

Enrolled Senate Bill 897

Sponsored by COMMITTEE ON COMMERCE AND WORKFORCE DEVELOPMENT

CHAPTER

AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 238.005, 238.640, 238A.005 and 238A.050; limiting expenditures; and declaring an emergency.

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

MEMBERSHIP OF PUBLIC EMPLOYEES RETIREMENT BOARD

SECTION 1. ORS 238.640 is amended to read:

238.640. (1) All members of the Public Employees Retirement Board must be at least 21 years of age, be citizens of the United States and have been residents of the state for at least two years immediately preceding appointment to the board.

(2) One member of the board must be:

(a) An employee of the state in a management position at the time of appointment and throughout the term of appointment; or

(b) A person who holds an elective office, by election or appointment, in the governing body of a participating public employer, other than the state.

(3) One member **of the board** must be **either:**

(a) A retired member of the Public Employees Retirement System who retired from a position in an appropriate bargaining unit as defined in ORS 243.650; or

(b) A public employee, as defined in ORS 243.650, who is in an appropriate bargaining unit, as defined in ORS 243.650, and who has an exclusive representative at the time of the member's appointment and throughout the term of the member. Membership on the board does not affect the status of the person as a public employee, as defined in ORS 243.650.

(4) Three members of the board must have experience in business management, pension management or investing. A member appointed under this subsection may not be a member of the Public Employees Retirement System or a beneficiary of a member of the system, and may not have any interest in benefits provided by the system.

(5) Notwithstanding the qualifications established for members of the board under this section, all members of the board have the same fiduciary duties and must exercise the same degree of independent judgment.

(6) Any vacancy on the board shall be filled by appointment for the unexpired term of the member replaced. Members of the board may be reappointed.

(7) Except as provided in subsection (8) of this section, a member of the board is entitled to compensation and expenses as provided in ORS 292.495 from the Public Employees Retirement Fund.

(8) Any member of the board who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the board. The wages or salary of the member shall not be reduced during periods that the member is released from duty for the purpose of conducting the official business of the board. The board shall reimburse a public employer for the cost of continuing the wages or salary of the member while the member is released from duty under this subsection. A member who continues to receive wages or salary under the provisions of this subsection shall not receive compensation under ORS 292.495, but shall receive travel and other expenses provided for under ORS 292.495. The provisions of this subsection do not apply to any person who is a member of the board and who holds another office that is subject to the provisions of section 10, Article II of the Oregon Constitution, prohibiting the holding of more than one lucrative office.

VERIFICATION OF RETIREMENT BENEFITS

SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS chapter 238.

SECTION 3. (1) Not earlier than two years before a member's earliest service retirement age, a member may request a verification of retirement data from the Public Employees Retirement Board. Upon receiving a request under this section, the board shall notify all of the member's participating public employers of the request. In a manner specified by rules of the board, the board shall allow those employers a reasonable time to confirm the records relating to the member that were provided to the board before the request was made. The board shall thereafter provide a verification to the member that includes the following data, as reflected in the records of the Public Employees Retirement System:

(a) The service information reported by the member's employers and the number of years and months of creditable service or retirement credit derived from that information, determined as of a date specified in the verification.

(b) The salary data reported by the member's employers for each calendar year, and the final average salary for the member derived from that data.

(c) If applicable, the member's regular account balance, and any variable account balance, as of the end of a calendar year specified in the verification.

(d) If applicable, the total amount of unused sick leave accumulated by the member as of a date specified in the verification.

(2) A member of the system may dispute the accuracy of the data provided in the verification by filing a written notice of dispute with the board not more than 60 days after the date on which the verification is provided to the member. Upon receiving a notice of dispute under this subsection, the board shall determine the accuracy of the disputed data and make a written decision based on its determination. The board shall provide to the member a copy of the decision and a written explanation of any applicable statutes and rules. A member may seek judicial review of the decision as provided in ORS 183.484 and rules of the board.

(3) Except as provided in this section, when a member who receives a verification under this section retires for service, the creditable service, retirement credit, final average salary, member account balances and accumulated unused sick leave used in calculating the member's retirement allowance or pension may not be less than the amounts provided in the verification, subject to adjustments for:

(a) Creditable service or retirement credit accrued by the member after the date specified in the verification.

(b) Salary attributable to periods of employment after the date specified in the verification.

(c) Earnings and losses credited to the member's accounts from the end of the calendar year specified in the verification to the member's effective retirement date, in accordance with rules adopted by the board.

(d) Sick leave used and accrued after the date specified in the verification.

(4) The board may use creditable service, retirement credit, final average salary, member account balances or accumulated unused sick leave in calculating a member's service retirement allowance that is less than the amounts provided in a verification received under this section if the member knew that the amounts were not accurate at the time the verification was provided and the member did not dispute the accuracy of the amounts as provided in subsection (2) of this section.

(5) A participating public employer may not modify information provided to the board relating to a member's creditable service, retirement credit, final average salary, employee contributions or accumulated unused sick leave after the board provides the member with a verification under this section that is based on that information except in response to the board's request for the purpose of a determination under subsection (2) or (4) of this section.

(6)(a) Subject to paragraph (b) of this subsection, erroneous payments or overpayments paid to or on account of a member based on a verification provided under this section may not be recovered under ORS 238.715, but may be charged to the reserve account established under ORS 238.670 (1), or charged as an administrative expense under ORS 238.610.

(b) The board shall recover erroneous payments or overpayments paid to or on account of a member based on a verification provided under this section if the board determines that the recovery 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.

(7) A member may dispute the accuracy of data in a verification only as provided under this section. A member may not dispute the accuracy of data in a verification in the manner provided by ORS 238.450.

(8) A member shall be provided with one verification under this section at no cost. The board may establish procedures for recovering administrative costs from members for services in providing additional verifications.

SECTION 4. (1) Except as provided in this section, section 3 of this 2009 Act becomes operative on July 1, 2011.

(2) The requirement that the Public Employees Retirement Board provide verification of the amount of a member's accumulated unused sick leave under section 3 (1)(d) of this 2009 Act first applies to requests for verifications of retirement data received by the board on or after July 1, 2012.

SECTION 4a. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (1), chapter 75, Oregon Laws 2009 (Enrolled Senate Bill 5539), for the biennium beginning July 1, 2009, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Public Employees Retirement System, is increased by \$500,000.

PARTICIPATION OF OPSRP MEMBERS IN PERS HEALTH INSURANCE PLANS

SECTION 5. ORS 238A.050 is amended to read:

238A.050. (1) The Oregon Public Service Retirement Plan is part of the Public Employees Retirement System and is administered by the Public Employees Retirement Board.

(2) **Sections 3 and 7 of this 2009 Act and** ORS 238.225, 238.229, 238.231, **238.410**, 238.445, 238.450, 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630, 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696, 238.698, 238.700, 238.705, 238.710 and 238.715 apply to the Oregon Public Service Retirement Plan.

(3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4)

of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the provisions of ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the individual account program and pension program differently than the other assets of the Public Employees Retirement System.

(4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the limitations imposed by ORS 293.726 (6).

(5) The board may contract with a private provider for the administration of the individual account program. The board is not subject to the provisions of ORS chapter 279A or 279B in awarding a contract under the provisions of this subsection. The board shall establish procedures for inviting proposals and awarding contracts under this subsection.

RETIREMENT CREDIT FOR RETROACTIVE PAYMENTS

SECTION 6. Section 7 of this 2009 Act is added to and made a part of ORS chapter 238.

SECTION 7. (1) For the purpose of computing salary under this chapter and ORS chapter 238A, salary includes retroactive payments of wages made to an employee to correct a clerical error. Retroactive payments described in this subsection shall be allocated to and deemed paid in the periods in which the work was done or in which the work would have been done.

(2) For the purpose of computing salary under this chapter and ORS chapter 238A, salary includes retroactive payments of wages made to an employee pursuant to a judgment, administrative order, arbitration award, conciliation agreement or settlement agreement that resolves a dispute or claim based on the employee's rights under employment or wage law or under a collective bargaining agreement. Retroactive payments described in this subsection shall be allocated to and deemed paid in the periods of the employee's active or inactive membership in which the work was done or in which the work would have been done.

(3) If retroactive payments are included in the salary of an employee under this section, the employee shall receive retirement credit for the periods to which the payment is allocated.

SECTION 8. ORS 238.005 is amended to read:

238.005. For purposes of this chapter:

(1) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(2) "Board" means the Public Employees Retirement Board.

(3) "Calendar year" means 12 calendar months commencing on January 1 and ending on December 31 following.

(4) "Continuous service" means service not interrupted for more than five years, except that such continuous service shall be computed without regard to interruptions in the case of:

(a) An employee who had returned to the service of the employer as of January 1, 1945, and who remained in that employment until having established membership in the Public Employees Retirement System.

(b) An employee who was in the armed services on January 1, 1945, and returned to the service of the employer within one year of the date of being otherwise than dishonorably discharged and remained in that employment until having established membership in the Public Employees Retirement System.

(5) "Creditable service" means any period of time during which an active member is being paid a salary by a participating public employer and for which benefits under this chapter are funded by employer contributions and earnings on the fund. For purposes of computing years of "creditable service," full months and major fractions of a month shall be considered to be one-twelfth of a year and shall be added to all full years. "Creditable service" includes all retirement credit received by a member.

(6) "Earliest service retirement age" means the age attained by a member when the member could first make application for retirement under the provisions of ORS 238.280.

(7) "Employee" includes, in addition to employees, public officers, but does not include:

(a) Persons engaged as independent contractors.

(b) Seasonal, emergency or casual workers whose periods of employment with any public employer or public employers do not total 600 hours in any calendar year.

(c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such persons.

(d) Persons employed and paid from federal funds received under the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other federal program intended primarily to alleviate unemployment. However, any such person shall be considered an "employee" if not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects to have the person so considered by an irrevocable written notice to the board.

(e) Persons who are employees of a railroad, as defined in ORS 824.020, and who, as such employees, are included in a retirement plan under federal railroad retirement statutes. This paragraph shall be deemed to have been in effect since the inception of the system.

(8) "Final average salary" means whichever of the following is greater:

(a) The average salary per calendar year paid by one or more participating public employers to an employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee, in which three years the employee was paid the highest salary. The three calendar years in which the employee was paid the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is three or fewer, the final average salary for the employee is the average salary per calendar year paid by one or more participating public employers to the employee in all of those years, without regard to whether the employee was employed for the full calendar year.

(b) One-third of the total salary paid by a participating public employer to an employee who is an active member of the system in the last 36 calendar months of active membership before the effective date of retirement of the employee.

(9) "Firefighter" does not include a volunteer firefighter, but does include:

(a) The State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals; and

(b) An employee of the State Forestry Department who is certified by the State Forester as a professional wildland firefighter and whose primary duties include the abatement of uncontrolled fires as described in ORS 477.064.

(10) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 following.

(11) "Fund" means the Public Employees Retirement Fund.

(12)(a) "Member" means a person who has established membership in the system and whose membership has not been terminated as described in ORS 238.095. "Member" includes active, inactive and retired members.

(b) "Active member" means a member who is presently employed by a participating public employer in a qualifying position and who has completed the six-month period of service required by ORS 238.015.

(c) "Inactive member" means a member who is not employed in a qualifying position, whose membership has not been terminated in the manner described by ORS 238.095, and who is not retired for service or disability.

(d) "Retired member" means a member who is retired for service or disability.

(13)(a) "Member account" means the regular account and the variable account.

(b) "Regular account" means the account established for each active and inactive member under ORS 238.250.

(c) "Variable account" means the account established for a member who participates in the Variable Annuity Account under ORS 238.260.

(14) "Normal retirement age" means:

(a) For a person who establishes membership in the system before January 1, 1996, as described in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter or 58 years of age if the employee retires at that age as other than a police officer or firefighter.

(b) For a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter or 60 years of age if the employee retires at that age as other than a police officer or firefighter.

(15) "Pension" means annual payments for life derived from contributions by one or more public employers.

(16) "Police officer" includes:

(a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions whose duties, as assigned by the Director of the Department of Corrections, include the custody of persons committed to the custody of or transferred to the Department of Corrections and employees of the Department of Corrections who were classified as police officers on or before July 27, 1989, whether or not such classification was authorized by law.

(b) Employees of the Department of State Police who are classified as police officers by the Superintendent of State Police.

(c) Employees of the Oregon Liquor Control Commission who are classified as enforcement officers by the administrator of the commission.

(d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified by the sheriff, are the regular duties of police officers or corrections officers.

(e) Police chiefs and police personnel of a city who are classified as police officers by the council or other governing body of the city.

(f) Parole and probation officers employed by the Department of Corrections, parole and probation officers who are transferred to county employment under ORS 423.549 and adult parole and probation officers, as defined in ORS 181.610, who are classified as police officers for the purposes of this chapter by the county governing body. If a county classifies adult parole and probation officers as police officers for the purposes of this chapter, and the employees so classified are represented by a labor organization, any proposal by the county to change that classification or to cease to classify adult parole and probation officers as police officers for the purposes of this chapter is a mandatory subject of bargaining.

(g) Police officers appointed under ORS 276.021 or 276.023.

(h) Employees of the Port of Portland who are classified as airport police by the Board of Commissioners of the Port of Portland.

(i) Employees of the State Department of Agriculture who are classified as livestock police officers by the Director of Agriculture.

(j) Employees of the Department of Public Safety Standards and Training who are classified by the department as other than secretarial or clerical personnel.

(k) Investigators of the Criminal Justice Division of the Department of Justice.

(L) Corrections officers as defined in ORS 181.610.

(m) Employees of the Oregon State Lottery Commission who are classified by the Director of the Oregon State Lottery as enforcement agents pursuant to ORS 461.110.

(n) The Director of the Department of Corrections.

(o) An employee who for seven consecutive years has been classified as a police officer as defined by this section, and who is employed or transferred by the Department of Corrections to fill a position designated by the Director of the Department of Corrections as being eligible for police officer status.

(p) An employee of the Department of Corrections classified as a police officer on or prior to July 27, 1989, whether or not that classification was authorized by law, as long as the employee

remains in the position held on July 27, 1989. The initial classification of an employee under a system implemented pursuant to ORS 240.190 does not affect police officer status.

(q) Employees of a school district who are appointed and duly sworn members of a law enforcement agency of the district as provided in ORS 332.531 or otherwise employed full-time as police officers commissioned by the district.

(r) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050, 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who have supervisory, control or teaching responsibilities over juveniles committed to the custody of the Department of Corrections or the Oregon Youth Authority.

(s) Employees at youth correction facilities as defined in ORS 420.005 whose primary job description involves the custody, control, treatment, investigation or supervision of juveniles placed in such facilities.

(t) Employees of the Oregon Youth Authority who are classified as juvenile parole and probation officers.

(17) "Public employer" means the state, one of its agencies, any city, county, or municipal or public corporation, any political subdivision of the state or any instrumentality thereof, or an agency created by one or more such governmental organizations to provide governmental services. For purposes of this chapter, such agency created by one or more governmental organizations is a governmental instrumentality and a legal entity with power to enter into contracts, hold property and sue and be sued.

(18) "Prior service credit" means credit provided under ORS 238.442 or under ORS 238.225 (2) to (6) (1999 Edition).

(19) "Qualifying position" means one or more jobs with one or more participating public employers in which an employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which a participating public employer does not provide benefits under this chapter pursuant to an application made under ORS 238.035.

(20) "Retirement credit" means a period of time that is treated as creditable service for the purposes of this chapter.

(21)(a) "Salary" means the remuneration paid an employee in cash out of the funds of a public employer in return for services to the employer, plus the monetary value, as determined by the Public Employees Retirement Board, of whatever living quarters, board, lodging, fuel, laundry and other advantages the employer furnishes the employee in return for services.

(b) "Salary" includes but is not limited to:

(A) Payments of employee and employer money into a deferred compensation plan, which are deemed salary paid in each month of deferral;

(B) The amount of participation in a tax-sheltered or deferred annuity, which is deemed salary paid in each month of participation;

(C) Retroactive payments [*made to an employee to correct a clerical error or pursuant to an award by a court or by order of or a conciliation agreement with an administration agency charged with enforcing federal or state law protecting the employee's rights to employment or wages, which shall be allocated to and deemed paid in the periods in which the work was done or in which it would have been done*] **described in section 7 of this 2009 Act**; and

(D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS 652.190.

(c) "Salary" or "other advantages" does not include:

(A) Travel or any other expenses incidental to employer's business which is reimbursed by the employer;

(B) Payments for insurance coverage by an employer on behalf of employee or employee and dependents, for which the employee has no cash option;

(C) Payments made on account of an employee's death;

(D) Any lump sum payment for accumulated unused sick leave;

(E) Any accelerated payment of an employment contract for a future period or an advance against future wages;

(F) Any retirement incentive, retirement severance pay, retirement bonus or retirement gratuitous payment;

(G) Payments for periods of leave of absence after the date the employer and employee have agreed that no future services qualifying pursuant to ORS 238.015 (3) will be performed, except for sick leave and vacation;

(H) Payments for instructional services rendered to institutions of the Department of Higher Education or the Oregon Health and Science University when such services are in excess of full-time employment subject to this chapter. A person employed under a contract for less than 12 months is subject to this subparagraph only for the months to which the contract pertains; or

(I) Payments made by an employer for insurance coverage provided to a domestic partner of an employee.

(22) "School year" means the period beginning July 1 and ending June 30 next following.

(23) "System" means the Public Employees Retirement System.

(24) "Vested" means being an active member of the system in each of five calendar years.

(25) "Volunteer firefighter" means a firefighter whose position normally requires less than 600 hours of service per year.

SECTION 9. ORS 238A.005 is amended to read:

238A.005. For the purposes of this chapter:

(1) "Active member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

(2) "Actuarial equivalent" means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.

(3) "Board" means the Public Employees Retirement Board.

(4) "Eligible employee" means a person who performs services for a participating public employer, including elected officials other than judges. "Eligible employee" does not include:

(a) Persons engaged as independent contractors;

(b) Aliens working under a training or educational visa;

(c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190, provided sheltered employment or make-work by a public employer;

(d) Persons categorized by a participating public employer as student employees;

(e) Any person who is an inmate of a state institution;

(f) Employees of foreign trade offices of the Economic and Community Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

(g) An employee actively participating in an alternative retirement program established under ORS 353.250 or an optional retirement plan established under ORS 341.551;

(h) Employees of the Oregon University System who are actively participating in an optional retirement plan offered under ORS 243.800;

(i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003, for membership in the system under the provisions of ORS chapter 238 or other law;

(j) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

(k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who continues to receive retirement benefits while employed; and

(L) Judges.

(5) "Firefighter" means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

(b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals; and

(c) An employee of the State Forestry Department who is certified by the State Forester as a professional wildland firefighter and whose primary duties include the abatement of uncontrolled fires as described in ORS 477.064.

(6) "Fund" means the Public Employees Retirement Fund.

(7)(a) "Hour of service" means:

(A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and

(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.

(b) "Hour of service" does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation laws.

(8) "Inactive member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan whose membership has not been terminated, who is not a retired member and who is not employed in a qualifying position.

(9) "Individual account program" means the defined contribution individual account program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(10) "Member" means an eligible employee who has established membership in the pension program or the individual account program of the Oregon Public Service Retirement Plan and whose membership has not been terminated under ORS 238A.110 or 238A.310.

(11) "Participating public employer" means a public employer as defined in ORS 238.005 that provides retirement benefits for employees of the public employer under the system.

(12) "Pension program" means the defined benefit pension program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(13) "Police officer" means a police officer as described in ORS 238.005.

(14) "Qualifying position" means one or more jobs with one or more participating public employers in which an eligible employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which benefits are not provided under the Oregon Public Service Retirement Plan pursuant to ORS 238A.070 (2).

(15) "Retired member" means a pension program member who is receiving a pension as provided in ORS 238A.180 to 238A.195.

(16)(a) "Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection, but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in taxable income.

(b) "Salary" includes the following amounts:

(A) Payments of employee and employer money into a deferred compensation plan that are made at the election of the employee.

(B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the employee.

(C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit plan by the employer at the election of the employee and that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on August 29, 2003.

(D) Any amount that is contributed to a cash or deferred arrangement by the employer at the election of the employee and that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect on August 29, 2003.

(E) Retroactive payments [*made to an employee to correct a clerical error, pursuant to an award by a court or by order of or pursuant to a conciliation agreement with an administration agency charged with enforcing federal or state law protecting the employee's rights to employment or wages, which shall be allocated to and deemed paid in the periods in which the work was done or in which the work would have been done*] **described in section 7 of this 2009 Act.**

(F) The amount of an employee contribution to the individual account program that is paid by the employer and deducted from the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(a).

(G) The amount of an employee contribution to the individual account program that is not paid by the employer under ORS 238A.335.

(H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS 652.190.

(c) "Salary" does not include the following amounts:

(A) Travel or any other expenses incidental to employer's business which is reimbursed by the employer.

(B) Payments made on account of an employee's death.

(C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid leave.

(D) Any severance payment, accelerated payment of an employment contract for a future period or advance against future wages.

(E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

(F) Payment for a leave of absence after the date the employer and employee have agreed that no future services in a qualifying position will be performed.

(G) Payments for instructional services rendered to institutions of the Department of Higher Education or the Oregon Health and Science University when those services are in excess of full-time employment subject to this chapter. A person employed under a contract for less than 12 months is subject to this subparagraph only for the months covered by the contract.

(H) The amount of an employee contribution to the individual account program that is paid by the employer and is not deducted from the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(b).

(I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

(17) "System" means the Public Employees Retirement System.

SECTION 10. The unit captions used in this 2009 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 2009 Act.

SECTION 11. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate June 26, 2009

.....
Secretary of Senate

.....
President of Senate

Passed by House June 29, 2009

.....
Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

.....
Secretary of State