

City of Portland Bureau of Fire and Police Disability and Retirement Agenda for Regular Meeting – Board of Trustees

City Council Chambers – City Hall
1221 SW Fourth Avenue, 2nd Floor, Portland, Oregon 97204
Tuesday, November 19, 2013 – 2:00 p.m.

ADMINISTRATION

The following consent item(s) are considered to be routine and will be acted upon by the Board in one motion, without discussion, unless a Board member, staff member or the public requests an item be held for discussion.

- 1 Approval of Minutes – September 24, 2013 Meeting

INTRODUCTION OF VISITORS

PUBLIC COMMENT PERIOD

A sign up sheet for members of the public wishing to make public comments will be available at the meeting. The public comment period will not exceed 30 minutes. Therefore, the Board may limit individual comments to three minutes per person. In addition, a sign up sheet will be available prior to the meeting to allow public members the opportunity to sign up for an agenda item which they wish to provide comment on. When discussion on a specific agenda item is to begin, the public member will be allowed three minutes to provide comments, unless additional time is allowed by the Board.

ACTION ITEMS

- 1 Resolution No. 484 - 2014 Trustee Meeting Schedule
 - o Issue: Proposed meeting schedule
 - o Expected Outcome: Board adopts meeting schedule

INFORMATION ITEMS

The following information items do not require action by the Board and are solely for informational purposes unless a Board member, staff member or the public requests an item be held for discussion.

- # 1 Legal Updates
- # 2 Disability Audit RFP Review
- 3 Reappointment of Citizen Trustee David Dougherty
- 4 Legislative Updates
- 5 FPDR Updates
- 6 Future Meeting Agenda Items

Copies of materials supplied to the Board before the meeting, except confidential items and those referred to Executive Session, are available for review by the public on the FPDR website at www.portlandonline.com or at the FPDR offices located at: 1800 SW First Avenue, Suite 450, Portland, Oregon 97201

NOTE: *If you have a disability that requires any special materials services or assistance call (503) 823-6823 at least 48 hours before the meeting.*

***denotes items will be in Executive Session pursuant to ORS 192.660(2)(f) and not open to the public**

#denotes items will be in Executive Session pursuant to ORS 192.660(2)(h) and not open to the public

[THE FOLLOWING SUMMARIZED MINUTES WERE CONDUCTED IN PUBLIC SESSION. THE EXECUTIVE SESSION PORTIONS OF THE MINUTES ARE CONFIDENTIAL AND NOT INCLUDED]

A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund was called to order on the 24th day of September, 2013 at 1:05 p.m.

Board Members Present Included:

Mayor Charlie Hales, Chair
Mr. Justin Delaney, Citizen Trustee
Mr. Jason Lehman, Fire Trustee
Mr. David Dougherty, Citizen Trustee

Board Members Absent Included:

Mr. Robert Foesch, Police Trustee

Also Present Were:

Mr. Samuel Hutchison, FPDR Director
Ms. Kimberly Mitchell, FPDR Claims Manager
Ms. Nancy Hartline, FPDR Finance Manager
Ms. Sheri Miller, FPDR Sr. Business Systems Analyst
Ms. Derily Bechthold, Deputy City Attorney
Mr. Kenneth A. McGair, Deputy City Attorney
Mr. Lorne Dauenhauer, Outside Legal Counsel
Ms. Julie Falender, Attorney
Mr. Nelson Hall, Attorney
Mr. Gabe Sansone, Fire Liaison
Mr. Brett Williamson, Police Liaison
Lt. Craig Morgan, Police Bureau
Mr. Del Stevens, Retired Member

Mayor Hales called the meeting to order.

Mr. Dougherty made a motion, which was seconded by Mr. Delaney and passed by a unanimous roll call vote of 4-0 to approve the July 23, 2013 minutes.

<i>Aye</i>	<i>Mayor Hales, Mr. Delaney, Mr. Dougherty, Mr. Lehman</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Foesch</i>

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General Public Comment:

Mr. Del Stevens addressed the Board regarding the settlement that was worked out in mediation regarding the overpayment of pension benefits. He explained the disparity of the settlement. He stated that he understood that the consequences of not paying back the overpayment were harsh and he felt the proper thing to do was to pay the overpayment, which he did. He added that some people felt they did not have to pay it back and filed a lawsuit, and in a mediation proceeding, a settlement was reached that those people who were part of the lawsuit would only pay back 60 percent of the overpayment. Mr. Stevens stated that the settlement left out people who already paid in advance of the settlement and he felt there was an inequity. He asked the Board if they were going to treat everyone the same.

Mr. McGair explained that the settlement that the Board approved applied to those members who were in the class and that the class was defined as anyone who did not consent to repaying the overpayment amount prior to August 2012. He added that Mr. Stevens consented to paying back the monies overpaid prior to August 2011 when the lawsuit was filed, so technically he was not a member of the class and not subject to the settlement.

Mayor Hales asked staff to think about the fairness issue. Mr. Delaney sympathized with Mr. Stevens and stated that Mr. Stevens did the right thing by repaying the overpayment. He explained that the Board agreed to the settlement because there were bad avenues in both directions. He stated that on one side there was a court decision that said the COLA holdback method the Board approved for collecting the overpayment was not proper and on the other side was the IRS saying that the FPDR must collect wrongly paid benefits or they could face plan disqualification.

Mr. McGair explained that the notice that went out also gave members of the class the opportunity to pay the overpayment back 100 percent and they did not have to go with the 60/40 settlement if they did not want to. Ms. Hartline stated that there have been members of the class who have chosen to repay the monies 100 percent as opposed to taking the 60/40 settlement. Mr. Dougherty stated that the FPDR had a right to receive the funds back and he felt Mr. Stevens did the right thing by repaying the full sum overpaid. He added that it was an honorable thing to do and that he felt the court ruling was not about the FPDR's right to receive the money back but the way in which they can go about getting the overpayment sums back. Mayor Hales stated that he is not sure if the Board can do anything now, but Mr. Stevens raised an important question and that the Board might want to evaluate the situation "after the dust settles".

Mr. Stevens also raised an issue regarding a request that he made for a copy of a letter that was sent out by FPDR. However that he was told he would need to file a public records request to obtain a copy. Mr. Lehman asked why FPDR could not just give Mr. Stevens the copy. Mr. Hutchison explained that the letter Mr. Stevens requested was

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one that was sent to members of the class, and while it is a public document, there is a City process for release of such documents. He further added that if the document being requested was a general document that had gone out to all members and Mr. Stevens wanted another copy, there would have been no problem.

Action Item No. 1 – Discussion on Public Hearing on Proposed Administrative Rule Amendments Held on August 27, 2013:

Mr. Hutchison provided some background on the proposed rule changes. He also stated that a public hearing on the proposed rules was held on August 27, 2013. He explained that the proposed rules were prepared by staff because of past audits, as well as the voter-approved Charter changes in November of last year. He added that based on the public hearing, he would be deferring ten of the proposed rules to another meeting. He also explained the four rule amendment resolutions that were being presented to the Board.

Action Item No. 2 – Resolution No. 479 – Administrative Rule Amendments:

Mr. Hutchison explained that proposed rules associated with Resolution No. 479 are straightforward and mostly housekeeping changes. He added that, based on the comments from the public hearing, two items were taken out from the proposed rules: 1) some definitions that were capitalized, and 2) 30-day timeline for particular actions (not the original claim filing). Mr. Delaney questioned the terms “assaults” and “combats” and asked that they be added to a future “to do” list.

Public Comment:

Mr. Hall addressed the Board and asked that the 14-day timeframe for reconsiderations be placed on a proactive list for future study. He stated that he originally had questions regarding the 30-day timeframe at Section 5.7.06, but because that particular amendment was removed from the proposed rules, his only concern on Resolution No. 479 was in Section 5.8.02. He stated that it could probably go on the proactive list, but asked that his concerns on Section 5.8.02 be noted for the record and that he would like to have a future discussion about mixing the terms “Required Duties” and “Assigned Duties”. He had nothing further to add to Resolution No. 479.

Mr. Delaney made a motion, which was seconded by Mr. Lehman and unanimously passed by a roll call vote to adopt Resolution No. 479.

<i>Aye</i>	<i>Mr. Delaney, Mr. Lehman, Mr. Dougherty, Mayor Hales</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Foesch</i>

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Action Item No. 2 – Resolution No. 480 – Administrative Rule Amendments:

Mr. Hutchison explained that Resolution No. 480 consisted of five rules regarding Sections 5.6.01, 5.6.02, 5.7.15, 5.9.11 and 5.10.09. He explained that the changes to Sections 5.6.01 and 5.6.02 were to update the rules to comply with Resolution No. 477, which the Board passed on May 23, 2013. He also added that Mr. Hall raised concerns at the public hearing about Section 5.6.02 and having to go to the head ALJ to get a recusal of an ALJ. Regarding Sections 5.7.15 and 5.9.11, Mr. Hutchison explained that those sections state that Disability Retirement Age shall be the earlier of the dates of (1) 30 years of service or (2) social security retirement age. Mr. Hutchison stated that there was some concern about why it included the social security wording. However, he explained that the wording was taken from the Charter and a Charter amendment was probably needed to remove the social security wording. He added that there is also a possibility of a financial impact with such a change. Mr. Hutchison explained that the rule change at Section 5.10.09 would require a member to provide documentation of efforts to find employment every other week. He stated that the Oregon Employment Department requires a weekly report.

Public Comment:

Mr. Hall addressed the Board and stated that he would like the record to reflect that he is incorporating his testimony from the August 27, 2013 public hearing. He explained his view on ALJ recusal and stated that when someone actually takes the step of petitioning or “affidavitting” a judge, that lawyer is going out on a limb and once that occurs the relationship with the ALJ is not going to be the same. He explained the process used in Multnomah County whereby an attorney can affidavit a judge and there is an automatic assignment to another judge and suggested the FPDR proposal be modified to do the same.

Mr. Delaney stated that the FPDR only has two ALJs for hearings and did not see how an automatic recusal would work with only two ALJs. Mr. Hall stated that he did not see a prohibition in the Charter from the presiding ALJ in Salem assigning another qualified ALJ. Mr. Delaney stated that he remembers discussions around the ALJs and they were a very limited population because the FPDR is different than workers’ compensation and from PERS disability.

Ms. Bechthold stated that there was extensive discussion when the proposal regarding right of recusal originally came to the Board from Attorney Kevin Keaney. She added that the reason staff recommended and the Board approved the good cause standard and implemented the procedure was because there is a limited pool of ALJs and an automatic veto could force all of the workload onto one ALJ. She stated that it is possible that there could be other ALJs trained and joined to the pool at some point but not currently. Ms. Bechthold also stated that she thought the ALJs were very professional and felt they would recuse themselves if there was actual bias. She added that she thought the rule

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was meant to be a “last case, worst case scenario” kind of rule to be implemented. Mr. Hall asked that this matter be placed on the proactive list to ask OAH to train a larger pool of ALJs when FPDR engages the OAH in contract discussions. Mr. Delaney stated to Mr. Hall that if there is any indication that there is an ALJ that is not being impartial to let the Board know.

Mr. Hall stated that he agreed with the definition of “good cause” for removal and did not challenge that. Concerning “Seeking Other Employment”, he felt that the current reporting procedure was adequate and he did not feel the rules warrant putting in a two-week reporting period. On Section 5.9.11, Mr. Hall stated that since testifying at the public hearing, he understands and appreciates the need for the social security language and felt that both the social security language and 30 years of service language in combination are appropriate. He also stated that a question was raised in terms of the PERS members and he did not know if it takes a Charter change, but it should be applied for FPDR Three members as well; that it should be a choice between social security or a PERS normal retirement.

Mr. Delaney made a motion, which was seconded by Mr. Dougherty and unanimously passed by a roll call vote to adopt Resolution No. 480.

<i>Aye</i>	<i>Mr. Lehman, Mr. Dougherty, Mayor Hales, Mr. Delaney</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Foesch</i>

Action Item No. 4 – Resolution No. 481 – Administrative Rule Amendments:

Mr. Hutchison explained that the IME process came up several times at the public hearing. Claims Manager Kim Mitchell went over the FPDR process for scheduling IMEs and how IME physicians are selected. Mr. Hutchison also went over areas of concern with the sections regarding IMEs.

Public Comment:

Mr. Hall addressed the Board and stated that, with any of the rules that are brought before them, they need to ask the questions, “why the rule, is it providing clarity, does it meet the expectations in terms of the delivery of benefits, and is it consistent with the Charter?” He also stated that his concerns with Resolution 481 are:

- 1) Section 5.7.03(I) – the term “any other gathering of information” be taken out.
- 2) IME appointments scheduled during a member’s off hours. Mandating someone to do something in his or her off hours may be a term of bargaining.

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- 3) Section 5.7.10(H) – relating to cooperating with the examination “and IME Physician”. The term “and IME Physician” should be stricken in all spots. It does not provide clarity and leaves discretion to a third party.
- 4) Section 5.9.06(F) – relating to elective surgery. A member could be back to work a lot quicker if the elective surgery approval process could be sped up.

Mr. Delaney asked Mr. Hall if he had any ideas on how to speed up the elective surgery approval process. Mr. Hall stated he was not sure it would be difficult to get an agreement whereby it could be done under subrogation. He offered his assistance in discussions with the other insurance carriers. He then stated that under Resolution No. 481, those were his remaining comments and he incorporates his testimony from the August public hearing. In closing he stated that he wanted to thank Mr. Hutchison and Ms. Mitchell for presenting the rules in workable packages and for their willingness to pull some of the rules there was concern on to think them through.

Mr. Hall also addressed the Board regarding Resolution 482. Mr. Hall explained the difficulty of using a labor market survey that is confined to a 50- mile radius of Portland.

Mr. Hutchison went over three different scenarios and stated that the challenge with the labor market is, when you have to make decisions about a person’s employability, where do you do it. He added that there is also an equity issue. Ms. Mitchell stated that the FPDR’s current practice is to use the labor market based on where the member resides. Mayor Hales stated we cannot hold people who choose to work in Portland and live somewhere else harmless.

The Board then went back to discussion on Resolution No. 481. Mr. Lehman stated he would like to see Resolution No. 481 deferred. Mr. Delaney concurred and stated that he would like to see “gathering of information” at Section 5.7.03(T) tightened up. In addition, he asked staff to make sure they have gotten legal advice regarding the off-hours IME appointment scheduling. Mr. Delaney also asked for more thinking on the timeframe for elective surgery and to look at the options to see if there is a chance to have subrogation discussions with other insurers. Mr. Lehman asked that a definition for “good cause” for non cooperation be put back into the proposed rules.

No action was taken on Resolution No. 481 and it was deferred to a future meeting.

Action Item No. 5 – Resolution No. 482 – Administrative Rule Amendments:

The Board then went back to discussion on Resolution No. 482. Mr. Lehman stated that the amendment to Section 5.10.05 changes what staff is doing right now and it could affect someone that does not know this is happening who might get hurt tomorrow who has not been hurt yet and lives out of town. He stated that the proposed rule could potentially punish or harm someone just because they happen to live out of town.

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Mr. Dougherty made a motion, which was seconded by Mr. Delaney and passed by a roll call vote of 3-1 to adopt Resolution No. 482. (Mr. Lehman opposed the motion; Mr. Foesch was absent from the vote).

<i>Aye</i>	<i>Mr. Dougherty, Mayor Hales, Mr. Delaney</i>
<i>Nay</i>	<i>Mr. Lehman</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Foesch</i>

Action Item No. 6 – Resolution No. 483 – Increase Online Business Systems Contract:

Ms. Miller explained that they completed the initial replatform of the FPDR database in October 2012. She stated that since then they have made significant strides toward increasing efficiency and functionality, have stayed within their original enhancement budget and have not exhausted it. However, she added that staff has made some conscious decisions to add additional functionality that will provide some cost savings in reporting and enhance tracking, as well as some unanticipated legislative changes that occurred and will need some required enhancement. In order to complete the additional projects additional compensation is being requested.

Mr. Delaney made a motion, which was seconded by Mr. Lehman and unanimously passed by a roll call vote to adopt Resolution No. 480.

<i>Aye</i>	<i>Mayor Hales, Mr. Delaney, Mr. Lehman, Mr. Dougherty</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Foesch</i>

Information Item No. 1 – Moody's Ratings Report:

Ms. Hartline went over the Moody's Ratings Report and explained that in August the City's AAA rating on unlimited tax general obligation bonds was confirmed and that Moody's understands that the FPDR levy is most likely to be sufficient to fully fund our requirements in the future. Mayor Hales stated the rating is very good news and that very few big American cities have a AAA rating for their long term debt, much less have had one for three decades.

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Information Item No. 2 – FPDR Disability Retirement Benefits:

Ms. Hartline stated that, at the Board's June meeting, Mr. Del Stevens asked why the FPDR does not provide a nontaxable disability retirement benefit. She went over a memorandum she provided to the Board and explained that FPDR service disability benefits paid prior to a member's disability retirement age are nontaxable and that after disability retirement age the member receives a taxable disability retirement benefit. The tax treatment is different because of how the benefits are calculated. She added that a nontaxable service disability retirement benefit could be created with a Charter amendment but such a benefit may affect staff's ability to manage disability claims, may pose an equity concern and may be difficult to design if it is to be financially neutral.

Public Comment:

Mr. Stevens addressed the Board and explained that, under the FPDR Plan, members have not paid into Medicare and so there are a number of members who are on disability who do not qualify for Medicare. He stated that he is talking about fairness for disabled members and hoped the Board will not just close the door on this issue.

Information Item No. 3 – FPDR Updates:

Ms. Hartline provided the Board with a legislative update. She stated that the Governor has called a special session and one of the proposed changes would affect the FPDR Two benefit adjustment. She went on to state that the proposal is to change the PERS COLA calculation so that it would be a marginal rate structure with a maximum rate of 1.25 percent.

The next meeting is scheduled for November 19, 2013 at 1:00 p.m. Agenda items for the next meeting:

- 2014 schedule
- Update on special session
- Upcoming disability audit.

There being no further business, the meeting was adjourned at 3:30 p.m.


Samuel Hutchison
Director

RESOLUTION NO. 484

WHEREAS, Section 5.2.01 of the FPDR Administrative Rules states that Board meetings are “normally held on the fourth Tuesday of every month”; and

WHEREAS, in the last three years there have been an average of six regularly scheduled Board meetings; and

WHEREAS, a Proposed 2014 FPDR Board of Trustees Meeting Schedule has been prepared and is attached hereto as Exhibit “A” and by this reference made a part hereof; and

WHEREAS, the proposed meeting schedule includes regularly scheduled meetings as well as meeting dates at the Board’s discretion.

NOW, THEREFORE BE IT RESOLVED that the FPDR Board meetings are scheduled as stated in the meeting schedule attached hereto as Exhibit “A”.

ADOPTED by the Board of Trustees on the 19th day of November, 2013.

Samuel Hutchison
Director

Proposed 2014 FPDR Board of Trustee Meeting Schedule

Agenda items subject to change

January 28 th	Financial <ul style="list-style-type: none"> ▪ Budget Approval ▪ Financial audit results ▪ Valuations, etc 2014/2015 FPDR project list General business
February 25 th	<i>Meet at Board's Discretion</i>
March 25 th	Annual adjustment Disability claim audit contract approval Rule amendment adoption (carryover from September 2013) General business
April 29 th	<i>Meet at Board's Discretion</i> <i>[Disability claim audit contract approval, if necessary]</i>
May 27 th	Tax Anticipation Notes Annual adjustment, if necessary General business
June 24 th	<i>Meet at Board's Discretion</i>
July 29 th	Disability claim audit results and response General business
August 26 th	<i>Meet at Board's Discretion</i>
September 30 th	Disability claim audit results and response, if necessary Rule amendment adoption (new proposed rule changes, if any) State of FPDR General business
October 28 th	<i>Meet at Board's Discretion</i>
November 18 th	Overview of Pension Audit (RFP distributed in December) General business
December	<i>No Meeting</i>

EXHIBIT "A"



City of Portland, Oregon



BUREAU OF FIRE AND POLICE DISABILITY AND RETIREMENT

1800 SW First Ave., Suite 450, Portland, OR 97201 • (503) 823-6823 • Fax: (503) 823-5166

Samuel Hutchison, Director

fpdr@portlandoregon.gov

Date: November 13, 2013

To: FPDR Board of Trustees

From: Nancy Hartline, FPDR Financial Manager

Re: PERS Legislation Update

During the Special Legislative Session in October, the Legislature passed Senate Bill 861 (SB 861), and the Governor signed it on October 8, 2013.

Like SB 822 earlier in the year, SB 861 seeks to reduce PERS costs by creating a marginal rate cost-of-living adjustment (COLA) scheme. The new bill, however, sets a lower maximum rate beginning on July 1, 2014:

- 1.25% on the first \$60,000 of yearly base pension, plus
- 0.15% on yearly base pension amounts over \$60,000

SB 861 also provides for supplementary payments, but these payments are not included in the yearly base pension for calculating future COLA increases:

- A supplementary payment to each pensioner of 0.25% of the yearly base pension, up to a maximum of \$150 (someone with a \$60,000 base pension would receive the \$150 maximum)
- An additional supplementary payment of 0.25% of the yearly base pension for a pensioner with a yearly base pension of \$20,000 or less

The supplementary payments sunset after 2019, but the Public Employees Retirement Board is directed to report to the Legislature its recommendations for the PERS COLA and the supplementary payments in 2018.

Because the supplementary payments are not included in a member's yearly base pension for future cost-of-living adjustments by PERS, the FPDR staff does not believe that the supplementary payments can be included in "the percentage rate applied to retirement benefits payable to police and fire employees by the Public Employees Retirement System of the State of Oregon" that limits the FPDR Two benefit adjustment in Charter Section 5-312. The Board is therefore limited by Charter Section 5-312 to a maximum increase of 1.25% for the 2014 FPDR Two benefit adjustment.

**A-Engrossed
Senate Bill 861**

Ordered by the Senate October 1
Including Senate Amendments dated October 1

Sponsored by JOINT COMMITTEE ON SPECIAL SESSION

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.

Modifies cost-of-living adjustment under Public Employees Retirement System.

Directs Public Employees Retirement Board to make annual supplementary payments to members or member's beneficiaries *[with yearly allowance or yearly pension or benefit of \$20,000 or less. Directs board to develop formula for determining whether it is reasonably prudent to make annual supplementary payments to members and member's beneficiaries with yearly allowance or yearly pension or benefit of more than \$20,000 and not more than \$60,000].*

[Directs board to report to Legislative Assembly with recommendations relating to cost-of-living adjustment and supplementary payments.]

Sunset supplementary payments on December 31, 2019.

Directs board to report to Governor, President of Senate and Speaker of House of Representatives on recommendations relating to cost-of-living adjustment and supplementary payments.

Provides for expedited review by Supreme Court upon petition by adversely affected party.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to cost-of-living adjustments under the Public Employees Retirement System; creating new
3 provisions; amending ORS 238.360, 238.465 and 238A.210; and declaring an emergency.

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

5
6 **COST-OF-LIVING ADJUSTMENTS**

7
8 **SECTION 1.** ORS 238.360, as amended by sections 1 and 3, chapter 53, Oregon Laws 2013, is
9 amended to read:

10 238.360. (1) On July 1 of each year, the Public Employees Retirement Board shall increase the
11 yearly allowance that a member or member's beneficiary receives or is entitled to receive, as pro-
12 vided in *[subsections (2) and (3)]* **subsection (2)** of this section. The increase is first payable with
13 the allowance that the member or the member's beneficiary receives or is entitled to receive on
14 August 1.

15 (2)(a) If the member's or member's beneficiary's yearly allowance *[for the previous year totaled*
16 *\$20,000]* **is \$60,000** or less, the allowance shall be increased by *[two]* **1.25** percent.

17 *[(b) If the member's or member's beneficiary's yearly allowance for the previous year totaled more*
18 *than \$20,000 but not more than \$40,000, the allowance shall be increased by \$400 plus 1.5 percent of*
19 *the amount of the yearly allowance exceeding \$20,000.]*

20 *[(c) If the member's or member's beneficiary's yearly allowance for the previous year totaled more*
21 *than \$40,000 but not more than \$60,000, the allowance shall be increased by \$700 plus one percent of*

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 *the amount of the yearly allowance exceeding \$40,000.]*

2 [(d)] (b) If the member's or member's beneficiary's yearly allowance [for the previous year
3 totaled] is more than \$60,000, the allowance shall be increased by [\$900 plus .25] \$750 plus 0.15
4 percent of the amount of the yearly allowance exceeding \$60,000.

5 [(3) If a member or member's beneficiary has been receiving an allowance for less than 12 months
6 on July 1 of any year, the board shall calculate the increase under subsection (2) of this section on the
7 basis of the yearly allowance the member or member's beneficiary would have received if the member
8 or member's beneficiary had received the monthly allowance for 12 months.]

9 [(4)] (3) Any increase in the allowance shall be paid from contributions of the public employer
10 under ORS 238.225.

11 (4) As used in this section, "yearly allowance" means the monthly allowance that a
12 member or member's beneficiary is entitled to on July 1 of the year in which the board is
13 calculating the increase under subsection (1) of this section, multiplied by 12.

14 **SECTION 2.** The amendments to ORS 238.360 by section 1 of this 2013 special session Act
15 apply to all increases to allowances made under ORS 238.360 on and after July 1, 2014.

16 **SECTION 3.** ORS 238A.210, as amended by sections 5 and 7, chapter 53, Oregon Laws 2013, is
17 amended to read:

18 238A.210. (1) On July 1 of each year, the board shall increase every pension payable under ORS
19 238A.180, 238A.185 and 238A.190, every disability benefit under ORS 238A.235 and every death ben-
20 efit payable under ORS 238A.230 as provided in [subsections (2) and (3)] subsection (2) of this sec-
21 tion. The increase shall be made for the payments payable on August 1 and thereafter.

22 (2)(a) If a person's yearly pension or benefit [for the previous year totaled \$20,000] is \$60,000 or
23 less, the pension or benefit shall be increased by [two] 1.25 percent.

24 [(b) If a person's yearly pension or benefit for the previous year totaled more than \$20,000 but not
25 more than \$40,000, the pension or benefit shall be increased by \$400 plus 1.5 percent of the amount of
26 the yearly pension or benefit exceeding \$20,000.]

27 [(c) If a person's yearly pension or benefit for the previous year totaled more than \$40,000 but not
28 more than \$60,000, the pension or benefit shall be increased by \$700 plus one percent of the amount
29 of the yearly pension or benefit exceeding \$40,000.]

30 [(d)] (b) If a person's yearly pension or benefit [for the previous year totaled] is more than
31 \$60,000, the pension or benefit shall be increased by [\$900 plus .25] \$750 plus 0.15 percent of the
32 amount of the yearly pension or benefit exceeding \$60,000.

33 [(3) If a person has been receiving a pension or benefit for less than 12 months on July 1 of any
34 year, the board shall calculate the increase under subsection (2) of this section on the basis of the
35 yearly allowance the person would have received if the person had received the pension or benefit for
36 12 months.]

37 (3) As used in this section, "yearly pension or benefit" means the monthly pension or
38 benefit that a person is entitled to on July 1 of the year in which the board is calculating the
39 increase under subsection (1) of this section, multiplied by 12.

40 **SECTION 4.** The amendments to ORS 238A.210 by section 3 of this 2013 special session
41 Act apply to all increases to pensions or benefits made under ORS 238A.210 on and after July
42 1, 2014.

43 **SECTION 5.** (1) The amendments to ORS 238.360 and 238A.210 by sections 1 and 3 of this
44 2013 special session Act become operative on July 1, 2014.

45 (2) The Public Employees Retirement Board may take any action before the operative

1 date specified in subsection (1) of this section to enable the board, on and after the operative
2 date specified in subsection (1) of this section, to exercise all the duties, functions and pow-
3 ers conferred on the board by the amendments to ORS 238.360 and 238A.210 by sections 1 and
4 3 of this 2013 special session Act.

5 **SECTION 6.** ORS 238.465 is amended to read:

6 238.465. (1) Notwithstanding ORS 238.445 or any other provision of law, payments under this
7 chapter or ORS chapter 238A of any pension, annuity, retirement allowance, disability benefit, death
8 benefit, refund benefit or other benefit that would otherwise be made to a person entitled thereto
9 under this chapter or ORS chapter 238A shall be paid, in whole or in part, by the Public Employees
10 Retirement Board to an alternate payee if and to the extent expressly provided for in the terms of
11 any judgment of annulment or dissolution of marriage or of separation, or the terms of any court
12 order or court-approved property settlement agreement incident to any judgment of annulment or
13 dissolution of marriage or of separation. *[Notwithstanding any other provisions of this section]* **Except**
14 **as provided in subsection (5) of this section,** the total value of benefits payable to a member and
15 to an alternate payee under this section may not be greater than the value of the benefits the
16 member would otherwise be eligible to receive. Any payment under this subsection to an alternate
17 payee bars recovery by any other person.

18 (2) A judgment, order or settlement providing for payment to an alternate payee under sub-
19 section (1) of this section may also provide:

20 (a) That payments to the alternate payee may commence, at the election of the alternate payee,
21 at any time after the earlier of:

22 (A) The earliest date the member would be eligible to receive retirement benefits if the member
23 separates from service; or

24 (B) The date the member actually separates from service due to death, disability, retirement or
25 termination of employment.

26 (b) That the alternate payee may elect to receive payment in any form of pension, annuity, re-
27 tirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit
28 in the form of a joint and survivor annuity, that would be available to the member under this
29 chapter or ORS chapter 238A, or that would be available to the member if the member retired or
30 separated from service at the time of election by the alternate payee, without regard to the form
31 of benefit elected by the member.

32 (c) That the alternate payee's life is the measuring life for the purpose of measuring payments
33 to the alternate payee under the form of benefit selected by the alternate payee and for the purpose
34 of determining necessary employer reserves.

35 (d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person designated by the
36 member as a beneficiary under ORS 238.300, 238.305, 238.325, 238A.190 or 238A.400 be changed, even
37 though the member has retired and has begun receiving a retirement allowance or pension. If a
38 change of beneficiary is ordered under this paragraph, the board shall adjust the anticipated benefits
39 that would be payable to the member and the beneficiary to ensure that the cost to the system of
40 providing benefits to the member and the new beneficiary does not exceed the cost that the system
41 would have incurred to provide benefits to the member and the original beneficiary. The judgment,
42 order or settlement may not provide for any change to the option selected by the retired member
43 under ORS 238.300, 238.305, 238.320, 238.325, 238A.190 or 238A.400 as to the form of the retirement
44 benefit.

45 (3) The board shall adopt rules that provide for:

1 (a) The creation of a separate account in the name of the alternate payee reflecting the
2 judgment's, order's or agreement's distribution of the member's benefits under this chapter or ORS
3 chapter 238A;

4 (b) The establishing of criteria to determine whether domestic relations judgments, orders and
5 agreements comply with this section; and

6 (c) The definitions and procedures for the administration of this section.

7 (4) An alternate payee may designate a beneficiary for the purposes of death benefits payable
8 under ORS 238.390 and 238.395. Subject to ORS 238A.410 (2), an alternate payee may designate a
9 beneficiary for the purposes of death benefits payable under ORS 238A.410. If the alternate payee
10 fails to designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and
11 238.395, the benefits shall be paid as provided by ORS 238.390 (2). If the alternate payee fails to
12 designate a beneficiary for the purposes of death benefits payable under ORS 238A.410, the benefits
13 shall be paid as provided by ORS 238A.410 (3). If a judgment, order or agreement awards an interest
14 to an alternate payee, and if the alternate payee predeceases the member before the alternate payee
15 has commenced receiving benefits, the alternate payee shall be considered a member of the system
16 who died before retiring for the purposes of the death benefits provided in ORS 238.390, 238.395,
17 238A.230 and 238A.410, but for purposes of the death benefits provided in ORS 238.395, the alternate
18 payee shall be considered a member of the system who died before retiring only if the member would
19 have been eligible for death benefits under ORS 238.395 had the member died at the same time as
20 the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons en-
21 titled to receive the benefits under ORS 238.390, 238.395, 238A.230 and 238A.410, shall constitute
22 payment in full of the alternate payee's interest under the judgment, order or agreement.

23 (5) Any increase in the retirement allowance provided to the member shall increase the amounts
24 paid to the [*spouse or former spouse of the member*] **alternate payee** in the same proportion, except
25 that:

26 (a) An alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360
27 or any other retirement allowance increase until benefits are first paid from the system on behalf
28 of the member[.]; and

29 (b) **Cost-of-living adjustments under ORS 238.360 or 238A.210 to the retirement allowance**
30 **paid to an alternate payee shall be calculated on the basis of the amount of the alternate**
31 **payee's yearly allowance or yearly pension or benefit, as those terms are defined in ORS**
32 **238.360 and 238A.210.**

33 (6) An alternate payee under this section is not eligible to receive the benefits provided under
34 ORS 238.410, 238.415, 238.420 and 238.440 by reason of the provisions of this section.

35 (7) An alternate payee who elects to begin receiving payments under subsection (1) of this sec-
36 tion before the member's effective date of retirement is not eligible to receive any additional pay-
37 ment by reason of credit in the system acquired by the member after the alternate payee begins to
38 receive payments.

39 (8) Subsection (1) of this section applies only to payments made by the board after the date of
40 receipt by the board of written notice of the judgment, order or agreement and such additional in-
41 formation and documentation as the board may prescribe.

42 (9) Whenever the board is required to make payment to an alternate payee under the provisions
43 of this section, the board shall charge and collect out of the benefits payable to the member and the
44 alternate payee actual and reasonable administrative expenses and related costs incurred by the
45 board in obtaining data and making calculations that are necessary by reason of the provisions of

1 this section. The board may not charge more than \$300 for total administrative expenses and related
2 costs incurred in obtaining data or making calculations that are necessary by reason of the pro-
3 visions of this section. The board shall allocate expenses and costs charged under the provisions of
4 this subsection between the member and the alternate payee based on the fraction of the benefit
5 received by the member or alternate payee.

6 (10) Unless otherwise provided by the judgment, order or agreement, a member has no interest
7 in the benefit payable to an alternate payee under this section. Upon the death of an alternate
8 payee, the board shall make such payment to the beneficiary designated by the alternate payee as
9 may be required under the form of benefit elected by the alternate payee. If a death benefit is pay-
10 able under ORS 238.390 or 238.395 by reason of the death of an alternate payee, payment of the
11 death benefit shall be made to the beneficiary designated by the alternate payee under ORS 238.390
12 (1), or as otherwise provided by ORS 238.390 and 238.395.

13 (11) As used in this section, "court" means any court of appropriate jurisdiction of this or any
14 other state or of the District of Columbia.

15
16 **SUPPLEMENTARY PAYMENTS**

17
18 **SECTION 7.** Section 8 of this 2013 special session Act is added to and made a part of ORS
19 chapter 238.

20 **SECTION 8.** (1) As used in this section:

21 (a) "Yearly allowance" has the meaning given that term in ORS 238.360.

22 (b) "Yearly pension or benefit" has the meaning given that term in ORS 238A.210.

23 (2) Each year, the Public Employees Retirement Board shall make a supplementary pay-
24 ment to each member or member's beneficiary. The supplementary payment shall be equal
25 to 0.25 percent of the member's or member's beneficiary's yearly allowance or yearly pension
26 or benefit, but in no event may the supplementary payment exceed \$150.

27 (3) In addition to the supplementary payment under subsection (2) of this section, the
28 board shall make an additional supplementary payment each year to each member or
29 member's beneficiary with a yearly allowance or yearly pension or benefit of \$20,000 or less.
30 A supplementary payment made under this subsection shall be equal to 0.25 percent of the
31 member's or member's beneficiary's yearly allowance or yearly pension or benefit.

32 (4) The board shall make the first supplementary payments under subsections (2) and (3)
33 of this section in 2014.

34 (5) A supplementary payment made under this section may not be included in a member's
35 or member's beneficiary's yearly allowance or yearly pension or benefit for purposes of cal-
36 culating cost-of-living adjustments under ORS 238.360, 238.575 or 238A.210.

37 (6) The board shall pay supplementary payments under this section out of the reserve
38 account established under ORS 238.670 (1).

39
40 **REPORT TO LEGISLATURE**

41
42 **SECTION 9.** On or before September 30, 2018, the Public Employees Retirement Board
43 shall report to the Governor, the President of the Senate and the Speaker of the House of
44 Representatives on:

45 (1) Recommendations relating to the cost-of-living adjustment under the Public Employ-

ees Retirement System;

(2) Recommendations relating to the continuation of supplementary payments to members and members' beneficiaries under section 8 of this 2013 special session Act; and

(3) Recommendations on approaches to calculating cost-of-living adjustments under the system that take into consideration a retired member's years of creditable service.

SUNSET

SECTION 10. Sections 8 and 9 of this 2013 special session Act are repealed on December 31, 2019.

JUDICIAL REVIEW

SECTION 11. (1) Jurisdiction is conferred on the Supreme Court to determine in the manner provided by this section whether this 2013 special session Act breaches any contract between members of the Public Employees Retirement System and their employers, violates any constitutional provision, 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, or is invalid for any other reason.

(2) A person who is adversely affected by this 2013 special session Act or who will be adversely affected by this 2013 special session 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 2013 special session 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.

CAPTIONS

SECTION 12. The unit captions used in this 2013 special session 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 2013 special session Act.

EMERGENCY CLAUSE

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SECTION 13. This 2013 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 special session Act takes effect on its passage.
