

Enrolled House Bill 2401

Sponsored by COMMITTEE ON PUBLIC EMPLOYEES RETIREMENT SYSTEM

CHAPTER

AN ACT

Relating to payment of certain costs incurred by Public Employees Retirement System; creating new provisions; and amending ORS 238.095, 238.157, 238.162, 238.175, 238.610 and 238.715.

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

SECTION 1. ORS 238.095 is amended to read:

238.095. (1) An employee shall cease to be a member of the Public Employees Retirement System if the employee withdraws the member account of the member in the manner provided by ORS 238.265.

(2) Except as provided in subsection (3) of this section, an employee shall cease to be a member of the system if the employee is absent from the service of all employers participating in the system for a total of more than five consecutive years after the employee becomes a member of the system.

(3) A school district employee shall not cease to be a member of the system under subsection (2) of this section if:

(a) After completing a school year, the member is absent from the service of all employers participating in the system for the next following five school years; and

(b) The member either returns to school employment at the beginning of the sixth school year, or reaches earliest service retirement age before the beginning of the sixth school year.

(4) Interest shall not accrue on the amount in the member account of the former member from the date that membership is terminated under subsection (2) of this section. **Upon request by the former member**, the Public Employees Retirement Board shall pay the amount in a member account to a former member upon the termination of the membership of the former member under subsection (2) of this section if the former member is separated from all service with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the **Public Employees Retirement Fund** as a qualified governmental retirement plan and trust. **The board may deduct, from the amount paid to a former member under this subsection, all reasonable costs incurred by the system in locating the member.**

SECTION 2. ORS 238.157 is amended to read:

238.157. (1) Any person who entered or reentered active service in the Armed Forces of the United States after January 1, 1950, for other than active duty for training, or who was in active service in the Armed Forces of the United States on January 1, 1950, for other than active duty for training, and who, after being other than dishonorably discharged therefrom, entered the employ of an employer participating in the Public Employees Retirement System, may acquire retirement credit for up to four years of active service in the Armed Forces by paying in a lump sum to the Public Employees Retirement Board within 90 days of the member's effective date of retirement an

amount determined by the board to represent the full cost to the system of providing the retirement credit to the member, **including all administrative costs incurred by the system in processing the application for acquisition of the retirement credit.**

(2) No person shall receive retirement credit under this section for any period of service with the Armed Forces of the United States for which that person receives credit under the provisions of ORS 238.156 or for which the person is receiving or entitled to receive a pension or retirement pay under a public retirement system established by the United States for the performance of service in the Armed Forces.

SECTION 3. ORS 238.162 is amended to read:

238.162. (1) A member of the Public Employees Retirement System who is a teacher as described in subsection (3) of this section is entitled to receive retirement credit as provided in subsection (2) of this section if:

(a) The member was employed as a teacher in a public school in another state before being employed in a position that entitled the member to credit in the system; and

(b) The member makes the payment required by subsection (2) of this section within the time specified by that subsection.

(2) Except as provided in subsection (4) of this section, a member of the system employed as a teacher as described in subsection (3) of this section and who meets the requirements of subsection (1) of this section is entitled to receive retirement credit for the period of the member's service with a public school in another state, not to exceed a maximum of four years, if the member within 90 days of the member's effective date of retirement:

(a) Applies in writing to the Public Employees Retirement Board for such retirement credit;

(b) Provides written verification to the board from the public employer that employed the member in the other state, verifying the period of time that the member served as a teacher in a public school in the other state; and

(c) Pays to the board, in a lump sum, for each year of retirement credit applied for under this section, an amount determined by the board to represent the full cost to the system of providing the retirement credit to the member, **including all administrative costs incurred by the system in processing the application for acquisition of the retirement credit.**

(3) The provisions of this section apply only to a licensed teacher, as defined in ORS 342.120, who is employed by a common school district, a union high school district or an education service district.

(4) A member may not receive retirement credit under the provisions of this section for any period of service with a public school in another state if the member is entitled to a pension or retirement allowance by reason of that service under a public plan or system offered by the other state.

SECTION 4. ORS 238.175 is amended to read:

238.175. (1) A member of the Public Employees Retirement System who receives a disability retirement allowance or disability payments under ORS chapter 656 shall receive retirement credit for the period during which the member receives the disability retirement allowance or disability payments if the member receives the allowance or payments by reason of injury or disease sustained while in actual performance of duty and not intentionally self-inflicted.

(2) A member of the Public Employees Retirement System who receives a disability retirement allowance or disability payments under ORS chapter 656 by reason of injury or disease that was not sustained while in actual performance of duty and that was not intentionally self-inflicted shall receive retirement credit for all or part of the period during which the member receives the disability retirement allowance or disability payments if the member, within 90 days before the effective date of retirement of the member, applies in writing to the Public Employees Retirement Board for that retirement credit and pays to the board in a lump sum an amount determined by the board to represent the full cost to the system of providing the retirement credit to the member, **including all administrative costs incurred by the system in processing the application for acquisition of the retirement credit.**

(3) A member may acquire retirement credit under the provisions of this section for the purposes of calculating a service retirement allowance only if the member returns to employment with a participating public employer after the period of disability.

(4) A member may not acquire retirement credit under the provisions of this section for a period of time that is in excess of the period of time used in calculating the disability retirement allowance paid to the member under ORS 238.320 during the period of disability for which the member seeks credit. For the purposes of this subsection, the retirement credit that may be acquired by a police officer or firefighter who elects to receive the optional, service-connected disability retirement allowance provided for under ORS 238.345 shall be determined as though the police officer or firefighter had received a disability retirement allowance calculated under ORS 238.320.

(5) Retirement credit acquired under this section may be used for the purpose of establishing eligibility under ORS 238.115, 238.125 or 238.135 or any other provision of this chapter that requires a specified number of years of creditable service.

(6) Retirement credit under this section may be acquired only for periods occurring on or after January 1, 1985, during which a member receives a disability retirement allowance or disability payments under ORS chapter 656.

SECTION 5. ORS 238.610 is amended to read:

238.610. (1) The administrative expenses of the **Public Employees Retirement** System shall be paid from interest earned by the **Public Employees Retirement** Fund; provided, that if such interest be insufficient the expense in excess thereof shall be paid from the contributions which this chapter requires participating employers to pay into the Public Employees Retirement Fund. **The Public Employees Retirement Board by rule may establish procedures for recovering administrative costs from members for services provided in estimating retirement benefit amounts and processing payments if the board determines that the services requested by an individual member result in extraordinary costs to the system.**

(2) In order to facilitate financing the establishment and administration of the system the board may designate fiscal periods and may provide that extraordinary expenses incurred during one such period, such as expenses for equipment and actuarial studies, may, for purposes of equitably distributing part of the burden of the expenses, be apportioned to subsequent fiscal periods in such manner as to the board seems equitable.

(3) For each fiscal period designated by the board there shall be deducted from the interest earned by the [retirement] fund, the administrative expenses of the system for that period; provided, that if such interest be insufficient for such purpose, the excess expense shall be paid by deducting from the account of each employer participating in the system that fraction of the administrative expense of the system for that period which the employer's total contribution to the fund for the period is of the sum of all the employers' contributions to the fund for the period.

(4) Amounts payable as refunds and retirement allowances shall not for any purpose be deemed expenses of the board and shall not be included in its biennial departmental budget.

SECTION 6. ORS 238.715 is amended to read:

238.715. (1) If the Public Employees Retirement Board determines that a member of the **Public Employees Retirement** System or any other person receiving a monthly payment from the Public Employees Retirement Fund has received any amount in excess of the amounts that the member or other person is entitled to under this chapter, the board may recover the overpayment or other improperly made payment by:

(a) Reducing the monthly payment to the member or other person for as many months as may be determined by the board to be necessary to recover the overpayment or other improperly made payment; or

(b) Reducing the monthly payment to the member or other person by an amount actuarially determined to be adequate to recover the overpayment or other improperly made payment during the period during which the monthly payment will be made to the member or other person.

(2)(a) Any person who receives a payment from the Public Employees Retirement Fund and who is not entitled to receive that payment, including a member of the system who receives an over-

payment, holds the improperly made payment in trust subject to the board's recovery of that payment under this section or by a civil action or other proceeding.

(b) The board may recover an improperly made payment in the manner provided by subsection (1) of this section from any person who receives an improperly made payment from the fund and who subsequently becomes entitled to receive a monthly payment from the fund.

(c) The board may recover an improperly made payment by reducing any lump sum payment in the amount necessary to recover the improperly made payment if a person who receives an improperly made payment from the fund subsequently becomes entitled to receive a lump sum payment from the fund.

(3) Unless the member or other person receiving a monthly payment from the fund authorizes a greater reduction, the board may not reduce the monthly payment made to a member or other person under the provisions of subsection (1) of this section by an amount that is equal to more than 10 percent of the monthly payment.

(4) Before reducing a benefit to recover an overpayment or erroneous payment, or pursuing any other collection action under this section, the board shall give notice of the overpayment or erroneous payment to the person who received the payment. The notice shall describe the manner in which the person who received the payment may appeal the board's determination that an overpayment or erroneous payment was made, the action the board may take if the person does not respond to the notice and the authority of the board to assess interest, penalties or costs of collection.

(5) If the board determines that an overpayment or erroneous payment was **not** caused by [*a fraudulent or intentional act of the person who received the payment*] **the system or by a participating public employer**, the board may assess interest in an amount equal to one percent per month on the balance of the improperly made payment until the payment is fully recovered. The board may also assess to the member or other person all costs incurred by the [*board*] **system** in recovering the payment, including attorney fees. Interest and costs may be collected in the manner prescribed in subsections (1) and (2) of this section. The board may waive the interest and costs on an overpayment or other improperly made payment for good cause shown.

(6) Notwithstanding ORS 293.240, the board may waive the recovery of any payment or payments made to a person who was not entitled to receive the payment or payments if the total amount of the overpayment or other improperly made payments is less than \$50.

(7) A payment made to a person from the fund may not be recovered by the board unless within six years after the date that the payment was made the board has commenced proceedings to recover the payment. For the purposes of subsection (1) of this section, the board shall be considered to have commenced proceedings to recover the payment upon mailing of notice to the person receiving a monthly payment that the board has determined that an overpayment or other improperly made payment has been made.

(8) The remedies authorized under this section are supplemental to any other remedies that may be available to the board for recovery of amounts incorrectly paid from the fund to members of the system or other persons.

(9) The board shall adopt rules establishing the procedures to be followed by the board in recovering overpayments and erroneous payments under this section.

SECTION 7. (1) The amendments to ORS 238.095 by section 1 of this 2003 Act apply only to payments made to former members of the Public Employees Retirement System under ORS 238.095 on or after the effective date of this 2003 Act.

(2) The amendments to ORS 238.157, 238.162 and 238.175 by sections 2, 3 and 4 of this 2003 Act apply only to acquisitions of retirement credit made on or after the effective date of this 2003 Act.

(3) The amendments to ORS 238.715 by section 6 of this 2003 Act apply to all overpayments and erroneous payments, whether made before, on or after the effective date of this 2003 Act.

Passed by House March 19, 2003

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Chief Clerk of House

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Speaker of House

Passed by Senate May 2, 2003

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President of Senate

Received by Governor:

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

Approved:

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

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Governor

Filed in Office of Secretary of State:

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

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Secretary of State