

Senate Bill 1128

Sponsored by Senator GORSEK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act says that a police officer or firefighter member is disabled for PERS if the member can't go back to the job they had. (Flesch Readability Score: 63.0).

Provides that a police officer or firefighter member of the Public Employees Retirement System is considered disabled if the member is unable to perform the work the member performed at the time the member became disabled.

A BILL FOR AN ACT

Relating to disability under the Public Employees Retirement System; creating new provisions; and amending ORS 238.320, 238.325, 238.340, 238A.155 and 238A.235.

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

SECTION 1. ORS 238.320 is amended to read:

238.320. *[(1) Whenever an employee who is a member of the Public Employees Retirement System is found, after being examined by one or more physicians selected by the Public Employees Retirement Board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, the member shall receive a disability retirement allowance consisting of:]*

(1)(a)(A) Except as provided in subparagraph (B) of this paragraph, an employee who is a member of the Public Employees Retirement System is considered to be disabled if the employee is found, after being examined by one or more physicians selected by the Public Employees Retirement Board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted.

(B) An employee who is a member of the Public Employees Retirement System and who is employed as a police officer or firefighter is considered to be disabled if the employee is found, after being examined by one or more physicians selected by the Public Employees Retirement Board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform the work the member performed at the time the member became disabled, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted.

(b) When a member is found to be disabled under this subsection, the member shall receive a disability retirement allowance consisting of:

[(a)] (A) A disability retirement refund annuity based on the contributions under this chapter, if any, credited to the member account of the member.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 [(b)] (B) A current service pension provided by the contributions of employers and, for benefits
 2 that accrue on or after July 1, 2020, amounts in the employee pension stability account established
 3 for the member under ORS 238A.353, equal to:

4 [(A)] (i) For a police officer or firefighter, the pension to which the member would have been
 5 entitled if the member had worked continuously until attaining the age of 55, or if the member has
 6 attained the age of 55, the pension which the member would receive were the member to retire for
 7 service, as provided in this chapter.

8 [(B)] (ii) For a member other than a police officer or firefighter, the pension to which the
 9 member would have been entitled if the member had worked continuously until attaining the age
 10 of 58, or if the member has attained the age of 58, the pension which the member would receive were
 11 the member to retire for service, as provided in this chapter.

12 [(c)] (C) The same prior service pension the member would have received had the member
 13 worked until normal retirement age.

14 (2) As used in subsection (1) of this section, "injury" means bodily injury causing the disability
 15 directly and independently of all other causes and effected solely through accidental means.

16 (3)(a) **Except as provided in paragraph (b) of this subsection**, whenever an employee who is
 17 a member of the system and who has been an employee for 10 years or more of an employer par-
 18 ticipating in the system is found, after being examined by one or more physicians selected by the
 19 board, to be mentally or physically incapacitated for an extended duration, as determined by medical
 20 examination, and thereby unable to perform any work for which qualified, from cause other than
 21 injury or disease sustained while in actual performance of duty or intentionally self-inflicted, the
 22 member shall receive a disability retirement allowance as provided in subsection (1) of this section.

23 **(b) Whenever an employee who is a member of the system, who is employed as a police**
 24 **officer or firefighter and who has been an employee for 10 years or more of an employer**
 25 **participating in the system is found, after being examined by one or more physicians selected**
 26 **by the board, to be mentally or physically incapacitated for an extended duration, as deter-**
 27 **mined by medical examination, and thereby unable to perform the work the member per-**
 28 **formed at the time the member became disabled, from cause other than injury or disease**
 29 **sustained while in actual performance of duty or intentionally self-inflicted, the member shall**
 30 **receive a disability retirement allowance as provided in subsection (1) of this section.**

31 (4) Payments under a disability retirement allowance provided for in subsection (1) or (3) of this
 32 section for the first 90-day period of incapacity shall be withheld until such 90-day period has
 33 elapsed.

34 (5) An inactive member is not eligible for disability benefits referred to in subsection (1) or (3)
 35 of this section unless the member applies for such disability benefits within five calendar years after
 36 the date of separation from service with a participating public employer if the disability is contin-
 37 uous from such separation date or within six months after the date of such separation from service
 38 if disability occurs after such separation date.

39 (6) In computing years of employment for the purpose of subsection (3) of this section, the fol-
 40 lowing schedule shall be used: For employment before the employee established membership in the
 41 Public Employees Retirement System, a member shall be considered to have been employed for one
 42 year for each year of prior service credit allowed, and for any minor fraction of a year of continuous
 43 service as certified by the employer for which no prior service credit was granted. After having
 44 established membership in the Public Employees Retirement System a member shall be considered
 45 to have been employed one year for each 12-month period or major fraction thereof during which

time the member received compensation for employment which entitled the member to membership in the system, as evidenced by payroll records. For the purpose of determining a member's eligibility for disability benefits, no leave of absence after a member ceases to work for any participating employer shall be considered other than accumulated sick leave not in excess of 90 days. The effective date of the disability shall not in any event be determined by the board as prior to the last day for which the disabled member performed services for a participating employer. No benefits may be paid for any month in which the member received salary or sick leave benefits from the participating employer.

(7) For the purposes of subsections (1) and (3) of this section, a member of the system shall be considered to be mentally or physically incapacitated for an extended duration if the mental or physical incapacity can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 90 days.

SECTION 2. ORS 238.340 is amended to read:

238.340. (1) **Except as provided in subsection (2) of this section,** when a member retired because of disability is determined by the Public Employees Retirement Board to be not incapacitated to the extent that the member is disabled from the performance of any work for which the member is qualified, the disability retirement shall be canceled forthwith, the member shall be eligible for reemployment and the member account of the member shall be credited with the amount that stood to the credit in the member account of the member in the fund at the time of retirement for disability. *[Any such person who for any reason is not reinstated in the service of an employer participating in the system shall receive separation benefits or service retirement benefits as provided in this chapter.]*

(2) When a member retired because of disability who was employed as a police officer or firefighter at the time the member became disabled is determined by the Public Employees Retirement Board to be not incapacitated to the extent that the member is disabled from the performance of the work the member performed at the time the member became disabled, the disability retirement shall be canceled forthwith, the member shall be eligible for reemployment and the member account of the member shall be credited with the amount that stood to the credit in the member account of the member in the fund at the time of retirement for disability.

(3) A member retired because of disability who for any reason is not reinstated in the service of an employer participating in the system shall receive separation benefits or service retirement benefits as provided in this chapter.

SECTION 3. ORS 238A.235 is amended to read:

238A.235. (1) An active member of the pension program described in subsection (2) of this section who becomes disabled shall receive a disability benefit in the amount of 45 percent of the salary of the member determined as of the last full month of employment before the disability commences.

(2) The provisions of this section apply only to:

(a) A member, other than a school employee as defined by ORS 238A.140, who has accrued 10 years or more of retirement credit before the member becomes disabled;

(b) A member who is a school employee as defined by ORS 238A.140 and who was an active member in 10 or more calendar years before the member becomes disabled; or

(c) A member who becomes disabled by reason of injury or disease sustained while in the actual performance of duty.

(3) A disability benefit under this section shall be paid until:

1 (a) The member is no longer disabled;

2 (b) The member attains normal retirement age under ORS 238A.160; or

3 (c) The member retires on or after the earliest normal retirement date for the member under
4 ORS 238A.165.

5 (4)(a) **Except as provided in paragraph (b) of this subsection**, a member is considered to be
6 disabled for the purpose of this section if the member is found, after being examined by one or more
7 physicians selected by the **Public Employees Retirement** Board, to be mentally or physically in-
8 capacitated for an extended duration and unable to perform any work for which qualified, by reason
9 of injury or disease that was not intentionally self-inflicted.

10 (b) **A member who is employed as a police officer or firefighter is considered to be disa-**
11 **bled for the purpose of this section if the member is found, after being examined by one or**
12 **more physicians selected by the board, to be mentally or physically incapacitated for an ex-**
13 **tended duration and unable to perform the work the member performed at the time the**
14 **member became disabled, by reason of injury or disease that was not intentionally self-**
15 **inflicted.**

16 **SECTION 4.** ORS 238A.155 is amended to read:

17 238A.155. (1) Notwithstanding any other provision of ORS 238A.100 to 238A.250, an active
18 member of the pension program who becomes disabled shall accrue retirement credit and hours of
19 service credit for vesting purposes for the period during which the member is disabled.

20 (2) Retirement credit accrues under this section only for as long as the member remains disabled
21 or until the member reaches the normal retirement age under ORS 238A.160.

22 (3) If a disabled member does not return to employment with a participating public employer
23 after the period of disability, the member shall receive a pension under ORS 238A.180, 238A.185 or
24 238A.190 upon retirement based on an adjusted salary. The adjusted salary shall be the salary paid
25 to the disabled member on the date the member left active employment with the participating public
26 employer by reason of disability, adjusted for each year after the member left employment and before
27 the member's effective date of retirement to reflect cost-of-living changes, based on the Consumer
28 Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor
29 Statistics of the United States Department of Labor. Adjustments under this subsection may not
30 exceed a two percent increase or decrease for any year. An adjustment shall be made under this
31 subsection only for calendar years in which the member is disabled for at least six months during
32 the year.

33 (4) Retirement credit for the period of disability under this section shall be classified the same
34 as the member's last qualifying position prior to the disability.

35 (5) A pension program member is considered to be disabled for the purpose of this section if:

36 (a)(A) **Except as provided in subparagraph (B) of this paragraph**, the member is found, after
37 being examined by one or more physicians selected by the Public Employees Retirement Board, to
38 be mentally or physically incapacitated for an extended duration and unable to perform any work
39 for which qualified, by reason of injury or disease that was not intentionally self-inflicted; or

40 (B) **If the member was employed as a police officer or firefighter at the time the member**
41 **became disabled, the member is found, after being examined by one or more physicians se-**
42 **lected by the board, to be mentally or physically incapacitated for an extended duration and**
43 **unable to perform the work the member performed at the time the member became disabled,**
44 **by reason of injury or disease that was not intentionally self-inflicted; or**

45 (b) The member receives workers' compensation benefits by reason of injury or disease that was

sustained while in actual performance of duty with a participating public employer and that was not intentionally self-inflicted and returns to employment with a participating public employer after the period of disability.

SECTION 5. ORS 238.325 is amended to read:

238.325. (1) At any time after establishing membership, but before the expiration of 90 days after the Public Employees Retirement Board makes its finding that the employee is disabled, an employee who is a member of the Public Employees Retirement System may elect to convert the disability retirement allowance otherwise payable on the member account of the member into a disability retirement annuity of equivalent actuarial value, by selecting one of the optional forms named below. The election of Option 2, 2A, 3 or 3A shall be effective immediately upon the effective date of the member's disability, and in the event of death within the first 90-day period of incapacity, payment to the beneficiary of the member shall be made in accordance with the option selected.

Option 1. (a) A life annuity (nonrefund) payable during the member's life only, which shall be the actuarial equivalent of the accumulated contributions under this chapter and interest thereon credited to the member at the time the member retires (if death occurs before the first payment is due, the member account of the member shall be treated as though death had occurred before retirement); (b) a life pension (nonrefund) provided by the contributions of employers and, for benefits that accrue on or after July 1, 2020, amounts in the employee pension stability account established for the member under ORS 238A.353 as provided in ORS 238.320 [(1)(b)] **(1)(b)(B)**; (c) an additional nonrefund pension for prior service credit, including military service, credited to the member at the time the member first becomes a member of the system, as elsewhere provided in this chapter, which pension shall be provided by the contributions of the employer; or

Option 2. A reduced disability retirement allowance payable during the period of incapacity, with the provision that after death, if death shall occur after the effective date of the disability and during the period of incapacity, it shall continue for the life of the beneficiary whom the member has designated in writing duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 2A. A reduced disability retirement allowance payable during the period of incapacity which, unless modified under subsection (3) of this section, continues after death, if death shall occur after the effective date of the disability and during the period of incapacity, for the life of the beneficiary whom the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 3. A reduced disability retirement allowance payable during the period of incapacity, with the provision that after death, if death shall occur after the effective date of the disability and during the period of incapacity, such allowance shall continue at one-half the rate paid to the member and be paid for the life of the beneficiary whom the member has designated in writing duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 3A. A reduced disability retirement allowance payable during the period of incapacity which, unless modified under subsection (3) of this section, continues after death, if death shall occur after the effective date of the disability and during the period of incapacity, at one-half the rate paid to the member and is paid for the life of the beneficiary whom the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 4. A reduced disability retirement allowance payable during the period of incapacity,

1 with the provisions that if the member dies during the period of incapacity and before a total of 180
 2 monthly payments is made, the remainder of the 180 monthly payments shall be paid monthly to the
 3 beneficiary the member nominates by written designation duly acknowledged and filed with the
 4 board at any time before the member's death; and that if the member designates no beneficiary to
 5 receive the monthly payments or no such beneficiary is able to receive the monthly payments, an
 6 amount equal to the actuarial value, on the date of the member's death, of the total of the monthly
 7 payments not made to the member shall be paid according to ORS 238.390 for disposal of an amount
 8 credited to the member account of a member at the time of death; and that if the beneficiary re-
 9 ceiving monthly payments dies before the total number of monthly payments to which the benefi-
 10 ciary is entitled is made, an amount equal to the actuarial value, on the date of the beneficiary's
 11 death, of the total of the monthly payments not made to the member and beneficiary shall be paid
 12 according to ORS 238.390 for disposal of an amount credited to the member account of a member
 13 at the time of death and as if the beneficiary had been a member.

14 (2) The beneficiary designated by a member to receive any benefit under this section shall be
 15 the same as designated under ORS 238.390 (1). The designation of a beneficiary or the election of
 16 an option may be changed by a member within 60 days after the date of the first benefit payment,
 17 except that the designation of a beneficiary under Option 4 may be changed by the member at any
 18 time before the member's death.

19 (3) If a retired member has elected to receive a disability retirement allowance under Option
 20 2A or Option 3A as provided in subsection (1) of this section, and if the beneficiary under that op-
 21 tion dies after the expiration of the time within which the member could change the election of an
 22 option or if the beneficiary is the spouse of the member and the marriage relationship is terminated
 23 as provided by law after the expiration of the time within which the member could change the
 24 election of an option, the member may elect to receive, in lieu of the optional form of allowance
 25 previously elected, the allowance that the member would have received on the effective date of re-
 26 tirement under Option 1 as provided in subsection (1) of this section and adjusted by the actual
 27 amount of any cost-of-living or other post-retirement adjustments made to the original allowance
 28 since the effective date of retirement. Notice of election under this subsection must be in a form
 29 approved by the board. If an election is made under this subsection, the Option 1 payment amount
 30 is applicable to the first full month after the death of the beneficiary, or the first full month after
 31 entry of the judgment of divorce, and payable the first day of the month thereafter. If the increased
 32 amount is not paid in any month in which the increased amount is due, the board shall make a lump
 33 sum payment to the retired member that is equal to the difference between the amount paid to the
 34 member for that month and the amount that should have been paid under the provisions of this
 35 subsection.

36 (4) The cost to the system of a disability retirement allowance in any optional form may not
 37 exceed the cost to the system of a nonrefund disability retirement allowance payable to, and on
 38 account of, the member making such election.

39 (5) The obligation for payment of any benefit in force prior to April 8, 1953, may not be altered
 40 by subsections (1) to (4) of this section. However, the beneficiary of a retired member who prior to
 41 July 1, 1953, elected an option but died prior to the effective date of such election, shall have a right
 42 to repay, before December 31, 1953, the amount of the lump sum refund made in lieu of the monthly
 43 life benefit elected and receive payment of such benefit, computed as of the date of the member's
 44 death and payable from such date.

45 (6) If a member who would have qualified for disability benefits makes preliminary application

for such benefits but dies prior to being found by the board to be disabled or prior to electing a plan of benefit payments, and the records of the board indicate that the member had designated the surviving spouse as beneficiary under ORS 238.390 (1), such surviving spouse may, not more than 90 days after the board makes its finding that the member would have qualified for disability benefits if living:

(a) Elect to receive the amount referred to in ORS 238.395 if such benefit would have been available if the member had not applied for disability benefits;

(b) If not eligible for benefits under ORS 238.395, elect to receive benefits under ORS 238.390 (1); or

(c) Elect Option 2 or 3 under subsection (1) of this section and designate the surviving spouse as beneficiary thereunder with the same force and effect as if the election and designation had been properly made by the deceased member.

(7) The board may deny an election to convert a disability retirement allowance under this section, a change of beneficiary under this section or a change in benefit options under this section if that denial is required to maintain the status of the 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.

SECTION 6. The amendments to ORS 238.320, 238.325, 238.340, 238A.155 and 238A.235 by sections 1 to 5 of this 2025 Act apply to members of the Public Employees Retirement System who are considered disabled under ORS 238.320 or 238A.235 on the effective date of this 2025 Act, or who become disabled on or after the effective date of this 2025 Act.