

CHAPTER 105

AN ACT

SB 1566

Relating to employer contributions to the Public Employees Retirement System; creating new provisions; amending section 31, chapter 101, Oregon Laws 2018 (Enrolled Senate Bill 1529); repealing sections 31a and 31b, chapter 101, Oregon Laws 2018 (Enrolled Senate Bill 1529); and prescribing an effective date.

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

EMPLOYER INCENTIVE FUND

SECTION 1. (1) The Employer Incentive Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Employer Incentive Fund shall be credited to the fund, but interest earned may not be used under section 2 of this 2018 Act to match lump sum payments made under ORS 238.229.

(2) Moneys in the fund are continuously appropriated to the Public Employees Retirement Board for the purposes described in sections 2 and 26 of this 2018 Act.

SECTION 2. (1)(a) The Public Employees Retirement Board shall establish a process for distributing the moneys in the Employer Incentive Fund established under section 1 of this 2018 Act.

(b) The process must allow a participating public employer to apply to reserve matching amounts in the Employer Incentive Fund by committing to make a qualifying lump sum payment of at least \$25,000 to an account established under ORS 238.229.

(2) The board shall adopt rules establishing:

(a) The percentage of a lump sum payment that may be matched by distributions from the fund, not to exceed 25 percent of a qualifying lump sum payment.

(b) The maximum matching amount that may be reserved by a participating public employer, not to exceed the greater of:

(A) Five percent of the unfunded actuarial liability attributable to the employer, as determined in the most recent report prepared under ORS 238.605; or

(B) \$300,000.

(c) The qualifications for lump sum payments that may be matched under this section. The qualifications must include the following requirements:

(A) The participating public employer must apply to reserve matching funds no later than December 31, 2019.

(B) The participating public employer must make the qualifying lump sum payment no later than July 1, 2023.

(C) A qualifying lump sum payment may not be a payment from moneys borrowed by the employer.

(d) A requirement that the participating public employer participate in the Unfunded Actuarial Liability Resolution Program to develop a plan under section 26 of this 2018 Act.

(3)(a) The board may begin accepting applications under subsection (1) of this section on the date on which the board determines that there are sufficient moneys in the Employer Incentive Fund.

(b) For 180 days after the board begins accepting applications under subsection (1) of this section, a participating public employer may apply to reserve matching amounts from the Employer Incentive Fund under subsection (1) of this section only if the unfunded actuarial liability attributable to the employer, as determined in the most recent report prepared under ORS 238.605, is more than 200 percent of the employer's payroll for members of the Public Employees Retirement System.

(c) After the 180-day period described in paragraph (b) of this subsection, any participating public employer may apply to reserve matching funds from the Employer Incentive Fund under subsection (1) of this section.

(4) The board shall approve applications that meet the qualifications established under subsection (2) of this section in the order in which the applications are submitted. The board shall continue approving applications as long as moneys in the Employer Incentive Fund are available.

(5) The board shall transfer matching amounts approved under subsection (4) of this section from the Employer Incentive Fund to the approved employers' accounts established under ORS 238.229.

(6) The board may transfer moneys from the Employer Incentive Fund to the Public Employees Retirement Fund established under ORS 238.660 for crediting to the reserves for pension accounts and annuities as provided in ORS 238.670 (2).

(7) The board may use moneys in the Employer Incentive Fund for reasonable administrative costs incurred under this section.

SECTION 3. (1) Section 2 of this 2018 Act is repealed January 2, 2025.

(2)(a) The Employer Incentive Fund established under section 1 of this 2018 Act is abolished on January 2, 2025.

(b) The unexpended moneys remaining in the Employer Incentive Fund on January 2, 2025, shall be transferred to the General Fund.

AMORTIZATION PERIOD FOR LUMP SUM PAYMENTS

SECTION 3a. Section 3b of this 2018 Act is added to and made a part of ORS chapter 238.

SECTION 3b. If a participating public employer makes a lump sum payment from moneys not borrowed by the employer to an account established under ORS 238.229 in an amount equal to or greater than \$10 million, the Public Employees Retirement Board shall allow the participating public employer to choose an amortization period of six years, 10 years, 16 years or 20 years for the use of the lump sum payment to offset contributions to the system that the public employer would otherwise be required to make for the liabilities against which the lump sum payment is applied.

NOTE: Sections 4 through 11 were deleted by amendment. Subsequent sections were not renumbered.

PROCEEDS FROM DEBT COLLECTION

SECTION 12. (1) Not later than January 31 of each year, the Oregon Department of Administrative Services shall calculate:

(a) The average amount per fiscal year collected by or on behalf of state agencies required to report under ORS 293.229 for liquidated and delinquent accounts owed to the General Fund during the three fiscal years preceding the immediately preceding fiscal year; and

(b) The amount collected by or on behalf of state agencies required to report under ORS 293.229 for liquidated and delinquent accounts owed to the General Fund during the immediately preceding fiscal year, as reported under ORS 293.229.

(2) If the amount calculated under subsection (1)(b) of this section exceeds the average calculated under subsection (1)(a) of this section, the department shall coordinate the transfer from the General Fund of an amount equal to the excess, less any amount required to be returned to taxpayers under ORS 291.349, to the School Districts Unfunded Liability Fund established in section 24 of this 2018 Act. The department shall coordinate the transfer of amounts required under this section at least once in each biennium.

SECTION 12a. (1) The Oregon Department of Administrative Services shall make the first calculation under section 12 (1)(a) of this 2018 Act no later than January 31, 2019, for the three fiscal years beginning July 1, 2014.

(2) Notwithstanding section 12 (2) of this 2018 Act, the department shall coordinate the first transfer of amounts required under section 12

(2) of this 2018 Act no later than January 31, 2020.

SECTION 12b. Section 12 of this 2018 Act is repealed on December 31, 2024.

PROCEEDS FROM CAPITAL GAINS TAX

SECTION 13. (1) Not earlier than July 1 and not later than October 1 of the years 2019, 2021 and 2023, the division of the Oregon Department of Administrative Services that serves as office of economic analysis shall:

(a) Calculate the rate of change in the tax liability from personal income taxes on taxable capital gains during the five preceding biennia; and

(b) Use the rate of change calculated under paragraph (a) of this subsection to forecast the tax liability from personal income taxes on taxable capital gains for the biennium beginning on July 1 of the year in which the calculation is made.

(2) Not later than November 1 of the odd-numbered year following each calculation under subsection (1) of this section, the Oregon Department of Administrative Services, in consultation with the Department of Revenue, shall estimate the tax liability from personal income taxes on taxable capital gains for the previous biennium.

(3) Not later than November 30 of the odd-numbered year in which the estimate is made under subsection (2) of this section, the Oregon Department of Administrative Services, in consultation with the Department of Revenue, shall determine whether the tax liability from personal income taxes on capital gains estimated under subsection (2) of this section, less any amount required to be returned to taxpayers under ORS 291.349, exceeds the tax liability from personal income taxes on taxable capital gains forecasted under subsection (1) of this section.

(4) Except as provided in subsection (5) of this section, the Department of Revenue shall transfer an amount equal to 25 percent of any excess calculated under subsection (3) of this section to the School Districts Unfunded Liability Fund established in section 24 of this 2018 Act.

(5) The Department of Revenue may not make a transfer under subsection (4) of this section if:

(a) The Legislative Assembly has appropriated moneys from the Oregon Rainy Day Fund under ORS 293.144 on or after the effective date of this 2018 Act; or

(b) The Public Employees Retirement System is more than 90 percent funded as determined in accordance with rules adopted by the Public Employees Retirement Board.

(6) The Department of Revenue shall retain unreceipted revenue from the tax imposed under ORS chapter 316 in an amount necessary to make the transfer required under subsection (4) of this section. The department shall make the transfer out of the unreceipted revenue in lieu of paying the revenue over to the State Treasurer for deposit in the General Fund.

SECTION 14. The division of the Oregon Department of Administrative Services that serves as office of economic analysis shall make the first calculation required under section 13 (1) of this 2018 Act not later than October 1, 2019. The calculation shall be for the five biennia beginning July 1, 2009.

PROCEEDS FROM ESTATE TAXES

SECTION 15. (1) Not earlier than July 1 and not later than October 1 of the years 2019, 2021 and 2023, the division of the Oregon Department of Administrative Services that serves as office of economic analysis shall:

(a) Calculate the rate of change in collections from estate taxes during the five preceding biennia; and

(b) Use the rate of change calculated under paragraph (a) of this subsection to forecast the collections from estate taxes for the biennium beginning on July 1 of the year in which the calculation is made.

(2) Not later than November 1 of the odd-numbered year following each calculation under subsection (1) of this section, the Oregon Department of Administrative Services, in consultation with the Department of Revenue, shall estimate the collections from estate taxes for the previous biennium.

(3) Not later than November 30 of the odd-numbered year in which the estimate is made under subsection (2) of this section, the Oregon Department of Administrative Services, in consultation with the Department of Revenue, shall determine whether the collections from estate taxes estimated under subsection (2) of this section exceed the collections from estate taxes forecasted under subsection (1) of this section.

(4) The Department of Revenue shall transfer an amount equal to the amount of any excess calculated under subsection (3) of this section, less any amount required to be returned to taxpayers under ORS 291.349, to the School Districts Unfunded Liability Fund established in section 24 of this 2018 Act.

(5) The Department of Revenue shall retain unreceipted revenue from estate taxes imposed under ORS 118.005 to 118.540 in an amount necessary to make the transfer required under subsection (4) of this section. The department shall make the transfer out of the unreceipted

revenue in lieu of paying the revenue over to the State Treasurer for deposit in the General Fund.

SECTION 16. The division of the Oregon Department of Administrative Services that serves as office of economic analysis shall make the first calculation required under section 15 (1) of this 2018 Act not later than October 1, 2019. The calculation shall be for the five biennia beginning January 1, 2009.

NOTE: Sections 17 through 21 were deleted by amendment. Subsequent sections were not renumbered.

INTEREST FROM UNCLAIMED PROPERTY

SECTION 22. (1) On January 1 of each year, the Department of State Lands shall transfer from the Common School Fund Account to the School Districts Unfunded Liability Fund established in section 24 of this 2018 Act all or part of the interest earned in the previous calendar year from the cumulative unclaimed property deposited in the Common School Fund Account under ORS 98.386 to which the state has not taken title, as described in subsection (2) of this section.

(2) The amount made available under subsection (1) of this section may not exceed an amount equal to the proceeds from unclaimed property received by the department in the previous calendar year, minus:

(a) The amount paid for unclaimed property claims under ORS 98.396 in the previous calendar year;

(b) The department's investment expenses related to the Common School Fund for the previous calendar year; and

(c) Operating expenses that the department is entitled to recover for the previous calendar year.

SECTION 23. Section 22 of this 2018 Act is repealed on January 2, 2027.

SCHOOL DISTRICTS UNFUNDED LIABILITY FUND

SECTION 24. (1) The School Districts Unfunded Liability Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the School Districts Unfunded Liability Fund shall be credited to the fund. The fund consists of moneys transferred to the fund under sections 12, 13, 15 and 22 of this 2018 Act and other moneys transferred, allocated or appropriated to the fund.

(2) Moneys in the fund are continuously appropriated to the Public Employees Retirement Board for the purpose of establishing and funding a pooled account to be applied against the

liabilities of participating public employers, as defined in ORS 238.005, that are school districts.

(3) The board shall establish an account in the Public Employees Retirement Fund for the moneys in the School Districts Unfunded Liability Fund.

(4) The board shall adopt rules providing for:

(a) Proportional distribution to school districts of the moneys in the account established under subsection (3) of this section;

(b) Amortization of the moneys distributed; and

(c) Administration of the account established under subsection (3) of this section in the same manner as accounts established under ORS 238.229 (2).

(5) No later than February 1 of each odd-numbered year, the board shall report to the Oregon Department of Administrative Services and the Legislative Fiscal Officer an estimate of how moneys will be distributed under this section in the following biennium.

UNFUNDED ACTUARIAL LIABILITY RESOLUTION PROGRAM

SECTION 25. Section 26 of this 2018 Act is added to and made a part of ORS chapter 238.

SECTION 26. (1) The Public Employees Retirement Board shall establish an Unfunded Actuarial Liability Resolution Program. Under the program, the board shall provide technical expertise to participating public employers in developing plans to improve the employers' funded status and to manage projected employer contribution rate changes. Participating public employers are not required to participate in the program.

(2) The board may use moneys in the Employer Incentive Fund established in section 1 of this 2018 Act for reasonable administrative costs incurred under this section.

REPORTING BY PUBLIC EMPLOYEES RETIREMENT BOARD

SECTION 27. Section 28 of this 2018 Act is added to and made a part of ORS chapter 238.

SECTION 28. During each regular session of the Legislative Assembly, the Public Employees Retirement Board shall report to the Joint Committee on Ways and Means on the status of the Employer Incentive Fund established in section 1 of this 2018 Act, the School Districts Unfunded Liability Fund established in section 24 of this 2018 Act and the Unfunded Actuarial Liability Resolution Program established under section 26 of this 2018 Act.

SECTION 29. Section 28 of this 2018 Act is repealed on January 2, 2027.

STUDY BY STATE TREASURER

SECTION 30. (1) The State Treasurer shall study the feasibility and prudence of borrowing moneys currently deposited by state agencies and other state entities into the Oregon Short Term Fund created by ORS 293.728 to be redeployed by the Oregon Investment Council into investments in the Public Employees Retirement Fund created in ORS 238.660, that would generate a higher rate of return sufficient to repay the borrowing and make supplemental deposits targeted at reducing the unfunded actuarial liability of the Public Employees Retirement System. The study must include an examination of recent similar actions in other states.

(2) The State Treasurer shall report to the Legislative Assembly in the manner provided in ORS 192.245 on the results of the study performed under subsection (1) of this section no later than September 30, 2019.

REVIEW BY SUPREME COURT

SECTION 31. (1) Jurisdiction is conferred upon the Supreme Court to determine in the manner provided by this section whether this 2018 Act violates any provision of the Oregon Constitution or of the United States Constitution.

(2) A person who is adversely affected by this 2018 Act or who will be adversely affected by this 2018 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 2018 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)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene in any proceeding relating to this 2018 Act. After a member intervenes in a proceeding relating to this 2018 Act, the member has standing to par-

participate in the proceeding even if the member ceases to be a member of the Legislative Assembly.

(b) A member of the Senate or the House of Representatives who intervenes in or participates in a proceeding under this subsection may not use public funds to pay legal expenses incurred in intervening in or participating in the proceeding.

(7) 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.

(8) The Supreme Court may not award attorney fees to a petitioner in a proceeding under this section.

RECONCILIATION WITH ENROLLED SENATE BILL 1529

SECTION 32. Section 31, chapter 101, Oregon Laws 2018 (Enrolled Senate Bill 1529), is amended to read:

Sec. 31. On or before July 1, 2021, the Department of Revenue shall:

(1) Estimate the increase, if any, of corporate tax revenue received by the department and attributable to the treatment of post-1986 deferred foreign income under An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (P.L. 115-97); and

(2) Notwithstanding ORS 317.853, distribute an amount equal to the estimate required under subsection (1) of this section as follows:

(a) 18 percent shall be transferred to the Employer Incentive Fund established under [section 31a of this 2018 Act] **section 1 of this 2018 Act.**

(b) 82 percent shall be transferred to the School Districts Unfunded Liability Fund established under [section 31b of this 2018 Act] **section 24 of this 2018 Act.**

SECTION 33. Sections 31a and 31b, chapter 101, Oregon Laws 2018 (Enrolled Senate Bill 1529), are repealed.

CAPTIONS

SECTION 34. The unit captions used in this 2018 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 2018 Act.

EFFECTIVE DATE

SECTION 35. This 2018 Act takes effect on the 91st day after the date on which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Approved by the Governor April 10, 2018
Filed in the office of Secretary of State April 10, 2018
Effective date June 2, 2018