

# Senate Bill 271

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Judiciary for Judicial Conference of the State of Oregon, Judicial Department)

## 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**.

Provides that judge member of Public Employees Retirement System who fails to make plan election be retired under Plan B.

Allows judge to retire under Plan B if judge is at least 58 years of age and has at least 21.75 years of creditable service as judge.

Modifies calculation of Plan B service retirement allowance. Increases maximum number of years of service using 3.75 multiplier under formula from 16 to 18.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to judges' retirement; creating new provisions; amending ORS 238.535 and 238.545; and de-  
3 claring an emergency.

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

5 **SECTION 1.** ORS 238.535 is amended to read:

6 238.535. (1) [*Prior to attaining 60 years of age, all judge members shall*] **At least 60 days before**  
7 **a judge member's effective date of retirement, the judge member must** elect in writing to re-  
8 tire under either paragraph (a) or (b) of this subsection. [*The election shall be irrevocable after the*  
9 *judge member attains 60 years of age. Any*] **An election under this subsection may be changed**  
10 **by the judge member by a written notice to the Public Employees Retirement Board if the**  
11 **notice is received by the board at least 60 days before the judge member's effective date of**  
12 **retirement. Except as provided in ORS 238.545 (3), a judge member who fails to make the**  
13 election provided for in this subsection [*prior to attaining 60 years of age*] **within the time allowed**  
14 shall be retired under the provisions of paragraph [(a)] **(b)** of this subsection.

15 (a) Upon retiring from service as a judge at the age of 65 years or thereafter a judge member  
16 who has made contributions to the Public Employees Retirement Fund during each of five calendar  
17 years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund)  
18 provided by the contributions of the judge member and the state in an annual amount equal to  
19 2.8125 percent of final average annual salary multiplied by the number of years of service as a judge  
20 not exceeding 16 years of service as a judge and 1.67 percent of final average salary multiplied by  
21 the number of years of service as a judge exceeding 16 years of service as a judge, but the annual  
22 amount [*shall*] **may** not exceed 65 percent of final average salary.

23 (b)(A) Upon retiring from service as a judge [*at the age of 60 years or thereafter*], a judge member  
24 [*who has made contributions to the Public Employees Retirement Fund during each of five calendar*  
25 *years*] **described in subparagraph (B) of this paragraph** shall receive as a service retirement al-  
26 lowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge  
27 member and the state in an annual amount equal to 3.75 percent of final average salary multiplied

**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 by the number of years of service as a judge not exceeding [16] 18 years of service as a judge and  
 2 two percent of final average salary multiplied by the number of years of service as a judge exceed-  
 3 ing [16] 18 years of service as a judge, but the annual amount [shall] **may** not exceed 75 percent  
 4 of final average salary.

5 **(B) A judge member is eligible to receive the service retirement allowance described in**  
 6 **subparagraph (A) of this paragraph if on the effective date of retirement the judge member**  
 7 **is at least 60 years of age and has made contributions to the Public Employees Retirement**  
 8 **Fund during each of five calendar years, or is at least 58 years of age and has at least 21.75**  
 9 **years of creditable service as a judge.**

10 (c) Any judge member [electing to retire] **who retires** under paragraph (b) of this subsection shall  
 11 serve as a pro tem judge, without compensation, for 35 days per year for a period of five years. A  
 12 judge who serves more than 35 days per year may carry over the additional days to fulfill the pro  
 13 tem service obligation in future years. The five-year period shall commence on the judge member's  
 14 date of retirement or the date on which the judge member commences pro tem service under ORS  
 15 238.545 (4), whichever is earlier. Judge members may be reimbursed for expenses incurred in pro-  
 16 viding pro tem services under this paragraph. Upon certification from the Chief Justice that any  
 17 judge member who retired under paragraph (b) of this subsection has failed to perform the pro tem  
 18 services required under this paragraph, and has not been relieved of the obligations to perform those  
 19 services in the manner provided by this paragraph, the Public Employees Retirement Board shall  
 20 recalculate the service retirement allowance of the noncomplying judge member as though the judge  
 21 member elected to retire under paragraph (a) of this subsection, and the noncomplying judge member  
 22 shall receive only that recalculated amount thereafter. A judge may be relieved of the pro tem ser-  
 23 vice obligation imposed by this paragraph if the judge fails for good cause to complete the obli-  
 24 gation. A retired judge member who is relieved of the obligation to serve as a pro tem judge shall  
 25 continue to receive the retirement allowance provided in paragraph (b) of this subsection.

26 (d) For the purpose of paragraph (c) of this subsection:

27 (A) "Good cause" includes, but is not limited to:

28 (i) Physical or mental incapacitation of a judge that prevents the judge from discharging the  
 29 duties of judicial office;

30 (ii) Failure of the appointing authority to assign a judge to the requisite amount of pro tem  
 31 service, whether because of insufficient need for pro tem judges, a determination by the appointing  
 32 authority that the skills of a judge do not match the needs of the courts, clerical mistake, or oth-  
 33 erwise; or

34 (iii) Death of a judge.

35 (B) "Good cause" does not include:

36 (i) A judge's [refusal, without good cause,] **unjustified failure** to accept pro tem assignments  
 37 sufficient to meet the required amount; or

38 (ii) A judge's affirmative voluntary act that makes the judge unqualified to serve as a judge of  
 39 this state including, but not limited to, failure to maintain active membership in the Oregon State  
 40 Bar, acceptance of a position in another branch of state government, or acceptance of a position in  
 41 the Government of the United States or of another state or nation.

42 (e) The Chief Justice may make rules for the implementation of this subsection.

43 (2) As used in subsection (1) of this section, "final average salary" means whichever of the fol-  
 44 lowing is greater:

45 (a) The average salary per calendar year paid to a judge member in three of the calendar years

1 of service as a judge before the judge member retires, in which three years the judge member was  
2 paid the highest salary.

3 (b) One-third of the total salary paid to a judge member in the last 36 calendar months of service  
4 as a judge before the judge member retires.

5 (3) As used in subsection (1) of this section, "number of years of service" means the number of  
6 full years plus any remaining fraction of a year. In determining a remaining fraction, a full month  
7 shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as  
8 a full month.

9 (4) For a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989  
10 Edition), the service retirement allowance under subsection (1) of this section on retirement at the  
11 age of 70 years and either 12 years of service or two full six-year terms as a judge shall be at least  
12 the equivalent of the retirement pay the judge would have received had the judge retired under ORS  
13 1.314 to 1.390 (1989 Edition).

14 (5) A judge member who has made contributions to the Public Employees Retirement Fund dur-  
15 ing each of five calendar years and who attains the age of 60 years shall be retired upon written  
16 application by the judge member to the board on a reduced service retirement allowance which shall  
17 be the actuarial equivalent of the service retirement allowance provided for in subsection (1)(a) of  
18 this section.

19 (6) For the purposes of this section, a judge who elects to become a judge member as provided  
20 in ORS 237.215 (3) (1989 Edition) shall be considered to have made contributions to the Public Em-  
21 ployees Retirement Fund during one calendar year for each calendar year during which the judge  
22 made contributions to the Judges' Retirement Fund.

23 (7)(a) Notwithstanding subsection (1)(a) of this section, the maximum percentage used in calcu-  
24 lating the annual amount of the life pension (nonrefund) for a judge who is a judge member on  
25 September 27, 1987, or who elected to become a judge member in the manner provided by ORS  
26 237.215 (3)(b) or (4)(b) (1989 Edition), shall be the percentage specified by paragraph (b) of this sub-  
27 section if either:

28 (A) On September 27, 1987, the judge had more than 28 years of service that were creditable  
29 either under the system; or

30 (B) On September 27, 1987, the judge had more than 28 years of service that were creditable  
31 under the Judges' Retirement Fund established pursuant to ORS 1.314 to 1.390 (1989 Edition) and  
32 the judge became a member of the system under the provisions of ORS 237.215 (3)(b) (1989 Edition).

33 (b) The maximum percentage used in calculating the annual amount of the life pension  
34 (nonrefund) of a judge member who meets the requirements of paragraph (a) of this subsection shall  
35 not exceed 45 percent plus 1.67 percent multiplied by the number of years of service as a judge that  
36 exceed 16 years and that were served on or before September 27, 1987.

37 (c) In computing the annual amount of the life pension of a judge who meets the requirements  
38 of paragraph (a) of this subsection, the board shall use the percentage specified by paragraph (b)  
39 of this subsection and the final average salary of the judge computed on the date of retirement, not  
40 the final average salary of the judge computed as of September 27, 1987. In making the computation  
41 under this subsection, the board shall use the definition of "final average salary" provided by ORS  
42 238.535 as amended by section 2, chapter 625, Oregon Laws 1987.

43 **SECTION 2. The amendments to ORS 238.535 (1)(b) by section 1 of this 2005 Act that**  
44 **modify the service retirement allowance calculation for judge members who retire under**  
45 **ORS 238.535 (1)(b) apply only to judge members who have an effective date of retirement that**

1 **is on or after September 1, 2005.**

2 **SECTION 3.** ORS 238.545 is amended to read:

3 238.545. (1) Except as otherwise provided in this section, a judge member may withdraw from  
4 the Public Employees Retirement Fund the amount credited to the member account of the judge  
5 member if:

6 (a) The judge member is separated from all service with participating public employers;

7 (b) The judge member is separated from all service with employers who are treated as part of  
8 a participating public employer's controlled group under the federal laws and rules governing the  
9 status of the Public Employees Retirement System and the Public Employees Retirement Fund as a  
10 qualified governmental retirement plan and trust;

11 (c) The judge member has not attained 60 years of age; and

12 (d) The separation from service is not by reason of death or disability.

13 (2) If a judge member wishes to withdraw the member account balance under this section, the  
14 judge member must transmit to the Public Employees Retirement Board a withdrawal request. The  
15 board shall deny the withdrawal, or shall take all reasonable steps to recover withdrawn amounts,  
16 if:

17 (a) The board determines that the separation is not a bona fide separation; or

18 (b) The judge member fails to remain absent from the service of all employers described in  
19 subsection (1) of this section for at least one calendar month following the month in which the judge  
20 member separates from service.

21 (3) If a judge member who is eligible to withdraw as provided in subsection (1) of this section  
22 does not elect to withdraw, the member account of the judge member shall remain to the credit of  
23 the judge member, and the judge member is entitled to such death benefits and disability retirement  
24 allowance as ORS 238.500 to 238.585 provide. [*Before attaining 60 years of age*] **At least 60 days**  
25 **before a judge member's effective date of retirement**, a judge member who is eligible to with-  
26 draw as provided in subsection (1) of this section but who does not withdraw must elect in writing  
27 to retire under either ORS 238.535 (1)(a) or (b). [*The election is irrevocable after the judge member*  
28 *attains 60 years of age.*] **The election provided for in this subsection may be changed by the**  
29 **judge member by a written notice to the Public Employees Retirement Board if the notice**  
30 **is received by the board at least 60 days before the judge member's effective date of retire-**  
31 **ment.** Any inactive judge member who fails to make the election provided for in this subsection  
32 [*prior to attaining 60 years of age*] **within the time allowed** shall be retired under the provisions  
33 of ORS 238.535 (1)(a). The service retirement allowance of an inactive judge member who retires  
34 under ORS 238.535 (1)(a) shall be a reduced service retirement allowance that is the actuarial  
35 equivalent of the service retirement allowance provided for in ORS 238.535 (1)(a). An inactive judge  
36 member who elects to retire under ORS 238.535 (1)(b) must meet all other requirements imposed by  
37 ORS 238.535 for retirement under ORS 238.535 (1)(b).

38 (4) If approved by the Chief Justice of the Supreme Court, an inactive judge member who elects  
39 to retire under ORS 238.535 (1)(b) pursuant to the provisions of subsection (3) of this section may  
40 commence to serve the pro tem service obligation imposed by ORS 238.535 before the judge mem-  
41 ber's **effective** date of retirement. If the Chief Justice determines, at any time after the judge  
42 member commences performing the pro tem service obligation, that the judge member has failed to  
43 perform the pro tem services in the manner required by ORS 238.535 (1)(c), and the judge member  
44 has not been relieved of the obligation to perform those services in the manner provided by ORS  
45 238.535 (1)(c), the Chief Justice shall notify the Public Employees Retirement Board. If the judge

1 member has not yet retired, the board shall calculate the service retirement allowance of the non-  
 2 complying judge member at the time of retirement in the manner provided by ORS 238.535 (1)(a). If  
 3 the judge member has retired, the board shall recalculate the service retirement allowance of the  
 4 noncomplying judge member in the manner provided by ORS 238.535 (1)(a), and the noncomplying  
 5 judge member shall receive only that recalculated amount thereafter. An inactive judge member may  
 6 be relieved of the pro tem service obligation imposed by ORS 238.535 (1)(c) in the same manner as  
 7 provided in ORS 238.535 for retired judge members.

8 (5) Withdrawal of the member account balance under this section cancels all membership rights  
 9 in the system, including the right to claim credit for any employment before withdrawal.

10 (6) ORS 238.105 and 238.115 (1) apply to a former judge member who has withdrawn the member  
 11 account balance under this section.

12 **SECTION 4. An inactive judge member may elect to retire under ORS 238.535 (1)(b) pur-**  
 13 **suant to the provisions of ORS 238.545 (3) only if the judge separated from service as de-**  
 14 **scribed by ORS 238.545 (1)(a) and (b) on or after July 1, 1992.**

15 **SECTION 5. This 2005 Act being necessary for the immediate preservation of the public**  
 16 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
 17 **on its passage.**

18 \_\_\_\_\_