

**CHAPTER 3**

AN ACT

SB 862

[2013 Special Session]

Relating to public employee retirement; creating new provisions; amending ORS 237.650, 237.655, 238A.050, 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 three consecutive calendar years of membership that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is three or less, the final average salary for the member is the average salary per calendar year paid to the member in all of those years, without regard to whether the member was employed for full calendar years.

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

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

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

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

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

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

(a) The average salary per calendar year earned by an active member in the three consecutive calendar years of membership that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year.

If the number of consecutive calendar years of active membership before the effective date of retirement of the member is three or less, the final average salary for the member is the average salary per calendar year earned by the member in all of those years, without regard to whether the member was employed for full calendar years.

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

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

(a) Any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same class of employees as established by rule of the Public Employees Retirement Board. The Oregon Department of Administrative Services shall establish by rule more than one overtime average for a class of state employees based on the geographic placement of the employees.

**(b) Any increases in salary during the last 36 calendar months of membership before the effective date of retirement of the member that:**

**(A) Are made by an employer to pay for insurance coverage previously paid for by the employer; and**

**(B) Are not offered to all employees in the same class of employees as established by rule of the board under paragraph (a) of this subsection.**

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

**EXECUTION, GARNISHMENT AND ATTACHMENT OF DISTRIBUTIONS**

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

**SECTION 4.** (1) Notwithstanding ORS 238.445, any retirement allowance, pension payment, lump sum payment or other distribution payable under this chapter or ORS chapter 238A to a person convicted of a felony is subject to execution, garnishment, attachment or other process to collect, and may be assigned to satisfy, the portion of a money award described in subsection (2) of this section that is included in a judgment entered in the criminal action as provided in ORS 18.048.

(2) Subsection (1) of this section applies only to the amount of a money award attributable to restitution ordered under ORS 137.106 or a compensatory fine ordered under ORS 137.101.

**SECTION 5.** ORS 238A.050 is amended to read: 238A.050. (1) The Oregon Public Service Retirement Plan is part of the Public Employees Retirement System and is administered by the Public Employees Retirement Board.

(2) ORS 238.008, 238.225, 238.229, 238.231, 238.285, 238.410, 238.445, 238.450, 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630, 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696, 238.698, 238.700, 238.705, 238.710 and 238.715 and **section 4 of this 2013 special session Act** apply to the Oregon Public Service Retirement Plan.

(3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4) of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the provisions of ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the individual account program and pension program differently than the other assets of the Public Employees Retirement System.

(4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the limitations imposed by ORS 293.726 (6).

(5) The board may contract with a private provider for the administration of the individual account program. The board is not subject to the provisions of ORS chapter 279A or 279B in awarding a contract under the provisions of this subsection. The board shall establish procedures for inviting proposals and awarding contracts under this subsection.

**SECTION 6. Section 4 of this 2013 special session Act and the amendments to ORS 238A.050 by section 5 of this 2013 special session Act apply only to conduct resulting in a conviction of a felony that is committed on or after the effective date of this 2013 special session Act.**

#### STATUS OF LEGISLATORS IN PUBLIC EMPLOYEES RETIREMENT SYSTEM

**SECTION 7. (1) A person who is appointed or elected as a member of the Legislative Assembly and who is not a member of the Public Employees Retirement System at the time of the appointment or election:**

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

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

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

**SECTION 8.** ORS 237.650 is amended to read:

237.650. (1) Except as provided in this section, a person **who is** appointed or elected as a member of the Legislative Assembly **and who is a member of the Public Employees Retirement System at the time of the appointment or election** may make a retirement plan election in the manner provided by this section. If a person [*appointed or elected as a member of the Legislative Assembly*] **who is permitted to make an election under this section** does not make a retirement plan election under subsection [(2), (3) or (4)] **(2), (3), (4) or (5)** of this section, the person is deemed to have elected a retirement plan as provided in subsection [(7)] **(6)** of this section.

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

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

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

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

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

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

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

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

[(4) *A person who is appointed or elected as a member of the Legislative Assembly and who is not*

*a member of the Public Employees Retirement System at the time the person takes office may:]*

*[(a) Elect to become a member of the Oregon Public Service Retirement Plan established under ORS chapter 238A for the purpose of service in the Legislative Assembly;]*

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

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

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

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

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

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

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

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

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

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

**[(7)] (6)** Written notice of an election under subsection *[(2), (3) or (4)] (2), (3), (4) or (5)* of this section must be given to the Public Employees Retirement Board not more than 30 days after the person takes office. If the board does not receive written notice of the election within 30 days after the person takes office:

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

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

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

**(d)** A person described in subsection (5) of this section is deemed to have declined to become an active member of the system under ORS chapter 238A or to become a legislator member of the state deferred compensation plan under ORS 237.655, and remains a retired member of the system under ORS chapter 238A for the purpose of service in the Legislative Assembly.

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

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

**SECTION 9.** ORS 237.655 is amended to read:

**237.655. (1)(a)** If a person appointed or elected as a member of the Legislative Assembly elects under ORS 237.650 **or section 7 of this 2013 special session Act** to become a legislator member of the state deferred compensation plan for the purpose of service in the Legislative Assembly, the Legislative Assembly shall make employer contributions to the plan in an amount that is equal to six percent of the member's salary **plus the percentage of the member's salary that would have been contributed to the Public Employees Retirement Board for the member's normal cost under ORS 238A.220, as determined by the actuary under ORS 238.605.**

(b) Notwithstanding paragraph (a) of this subsection, contributions made to the plan by the Legislative Assembly under this subsection may not exceed the maximum allowed by federal law.

(2) If a person appointed or elected as a member of the Legislative Assembly elects under ORS 237.650 or section 7 of this 2013 special session Act to become a legislator member of the state deferred compensation plan for the purpose of service in the Legislative Assembly, and the person also participates in the state deferred compensation plan in the manner provided by ORS 243.401 to 243.507 as other than a legislator member, the total contributions made to the plan by the person and by the employer under subsection (1) of this section may not exceed the maximum allowed by federal law governing the plan's tax qualification.

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

**SECTION 10.** Section 11 of this 2013 special session Act is added to and made a part of ORS 238A.100 to 238A.245.

**SECTION 11.** Notwithstanding any other provision of this chapter:

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

(2) A member of the Legislative Assembly who is a member of the Public Employees Retirement System under this chapter as a member of the Legislative Assembly and who becomes eligible to retire by reason of service as other than a member of the Legislative Assembly, without regard to when that service was performed, may elect, by giving the board written notice, to retire and receive the pension provided by this chapter for service as other than a member of the Legislative Assembly, and to continue, for the purpose of service in the Legislative Assembly, as an active member as a member of the Legislative Assembly.

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

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

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

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

**SECTION 13.** ORS 238A.350 is amended to read: 238A.350. (1) Upon any contributions being made to the individual account program by or on behalf of a member of the program, the Public Employees Retirement Board shall create the account or accounts described in this section. Each account shall be adjusted at least annually in accordance with rules adopted by the board to reflect any net earnings or losses on those contributions and to pay the reasonable administrative costs of maintaining the program to the extent the earnings on the assets of the program are insufficient to pay those costs. The adjustments described in this subsection shall continue until the account is distributed to the member or forfeited.

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

(b) The board shall create a separate employee account for a member who becomes an active member for the purpose of service in the Legislative Assembly under ORS 237.650, which shall consist of the employee contributions made by or on behalf of the member that are attrib-

utable to the member's legislative service, as adjusted under subsection (1) of this section.

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

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

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

**SECTION 14.** ORS 243.163 is amended to read:

243.163. A member of the Legislative Assembly who is receiving a pension or annuity under ORS 238.092 (1)(a) or section 11 (1) of this 2013 special session Act shall be eligible to participate as a retired state officer in one of the group benefit plans described in ORS 243.135 after the member ceases to be a member of the Legislative Assembly if the member applies to the Public Employees' Benefit Board within 60 days after the member ceases to be a member of the Legislative Assembly.

### JUDICIAL REVIEW

**SECTION 15.** (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 16.** 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 17.** 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  
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