

CHAPTER 2

AN ACT

SB 861
[2013 Special Session]

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

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

COST-OF-LIVING ADJUSTMENTS

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

238.360. (1) On July 1 of each year, the Public Employees Retirement Board shall increase the yearly allowance that a member or member's beneficiary receives or is entitled to receive, as provided in [subsections (2) and (3)] **subsection (2)** of this section. The increase is first payable with the allowance that the member or the member's beneficiary receives or is entitled to receive on August 1.

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

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

[c] *If the member's or member's beneficiary's yearly allowance for the previous year totaled more than \$40,000 but not more than \$60,000, the allowance shall be increased by \$700 plus one percent of the amount of the yearly allowance exceeding \$40,000.*

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

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

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

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

SECTION 2. The amendments to ORS 238.360 by section 1 of this 2013 special session Act apply to all increases to allowances made under ORS 238.360 on and after July 1, 2014.

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

238A.210. (1) On July 1 of each year, the board shall increase every pension payable under ORS 238A.180, 238A.185 and 238A.190, every disability benefit under ORS 238A.235 and every death benefit payable under ORS 238A.230 as provided in [subsections (2) and (3)] **subsection (2)** of this section. The increase shall be made for the payments payable on August 1 and thereafter.

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

[b] *If a person's yearly pension or benefit for the previous year totaled more than \$20,000 but not more than \$40,000, the pension or benefit shall be increased by \$400 plus 1.5 percent of the amount of the yearly pension or benefit exceeding \$20,000.*

[c] *If a person's yearly pension or benefit for the previous year totaled more than \$40,000 but not more than \$60,000, the pension or benefit shall be increased by \$700 plus one percent of the amount of the yearly pension or benefit exceeding \$40,000.*

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

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

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

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

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

(2) The Public Employees Retirement Board may take any action before the operative date specified in subsection (1) of this section to enable the board, on and after the operative date

specified in subsection (1) of this section, to exercise all the duties, functions and powers conferred on the board by the amendments to ORS 238.360 and 238A.210 by sections 1 and 3 of this 2013 special session Act.

SECTION 6. ORS 238.465 is amended to read:

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

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

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

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

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

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

(c) That the alternate payee's life is the measuring life for the purpose of measuring payments to the alternate payee under the form of benefit selected by the alternate payee and for the purpose of determining necessary employer reserves.

(d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person designated by the member as a beneficiary under ORS 238.300, 238.305, 238.325, 238A.190 or 238A.400 be changed, even though the member has retired and has begun re-

ceiving a retirement allowance or pension. If a change of beneficiary is ordered under this paragraph, the board shall adjust the anticipated benefits that would be payable to the member and the beneficiary to ensure that the cost to the system of providing benefits to the member and the new beneficiary does not exceed the cost that the system would have incurred to provide benefits to the member and the original beneficiary. The judgment, order or settlement may not provide for any change to the option selected by the retired member under ORS 238.300, 238.305, 238.320, 238.325, 238A.190 or 238A.400 as to the form of the retirement benefit.

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

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

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

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

(4) An alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and 238.395. Subject to ORS 238A.410 (2), an alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS 238A.410. If the alternate payee fails to designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and 238.395, the benefits shall be paid as provided by ORS 238.390 (2). If the alternate payee fails to designate a beneficiary for the purposes of death benefits payable under ORS 238A.410, the benefits shall be paid as provided by ORS 238A.410 (3). If a judgment, order or agreement awards an interest to an alternate payee, and if the alternate payee predeceases the member before the alternate payee has commenced receiving benefits, the alternate payee shall be considered a member of the system who died before retiring for the purposes of the death benefits provided in ORS 238.390, 238.395, 238A.230 and 238A.410, but for purposes of the death benefits provided in ORS 238.395, the alternate payee shall be considered a member of the system who died before retiring only if the member would have been eligible for death benefits under ORS 238.395 had the member died at the same time as the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons entitled to receive the benefits under ORS 238.390, 238.395, 238A.230 and 238A.410, shall constitute payment in full of the alternate payee's interest under the judgment, order or agreement.

(5) Any increase in the retirement allowance provided to the member shall increase the amounts paid to the [spouse or former spouse of the member] **alternate payee** in the same proportion, except that:

(a) An alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other retirement allowance increase until benefits

are first paid from the system on behalf of the member[.]; and

(b) Cost-of-living adjustments under ORS 238.360 or 238A.210 to the retirement allowance paid to an alternate payee shall be calculated on the basis of the amount of the alternate payee's yearly allowance or yearly pension or benefit, as those terms are defined in ORS 238.360 and 238A.210.

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

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

(8) Subsection (1) of this section applies only to payments made by the board after the date of receipt by the board of written notice of the judgment, order or agreement and such additional information and documentation as the board may prescribe.

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

(10) Unless otherwise provided by the judgment, order or agreement, a member has no interest in the benefit payable to an alternate payee under this section. Upon the death of an alternate payee, the board shall make such payment to the beneficiary designated by the alternate payee as may be required under the form of benefit elected by the alternate payee. If a death benefit is payable under ORS 238.390 or 238.395 by reason of the death of an alternate payee, payment of the death benefit shall be made to the beneficiary designated by the alternate payee under ORS 238.390 (1), or as otherwise provided by ORS 238.390 and 238.395.

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

SUPPLEMENTARY PAYMENTS

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

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

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

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

(2) Each year, the Public Employees Retirement Board shall make a supplementary payment to each member or member's beneficiary. The supplementary payment shall be equal to 0.25 percent of the member's or member's beneficiary's yearly allowance or yearly pension or benefit, but in no event may the supplementary payment exceed \$150.

(3) In addition to the supplementary payment under subsection (2) of this section, the board shall make an additional supplementary payment each year to each member or member's beneficiary with a yearly allowance or yearly pension or benefit of \$20,000 or less. A supplementary payment made under this subsection shall be equal to 0.25 percent of the member's or member's beneficiary's yearly allowance or yearly pension or benefit.

(4) The board shall make the first supplementary payments under subsections (2) and (3) of this section in 2014.

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

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

REPORT TO LEGISLATURE

SECTION 9. On or before September 30, 2018, the Public Employees Retirement Board shall report to the Governor, the President of the Senate and the Speaker of the House of Representatives on:

(1) Recommendations relating to the cost-of-living adjustment under the Public Employees Retirement System;

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

(3) Recommendations on approaches to calculating cost-of-living adjustments under the system that take into consideration a retired member's years of creditable service.

SUNSET

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

JUDICIAL REVIEW

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

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

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

(b) The petition must include the following:

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

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

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

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

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

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

CAPTIONS

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.

Approved by the Governor October 8, 2013

Filed in the office of Secretary of State October 8, 2013

Effective date October 8, 2013