

## **An Act to Protect Public Employee Pensions and Preserve Public Services**

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

**SECTION 1. Findings of Fact.** The people of Oregon find that:

- (1) Oregon's Public Employees Retirement System (PERS) has accumulated unfunded liabilities in excess of \$20 billion in its pension program;
- (2) These liabilities resulted from pension payouts that have exceeded the system's goal for retirement benefits, lower-than-projected earnings on the system's investments and failures to recognize and account for the true costs of the system's pension program;
- (3) Further, the costs of the PERS pension program were shifted in full in 2004 to public employers and the taxpayers who fund then, after the enactment of legislation that ended the requirement for public employees to contribute six percent of their pay to support their pension benefits;
- (4) Also, in 2004, PERS created a separate 401(k)-style retirement savings program for all covered employees, to which public employees or their employers now contribute six percent of pay, and this program now funds supplemental retirement benefits in addition to the benefits of the pension program;
- (5) The costs borne by public employers for sustaining PERS pension benefits has more than doubled from the historic average of 12 percent of payroll to more than 25 percent of payroll and will exceed 30 percent of payroll over the next three years;
- (6) For the average Oregon household, the share of the annual taxes and fees paid to support PERS pension benefits climbed from \$620 in 2010 to \$1,560 today and will exceed \$2,200 annually by 2025;
- (7) These cost increases are billed to K-12 school districts, community colleges, public universities, police and fire departments, public health clinics, libraries, senior service agencies and other public programs, thereby forcing reductions in services or increases in taxes and fees at all levels of government in Oregon;
- (8) These costs will continue to burden public employers and taxpayers unless changes are made to the financing of the system;
- (9) Recent court decisions have clarified that all PERS benefits earned to date must be honored, but that changes to the system can be legally enacted on a going-forward basis for current as well as future employees;
- (10) Defined contribution plans, such as 401(k)-style plans commonly offered by private employers, may provide more flexible and portable benefits for employees while stabilizing costs for employers and taxpayers; and,
- (11) Employee contributions are standard features of retirement plans in the private sector and in public pension systems in other states, where employee payments to support their pension benefits average six

percent of salary, according to the National Association of State Retirement Administrators.

**SECTION 2. Reinstatement of Employee Contributions to Secure and Sustain Pension Benefits and Preserve Public Services; Consideration of an Optional Alternative 401(k)-style Plan for New Hires.** We,

the people of Oregon, affirm the obligation to protect the retirement benefits earned by public employees and retirees and recognize the need to stabilize the costs of PERS for public employers and taxpayers while maintaining adequate and competitive retirement benefits for public employees in the future. For these purposes, we enact the following changes to the Public Employees Retirement System to:

- (1) Reinststate the requirement that employees participating in the pension plan share in the cost of sustaining the plan on a going-forward basis;
- (2) Protect all retirement benefits earned to date;
- (3) Protect future pension benefits based on the years-of-service formula for service retirements, provided employees share in the cost of sustaining the plan on a going-forward basis;
- (4) Allow employees enrolled in the pension program to direct a portion of their future contributions to the existing 401(k)-style supplemental retirement savings plan, known as the Individual Account Program, to cover their contributions to the pension plan, thereby protecting them from any reduction in salary or take-home pay as a result of the reinstatement of employee contributions;
- (5) Recognize that arrangements by which employers agree to pay an employee's contribution to the Individual Account Program may be established or continue in effect and be applied to supporting the pension plan when the employer payment is made in lieu of an equivalent amount of an employee's salary;
- (6) Apply employer savings from employee contributions to preserve and enhance services for Oregonians; and,
- (7) Study and consider the option of allowing new public employees to choose between the pension program or an expanded 401(k)-style retirement savings plan.

**Section 3. Reinstatement of Employee Contributions to Share the Costs of Sustaining Pension Benefits.**

- (1) (a) Employees enrolled in the Public Employees Retirement System pension program shall contribute one third of the going-forward costs of pension benefits earned for their service pursuant to ORS 238.300 and ORS 238A.100 to 238A.250, beginning July 1, 2021.

- (b) "Going-forward costs" as used herein shall have the meaning of normal costs as used by the Public Employees Retirement Board for setting contributions rates for future benefits, excluding any unfunded liabilities for prior service.
- (c) The Public Employees Retirement Board shall not reduce going-forward costs with offsetting amounts from any participating employer's or employer group's prepayment accounts until the unfunded actuarial liability for the participating employer or employer group is reduced to zero.
- (2) The amount of employee contributions required under this Section shall be determined separately as a percentage of salary, not to exceed six percent, for each of the following categories of active members in the Public Employees Retirement System and for General Service members and for Police Officer and Firefighter members within these categories:
- (a) Tier One members who established membership in the Public Employees Retirement System before January 1, 1996;
- (b) Tier Two members who established membership in the Public Employees Retirement System on and after January 1, 1996 and before August 29, 2003;
- (c) Oregon Public Service Retirement Plan members who established membership in the Public Employees Retirement System on or after August 29, 2003.
- (3) Employee contributions established under this section shall be computed to the nearest one-tenth of one percent.
- (4) The determinations of employee contribution rates shall be made by the Public Employees Retirement Board for the two-year period beginning July 1, 2021 and adjusted every two years thereafter based on actuarial evaluations of the cost of the pension program.
- (5) Employee contributions under this section may not be used to provide additional benefits pursuant to the Money Match method of determining a service retirement allowance under ORS 238.300(2)(b)(A).
- (6) Except as provided by the operations of Section 5 and Section 6 of this 2020 Act, employers may not pick up, assume or pay the employee's contribution under this Section.

**Section 4. Protection of Pension Benefits for Contributing Employees.**

Beginning July 1, 2021 and thereafter, as long as the employee contributions specified in Section 3 of this 2020 Act remain in effect, the service retirement benefits based on final average salary multiplied by the number of years of membership in the pension program, the computation of final average salary and the age for normal retirement shall not be modified or reduced.

**Section 5. Continuation of the Individual Account Program with Employees' Option for Directing Contributions to the Pension Plan.**

- (1) Notwithstanding ORS 238A.305(2), employee participation in the Individual Account Program pursuant to ORS 238A.300 shall continue in effect.
- (2) Beginning July 1, 2021, employees may choose to direct all or a portion of their contributions to the Individual Account Program in amounts needed to cover their contributions to the pension plan pursuant to Section 3 of this 2020 Act, unless prohibited by a collective bargaining agreement.

**Section 6. Employer Payments of Employees' Contributions to the Individual Account Program.**

Employers may continue to pick up, assume or pay the employee's contribution to the Individual Account program pursuant to ORS 238A.335.

**Section 7. Employer Contribution Rates To Be Reduced by Employee Contributions; Application of Savings for Employers to Preserve, Expand and Enhance Public Services.**

- (1) When the Public Employees Retirement Board determines the amounts actuarially necessary to adequately fund benefits under ORS 238.225, the Board shall reduce the required contributions by participating employers by the amounts contributed by employees under Section 3 of this 2020 Act.
- (2) As soon as practicable after the effective date of this 2020 Act, the Public Employees Retirement Board shall:
  - (a) Determine the amount of savings in employer contributions that are attributable to the provisions of this 2020 Act;
  - (b) Recalculate the contribution rates of all employers, pursuant to ORS 238.225, to reflect the provisions of this 2020 Act.
- (3) The board shall issue corrected contribution rates to participating employers affected by rates recalculated under this Section as soon as practicable after the effective date of this 2020 Act. The corrected rates are effective July 1, 2021.
- (4) Cost reductions for participating employers as the result of the contribution rate reductions under this Section shall be applied to preserve, expand and enhance public services for Oregonians.

**Section 8. Exceptions.**

- (1) The provisions of this 2020 Act do not apply to:

- (a) A judge member as defined in ORS 238.500 who participates in and contributes to the pension plan under ORS 238.515.
- (b) A member of the Legislative Assembly who is not eligible to participate in the pension plan.
- (c) Employees of an institution of higher education, as defined in ORS 238A.005(10), who have the option of enrolling in the PERS pension plan or an alternative retirement savings plan.

**Section 9. Consideration of an Expanded 401(k)-style Plan as an Option for New Employees.**

- (1) No later than November 30, 2021, the Oregon State Treasury shall complete and forward to the Governor and the Legislative Assembly a study assessing the feasibility, benefits and costs for participating employers and public employees of creating an alternative 401(k)-style defined contribution plan as an option for newly-hired general service employees beginning July 1, 2022.
- (2) The study required under subsection 1 of this Section shall include a consideration of at least one option based on:
  - (a) Employer contributions of eight percent of pay that vest for the employee after three years of service.
  - (b) Employee contributions of four percent of pay that vest for the employee immediately.
  - (c) Substantially similar provisions to the Individual Account Program now in effect.

**Section 10. Implementation**

- (1) The Public Employees Retirement Board shall adopt rules needed to facilitate the timely implementation of this 2020 Act, including the creation of segregated member contribution accounts within the Individual Account Program and within the pension program to effect the transfer of employee contributions to support the going-forward costs of pension benefits pursuant to Section 3, Section 5 and Section 6 of this 2020 Act.
- (2) The Legislative Assembly shall codify the provisions of this 2020 Act within Chapters 238 and 238A of the Oregon Revised Statutes. Unless otherwise defined in this 2020 Act, the words and phrases used in this 2020 Act shall have the same meaning given them in ORS Chapters 238 and 238A and in rules of the Oregon Public Employees Retirement System, Chapter 459.
- (3) The Public Employees Retirement Board shall seek timely qualification of any plan changes required by this 2020 Act which necessitate a determination of compliance with the requirements of the Internal Revenue Code for qualified retirement plans.

**Section 11. Severability**

If any provision of this 2020 Act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this 2020 Act that can be given effect without the invalid provision or application, and to this end the provisions of this 2020 Act are severable.

**SECTION 12. Judicial Review.**

(1) Jurisdiction is conferred upon the Supreme Court to determine in the manner provided by this section whether this 2020 Act breaches any contract between members of the Public Employees Retirement System and their employers or violates any provision of the Oregon Constitution or of the United States Constitution, 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.

(2) A person who is adversely affected by this 2020 Act or who will be adversely affected by this 2020 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 2020 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.

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

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