make a supplementary payment each year to**
29 **each member or member's beneficiary with a yearly allowance or**
30 **yearly pension or benefit that is more than \$20,000 but not more than**
31 **\$60,000. A supplementary payment made under this subsection shall**

1 be equal to 0.25 percent of the member's or member's beneficiary's
2 yearly allowance or yearly pension or benefit.

3 (b) The board shall develop a formula for determining each year
4 whether it is reasonably prudent, based on the earnings of the Public
5 Employees Retirement Fund, available reserves and the unfunded
6 actuarial liability of the system, to make a supplementary payment
7 under this subsection.

8 (4) A supplementary payment made under this section may not be
9 included in a member's or member's beneficiary's yearly allowance or
10 yearly pension or benefit for purposes of calculating cost-of-living ad-
11 justments under ORS 238.360, 238.575 or 238A.210.

12 (5) The board shall pay supplementary payments under this section
13 out of the reserve account established under ORS 238.670 (1).

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REPORT TO LEGISLATURE

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17 SECTION 9. On or before September 30, 2018, the Public Employees
18 Retirement Board shall report to an appropriate committee or interim
19 committee of the Legislative Assembly on:

20 (1) Recommendations relating to the cost-of-living adjustment un-
21 der the Public Employees Retirement System; and

22 (2) Recommendations relating to the continuation of supplementary
23 payments to members and members' beneficiaries under section 8 of
24 this 2013 special session Act.

25

26

SUNSET

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28 SECTION 10. Sections 8 and 9 of this 2013 special session Act are
29 repealed on December 31, 2019.

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JUDICIAL REVIEW

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

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

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

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

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

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

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

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

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

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

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CAPTIONS

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

EMERGENCY CLAUSE

SECTION 13. This 2013 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 special session Act takes effect on its passage.
