

Enrolled House Bill 2004

Sponsored by COMMITTEE ON PUBLIC EMPLOYEES RETIREMENT SYSTEM

CHAPTER

AN ACT

Relating to actuarial equivalency factor tables; creating new provisions; amending ORS 238.630; limiting expenditures; and declaring an emergency.

Whereas the Public Employees Retirement Board has long-standing authority under ORS 238.630 (3)(g) to establish actuarial equivalency factors from time to time, and those factors as established constitute part of the Public Employees Retirement System; and

Whereas actuarial equivalency factors are based on assumptions and conditions that vary over time as the demographics of a system's constituent population and the expected performance of investments of the Public Employees Retirement Fund change, so that the most reasonable expectation is that such factors, by their very nature, must vary over time to reflect those demographic and performance shifts; and

Whereas the long-term stability and viability of the Public Employees Retirement Fund depends on the ability of public employers and taxpayers to pay the costs of the system; and

Whereas the board is charged with giving equal consideration to the interests of the public employer and the public employee to the extent consistent with the board's fiduciary duties; and

Whereas adjustments to actuarial equivalency factors must be made as assumptions and conditions change to ensure that the public employer's actual costs fairly match the actual demographic and performance characteristics that then exist and as reasonably anticipated with the system's fund and membership; and

Whereas based on the review by the Legislative Assembly of the Public Employees Retirement System's plan as a whole, the Legislative Assembly has concluded that the Public Employees Retirement Board's administration of its authority to establish actuarial equivalency factors from time to time does not (a) ensure that the system is run on a sound actuarial basis, (b) conform to the Legislative Assembly's intent that benefits paid represent actuarial equivalencies, (c) sufficiently conform to the Legislative Assembly's direction to balance the interests of the public employer and the public employee and (d) constitute the best process available that is consistent with the board's fiduciary duties; and

Whereas this 2003 Act is intended to redirect the board's future administration of its authority to establish actuarial equivalency factors, define the process by which actuarial equivalency factors are to be reviewed and changed over time, and set a benchmark for when and how those changes are to occur to ensure that the system operates using accurate factors that fully comply with the statutory requirements and, in addition, to ensure that these factors continue to reflect future changes in the fund and the system; now, therefore,

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

SECTION 1. Sections 2, 3 and 4 of this 2003 Act are added to and made a part of ORS chapter 238.

SECTION 2. (1) Once every two calendar years, the Public Employees Retirement Board shall adopt actuarial equivalency factor tables for the purpose of computing the payments to be made to members and their beneficiaries, alternate payees and judge members and their spouses and beneficiaries. The tables may be adopted in conjunction with the system evaluation required by ORS 238.605. Tables adopted under this section must use the best actuarial information on mortality available at the time the board adopts the tables, as provided by the actuary engaged by the board. Actuarial equivalency factor tables adopted under this section become effective on January 1 of the calendar year following adoption of the tables by the board. All computations of payments must use the actuarial equivalency factor tables that are in effect on:

- (a) The effective date of retirement for any member, judge member or alternate payee;
- (b) The date that the first payment is due for any death beneficiary; or
- (c) The date that the first payment is due for any recalculation of payments that is not attributable to error, including but not limited to recalculations under ORS 238.465 (2).

(2) The board may not defer or delay implementation of the actuarial equivalency factor tables adopted under this section.

SECTION 3. The Public Employees Retirement Board shall first adopt actuarial equivalency factor tables under section 2 of this 2003 Act to become effective January 1, 2005.

SECTION 4. (1) Subject to subsections (2) and (3) of this section, for the purpose of computing the retirement allowance of members and alternate payees with effective dates of retirement on or after July 1, 2003, and before January 1, 2005, the Public Employees Retirement Board shall use actuarial equivalency factor tables that are based on the mortality assumptions adopted by the board on September 10, 2002.

(2) The retirement allowance of any member or alternate payee who has an effective date of retirement on or after July 1, 2003, shall be the higher of the following amounts:

(a) The amount calculated for the retirement allowance selected by the member under ORS 238.300, 238.305, 238.320 or 238.325 determined as of the member's or alternate payee's effective date of retirement using actuarial equivalency factor tables in effect on the effective date of retirement for the purpose of all calculations using actuarial equivalency factor tables; or

(b) The amount calculated under subsection (3) of this section.

(3) For each member or alternate payee described in subsection (2) of this section, the board shall establish an account balance as of June 30, 2003. The account balance shall include all employee contributions made by or on behalf of the member as of June 30, 2003, and earnings on those contributions as of June 30, 2003, credited in the manner provided by board rules in effect on the effective date of this 2003 Act governing crediting of earnings upon retirement of a member. The board shall then calculate the retirement allowance selected by the member under ORS 238.300, 238.305, 238.320 or 238.325, except that:

(a) The board shall use the actuarial equivalency factor tables in effect on June 30, 2003, for the purpose of all calculations using actuarial equivalency factor tables; and

(b) The board shall use the account balance established by the board under this subsection for the member as of June 30, 2003.

(4) The board need not perform the calculations described in subsections (2) and (3) of this section for a member if the board actuarially determines that one of the calculations described in subsection (2) or (3) of this section necessarily provides the highest amount.

(5) Any monthly payments to be made to a death beneficiary under ORS 238.390, 238.395 or 238.405 for a member who dies on or after the effective date of this 2003 Act shall be calculated using the actuarial equivalency factor tables that are in effect on the date that the first payment is due to the death beneficiary.

SECTION 5. (1) Exclusive jurisdiction is conferred on the Supreme Court to determine in the manner provided by this section whether the implementation of actuarial equivalency factor tables under section 2 or 4 of this 2003 Act breaches any contract between members of the Public Employees Retirement System and their employers, or violates any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under section 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the United States Constitution.

(2) Under the jurisdiction conferred in subsection (1) of this section, any person aggrieved by the implementation of actuarial equivalency factor tables under section 2 or 4 of this 2003 Act may petition the Supreme Court for relief. The petition must state the facts showing how the petitioner is aggrieved and the grounds upon which the petition is based. The Supreme Court shall give priority on its docket to a petition for relief filed under this section and shall expedite a decision on the petition. Any and all petitions filed under this section alleging a similar basis or bases of challenge may be consolidated by the Supreme Court upon its own motion.

(3) A person petitioning for relief under this section is not required to exhaust administrative remedies or file in any other court.

(4) A petition for relief under this section must be filed before August 15, 2003.

(5) A petition for relief under this section must present a justiciable controversy. The petitioner must serve a copy of the petition on the Attorney General.

(6) Any public employer participating in the Public Employees Retirement System may intervene in any proceeding commenced under this section.

(7) If the Supreme Court determines that factual determinations are necessary for resolution of a proceeding commenced under this section, the Supreme Court may appoint a special master to hear evidence and prepare proposed findings of fact. If the Supreme Court appoints a special master, the court shall allow the parties to conduct discovery under ORCP 36 to 46.

(8) A petition under this section is the exclusive means of determining whether the implementation of actuarial equivalency factor tables under section 2 or 4 of this 2003 Act breaches any contract between members of the Public Employees Retirement System and their employers, or violates any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under section 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the United States Constitution.

SECTION 6. Section 7 of this 2003 Act is added to and made a part of ORS chapter 238.

SECTION 7. (1) The Public Employees Retirement Board shall conduct a study of the life expectancy of members of the Public Employees Retirement System in the categories described in subsection (2) of this section. If the board determines that members in the categories described in subsection (2) of this section have a life expectancy that is substantially shorter than the life expectancy of members of the system generally, the board shall adopt and use separate actuarial equivalency factor tables under section 2 of this 2003 Act for the purpose of computing the payments to be made to members in the categories described in subsection (2) of this section and to the beneficiaries and alternate payees of those members. Any actuarial equivalency factor tables adopted under this section shall first become effective January 1, 2005.

(2) The provisions of this section apply to members of the system who are defined as firefighters under ORS 238.005 (9) or as police officers under ORS 238.005 (16)(a), (b), (d), (e), (f), (L), (n), (o) or (p).

SECTION 8. ORS 238.630 is amended to read:

238.630. (1) The governing authority of the system shall be a board known as the Public Employees Retirement Board and consisting of 12 members appointed by the Governor subject to con-

firmation by the Senate in the manner provided in ORS 171.562 and 171.565. Except as otherwise provided in ORS 238.640, the term of each member shall be three years.

(2) The board shall have:

(a) The powers and privileges of a corporation, including the right to sue and be sued in its own name as such board; and

(b) The power and duty, subject to the limitations of this chapter, of managing the system.

(3) The board:

(a) Shall, at its first meeting each year, designate one of its members to serve as chair of the board for the remainder of the year and until a successor is designated and takes that office;

(b) Shall arrange for actuarial service for the system;

(c) Shall employ a director;

(d) Shall create such other positions as it deems necessary to sound and economical administration of the system, which positions the director shall fill by appointment;

(e) Shall, with the approval of the Director of the Oregon Department of Administrative Services, and as otherwise provided by law, fix the salaries of all persons employed for purposes of administering the system;

(f) Shall publish and distribute to all employer and employee members of the system an annual report including a summary of investments of moneys in the fund, investment earnings, significant legislative or administrative changes in the system and other pertinent information on the operation of the system for the preceding year;

(g) Shall determine the actuarial equivalency of optional forms of retirement allowances and *[establish from time to time]* **adopt** for that purpose the necessary *[actuarial factors]* **actuarial equivalency factor tables in the manner provided by section 2 of this 2003 Act**, which shall constitute a part of the system; and

(h) Shall adopt rules and take all actions necessary to maintain qualification of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. Rules under this paragraph may impose limits on contributions to the system, limits on benefits payable from the system and other limitations or procedures required or imposed under federal law or regulation for the purpose of qualification of the Public Employees Retirement System and Public Employees Retirement Fund under the Internal Revenue Code as a governmental retirement plan and trust.

(4) The board established by this section shall succeed to all the duties and prerogatives of the Public Employees Retirement Board created by chapter 401, Oregon Laws 1945, in relation to the Public Employees Retirement Fund, and in addition shall perform all duties required of it by ORS 237.950 to 237.980, in regard to moneys payable to or from such fund.

(5) The board shall identify by rule those records that must be maintained by participating public employers for the purposes of subsection (3)(h) of this section. A participating public employer shall maintain records for all employees who are members of the system as required by board rules, and shall provide that information to the board upon request.

SECTION 9. Notwithstanding any other law, the amount of \$5,098,863 is established for the biennium beginning July 1, 2003, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Public Employees Retirement System, for purposes of implementing the provisions of this 2003 Act.

SECTION 10. The Public Employees Retirement Board shall recalculate the contribution rates of all public employers that participate in the Public Employees Retirement System to reflect changes in those rates attributable to this 2003 Act and attributable to any other law enacted by the Seventy-second Legislative Assembly that affects contribution rates of participating public employers. The board shall issue revised contribution rate orders to participating public employers within 90 days after the regular session of the Seventy-second

Legislative Assembly adjourns sine die. Revised rate orders issued under this section are effective July 1, 2003.

SECTION 11. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.

Passed by House February 27, 2003

Received by Governor:

Repassed by House May 6, 2003

.....M,....., 2003

Approved:

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Chief Clerk of House

.....M,....., 2003

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Speaker of House

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Governor

Passed by Senate May 2, 2003

Filed in Office of Secretary of State:

.....M,....., 2003

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President of Senate

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Secretary of State