

House Bill 2163

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

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**.

Permits employer to make deduction from employee's wages for contribution to individual account for employee's benefit in plan maintained under section 125, 401(k), 403(b), 408, 408A or 457 of Internal Revenue Code if employee is given certain notices and right to cancel or change contribution.

Requires governing board of public university to contribute four percent of employee's salary to Optional Retirement Plan in each month in tax year after employee contributes maximum amount allowed to tax-deferred investment plan.

A BILL FOR AN ACT

1
2 Relating to contributions to retirement plans; creating new provisions; and amending ORS 243.800
3 and 652.610.

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

5 **SECTION 1.** ORS 652.610, as amended by section 1, chapter 115, Oregon Laws 2016, is amended
6 to read:

7 652.610. (1)(a) All persons, firms, partnerships, associations, cooperative associations, corpo-
8 rations, municipal corporations, the state and its political subdivisions, except the federal govern-
9 ment and its agencies, employing, in this state, during any calendar month one or more persons,
10 shall provide the employee on regular paydays and at other times payment of wages, salary or
11 commission is made, with an itemized statement as described in paragraph (b) of this subsection.

12 (b) The statement required under this subsection must be a written statement, sufficiently
13 itemized to show:

14 (A) The date of the payment;

15 (B) The dates of work covered by the payment;

16 (C) The name of the employee;

17 (D) The name and business registry number or business identification number;

18 (E) The address and telephone number of the employer;

19 (F) The rate or rates of pay;

20 (G) Whether the employee is paid by the hour, shift, day or week or on a salary, piece or com-
21 mission basis;

22 (H) Gross wages;

23 (I) Net wages;

24 (J) The amount and purpose of each deduction made during the respective period of service that
25 the payment covers;

26 (K) Allowances, if any, claimed as part of minimum wage;

27 (L) Unless the employee is paid on a salary basis and is exempt from overtime compensation as
28 established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate

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 or rates of pay, the number of regular hours worked and pay for those hours, and the number of
 2 overtime hours worked and pay for those hours; and

3 (M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number
 4 of pieces completed at each piece rate and the total pay for each rate.

5 (c) Notwithstanding paragraph (b) of this subsection, the employer may provide the statement
 6 required under this subsection to the employee in electronic form pursuant to ORS 84.001 to 84.061
 7 if:

8 (A) The statement contains the information described in paragraph (b) of this section;

9 (B) The employee expressly agrees to receive the statement in electronic form; and

10 (C) The employee has the ability to print or store the statement at the time of receipt.

11 (2)(a) The statement may be attached to or be a part of the check, draft, voucher or other in-
 12 strument by which payment is made, or may be delivered separately from the instrument.

13 (b) The statement shall be provided electronically at the time payment is made to all state offi-
 14 cers and employees paid electronically under the state payroll system as provided by ORS 292.026.

15 (c) State agencies shall provide access to electronic statements to employees who do not have
 16 regular access to computers in their workplace.

17 (d) Notwithstanding paragraph (b) of this subsection, if an officer or employee paid under the
 18 state payroll system as provided by ORS 292.026 wants to receive payment of net salary and wages
 19 by check or to receive a paper statement of itemized payroll deductions, the officer or employee
 20 shall request paper statements or payment by check in accordance with the procedures adopted by
 21 rule by the Oregon Department of Administrative Services.

22 (3) An employer may not withhold, deduct or divert any portion of an employee's wages unless:

23 (a) The employer is required to do so by law;

24 (b) The deductions are voluntarily authorized in writing by the employee, are for the employee's
 25 benefit and are recorded in the employer's books;

26 (c) The employee has voluntarily signed an authorization for a deduction for any other item,
 27 provided that the ultimate recipient of the money [*withheld*] **deducted** is not the employer and that
 28 the deduction is recorded in the employer's books;

29 (d) The deduction is authorized by a collective bargaining agreement to which the employer is
 30 a party;

31 (e) The deduction is authorized under ORS 18.736; [*or*]

32 (f) The deduction is made from the payment of wages upon termination of employment and is
 33 authorized pursuant to a written agreement between the employee and employer for the repayment
 34 of a loan made to the employee by the employer, if all of the following conditions are met:

35 (A) The employee has voluntarily signed the agreement;

36 (B) The loan was paid to the employee in cash or other medium permitted by ORS 652.110;

37 (C) The loan was made solely for the employee's benefit and was not used, either directly or
 38 indirectly, for any purpose required by the employer or connected with the employee's employment
 39 with the employer;

40 (D) The amount of the deduction at termination of employment does not exceed the amount
 41 permitted to be garnished under ORS 18.385; and

42 (E) The deduction is recorded in the employer's books[.]; **or**

43 **(g) The deduction is for a contribution to an individual account for the employee's benefit**
 44 **in a plan maintained under section 125, 401(k), 403(b), 408, 408A or 457 of the Internal Re-**
 45 **venue Code, if the employee is given written notice of the contribution before the initial de-**

1 **duction is made or the amount of the deduction is increased. The notice must include a**
 2 **description of the benefit the contribution provides and of the right to cancel or change the**
 3 **amount of the contribution by instruction to the employer, including the procedure for giving**
 4 **the instruction.**

5 (4) When an employer deducts an amount from an employee's wages as required or authorized
 6 by law or agreement, the employer shall pay the amount deducted to the appropriate recipient as
 7 required by the law or agreement. The employer shall pay the amount deducted within the time re-
 8 quired by the law or the agreement or, if the time for payment is not specified by the law or
 9 agreement, within seven days after the date the wages from which the deductions are made are due.
 10 Failure to pay the amount as required constitutes an unlawful deduction.

11 (5) This section does not:

12 (a) Prohibit the [*withholding*] **deduction** of amounts authorized in writing by the employee to
 13 be contributed by the employee to charitable organizations, including contributions made pursuant
 14 to ORS 243.666 and 663.110;

15 (b) Prohibit deductions by checkoff dues to labor organizations or service fees when the de-
 16 ductions are not otherwise prohibited by law; or

17 (c) Diminish or enlarge the right of any person to assert and enforce a lawful setoff or
 18 counterclaim or to attach, take, reach or apply an employee's compensation on due legal process.

19 **SECTION 2.** ORS 243.800 is amended to read:

20 243.800. (1) Notwithstanding any provision of ORS chapter 238 or 238A or ORS 243.910 to
 21 243.945, the governing board of a public university listed in ORS 352.002 shall establish and admin-
 22 ister an Optional Retirement Plan for administrative and academic employees of the public univer-
 23 sity. The Optional Retirement Plan must be a qualified plan under the Internal Revenue Code,
 24 capable of accepting funds transferred under subsection (7) of this section without the transfer being
 25 treated as a taxable event under the Internal Revenue Code, and willing to accept those funds.
 26 Retirement and death benefits shall be provided under the plan by the purchase of annuity contracts,
 27 fixed or variable or a combination thereof, or by contracts for investments in mutual funds.

28 (2) An administrative or academic employee may elect to participate in the Optional Retirement
 29 Plan upon completion of:

30 (a) Six hundred hours of employment, or the equivalent as determined by the governing board;
 31 and

32 (b) Six months of employment that is not interrupted by more than 30 consecutive working days.

33 (3) An administrative or academic employee may make an irrevocable election to participate in
 34 the Optional Retirement Plan within six months after being employed. An election under this sub-
 35 section is effective on the first day of the month following the completion of the requirements of
 36 subsection (2) of this section.

37 (4) An administrative or academic employee who does not elect to participate in the Optional
 38 Retirement Plan:

39 (a) Remains or becomes a member of the Public Employees Retirement System in accordance
 40 with ORS chapters 238 and 238A; or

41 (b) Continues to be assisted by the governing board under ORS 243.920 if the employee is being
 42 so assisted.

43 (5) Except as provided in subsection (6) of this section, employees who elect to participate in the
 44 Optional Retirement Plan are ineligible for active membership in the Public Employees Retirement
 45 System or for any assistance by the governing board under ORS 243.920 as long as those employees

1 are employed in the public university and the plan is in effect.

2 (6)(a) An administrative or academic employee who elects to participate in the Optional Retirement
3 Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who
4 is not vested shall be considered by the Public Employees Retirement Board to be a terminated
5 member under the provisions of ORS 238.095 as of the effective date of the election, and the amount
6 credited to the member account of the member shall be transferred directly to the Optional Retirement
7 Plan by the Public Employees Retirement Board in the manner provided by subsection (7) of
8 this section.

9 (b) An administrative or academic employee who elects to participate in the Optional Retirement
10 Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is
11 vested shall be considered to be an inactive member by the Public Employees Retirement Board and
12 shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes
13 a written request to the Public Employees Retirement Board for a transfer of the amounts credited
14 to the member account of the member to the Optional Retirement Plan. A request for a transfer
15 must be made at the time the member elects to participate in the Optional Retirement Plan. Upon
16 receiving the request, the Public Employees Retirement Board shall transfer all amounts credited
17 to the member account of the member directly to the Optional Retirement Plan, and shall terminate
18 all rights, privileges and options of the employee under ORS chapter 238.

19 (c) An administrative or academic employee who elects to participate in the Optional Retirement
20 Plan, and who is not a vested member of the pension program of the Oregon Public Service Retirement
21 Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be
22 considered to be a terminated member of the pension program by the Public Employees Retirement
23 Board as of the effective date of the election.

24 (d) An administrative or academic employee who elects to participate in the Optional Retirement
25 Plan, and who is a vested member of the pension program of the Oregon Public Service Retirement
26 Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be consid-
27 ered an inactive member of the pension program by the Public Employees Retirement Board as of
28 the effective date of the election. An employee who is subject to the provisions of this paragraph
29 retains all the rights, privileges and options of an inactive member of the pension program. If the
30 actuarial equivalent of the employee's benefit under the pension program at the time that the
31 election becomes effective is \$5,000 or less, the employee may make a written request to the Public
32 Employees Retirement Board for a transfer of the employee's interest under the pension program to
33 the Optional Retirement Plan. The request must be made at the time the member elects to partic-
34 ipate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement
35 Board shall transfer the amount determined to be the actuarial equivalent of the employee's benefit
36 under the pension program directly to the Optional Retirement Plan, and shall terminate the mem-
37 bership of the employee in the pension program.

38 (e) An administrative or academic employee who elects to participate in the Optional Retirement
39 Plan, and who is a vested member of the individual account program of the Oregon Public Service
40 Retirement Plan as described in ORS 238A.320 on the date that the election becomes effective, shall
41 be considered an inactive member of the individual account program by the Public Employees Re-
42 tirement Board as of the effective date of the election. An employee who is subject to the provisions
43 of this paragraph retains all the rights, privileges and options of an inactive member of the indi-
44 vidual account program. An administrative or academic employee who elects to participate in the
45 Optional Retirement Plan, and who is a member of the individual account program of the Oregon

1 Public Service Retirement Plan, may make a written request to the Public Employees Retirement
2 Board that all amounts in the member's employee account, rollover account and employer account,
3 to the extent the member is vested in those accounts under ORS 238A.320, be transferred to the
4 Optional Retirement Plan. The request must be made at the time the member elects to participate
5 in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement
6 Board shall transfer the amounts directly to the Optional Retirement Plan, and shall terminate the
7 membership of the employee in the individual account program upon making the transfer.

8 (f) Notwithstanding paragraphs (b), (d) and (e) of this subsection, the Public Employees Retirement
9 Board may not treat any employee as an inactive member under the provisions of this sub-
10 section for the purpose of receiving any benefit under ORS chapter 238 or 238A that requires that
11 the employee be separated from all service with participating public employers and with employers
12 who are treated as part of a participating public employer's controlled group under the federal laws
13 and rules governing the status of the Public Employees Retirement System and the Public Employees
14 Retirement Fund as a qualified governmental retirement plan and trust.

15 (7) Any amounts transferred from the Public Employees Retirement Fund under subsection (6)
16 of this section shall be transferred directly to the Optional Retirement Plan by the Public Employees
17 Retirement Board and may not be made available to the employee.

18 (8) An employee participating in the Optional Retirement Plan who was hired before July 1,
19 2014, shall contribute monthly an amount equal to the percentage of the employee's salary that the
20 employee would otherwise have contributed as an employee contribution to the Public Employees
21 Retirement System if the employee had not elected to participate in the Optional Retirement Plan.

22 (9) For an employee participating in the Optional Retirement Plan who was hired before July
23 1, 2014, the governing board shall contribute monthly to the Optional Retirement Plan the percent-
24 age of salary of the employee equal to the percentage of salary that would otherwise have been
25 contributed as an employer contribution on behalf of the employee to the Public Employees Retirement
26 System, before any offset under ORS 238.229 (2), if the employee had not elected to participate
27 in the Optional Retirement Plan.

28 (10) For an employee participating in the Optional Retirement Plan who was hired on or after
29 July 1, 2014, the governing board shall contribute monthly to the Optional Retirement Plan:

30 (a) Eight percent of the employee's salary; *[and]*

31 (b) A percentage of the employee's salary equal to the percentage of salary contributed by the
32 employee to the public university's Tax-Deferred Investment 403(b) Plan under ORS 243.820, up to
33 four percent of the employee's salary in each pay period[.]; **and**

34 (c) **If, at any time during a tax year, an employee has contributed the maximum amount**
35 **allowed under the Internal Revenue Code to the public university's Tax-Deferred Investment**
36 **403(b) Plan under ORS 243.820, four percent of the employee's salary in each remaining**
37 **month in the tax year.**

38 (11) Both employee and employer contributions to an Optional Retirement Plan shall be remitted
39 directly to the companies that have issued annuity contracts to the participating employees or di-
40 rectly to the mutual funds.

41 (12) Benefits under the Optional Retirement Plan are payable to employees who elect to partic-
42 ipate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accord-
43 ance with the terms of the annuity contracts or the terms of the contract with the mutual fund.
44 Employees electing to participate in the Optional Retirement Plan agree that benefits payable under
45 the plan are not obligations of the State of Oregon or of the Public Employees Retirement System.

1 **SECTION 3.** The amendments to ORS 243.800 by section 2 of this 2017 Act apply only to
2 tax years beginning on or after the effective date of this 2017 Act.
3 _____