

# DRAFT

## SUMMARY

Provides that district attorneys and deputy district attorneys qualify as police officers under Public Employees Retirement System.

### A BILL FOR AN ACT

Relating to the status of district attorneys in the Public Employees Retirement System; creating new provisions; and amending ORS 238.005.

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

**SECTION 1.** ORS 238.005, as amended by section 4, chapter 54, Oregon Laws 2018, is amended to read:

238.005. For purposes of this chapter:

(1) "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.

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

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

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

(5) "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.

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

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

13 (7) "Earliest service retirement age" means the age attained by a member  
14 when the member could first make application for retirement under the pro-  
15 visions of ORS 238.280.

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

18 (a) Persons engaged as independent contractors.

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

22 (c) Persons provided sheltered employment or made-work by a public em-  
23 ployer in an employment or industries program maintained for the benefit  
24 of such persons.

25 (d) Persons employed and paid from federal funds received under a federal  
26 program intended primarily to alleviate unemployment. However, any such  
27 person shall be considered an "employee" if not otherwise excluded by para-  
28 graphs (a) to (c) of this subsection and the public employer elects to have  
29 the person so considered by an irrevocable written notice to the board.

30 (e) Persons who are employees of a railroad, as defined in ORS 824.020,  
31 and who, as such employees, are included in a retirement plan under federal

1 railroad retirement statutes. This paragraph shall be deemed to have been  
2 in effect since the inception of the system.

3 (f) Persons employed in positions classified as post-doctoral scholar posi-  
4 tions by a public university listed in ORS 352.002, or by the Oregon Health  
5 and Science University, under ORS 350.370.

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

7 (a) The average salary per calendar year paid by one or more participat-  
8 ing public employers to an employee who is an active member of the system  
9 in three of the calendar years of membership before the effective date of re-  
10 tirement of the employee, in which three years the employee was paid the  
11 highest salary. The three calendar years in which the employee was paid the  
12 largest total salary may include calendar years in which the employee was  
13 employed for less than a full calendar year. If the number of calendar years  
14 of active membership before the effective date of retirement of the employee  
15 is three or fewer, the final average salary for the employee is the average  
16 salary per calendar year paid by one or more participating public employers  
17 to the employee in all of those years, without regard to whether the em-  
18 ployee was employed for the full calendar year.

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

23 (10) "Firefighter" does not include a volunteer firefighter, but does in-  
24 clude:

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

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

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

1 (12) “Fund” means the Public Employees Retirement Fund.

2 (13) “Inactive member” means a member who is not employed in a quali-  
3 fying position, whose membership has not been terminated in the manner  
4 described by ORS 238.095 and who is not retired for service or disability.

5 (14) “Institution of higher education” means a public university listed in  
6 ORS 352.002, the Oregon Health and Science University and a community  
7 college, as defined in ORS 341.005.

8 (15) “Member” means a person who has established membership in the  
9 system and whose membership has not been terminated as described in ORS  
10 238.095. “Member” includes active, inactive and retired members.

11 (16) “Member account” means the regular account and the variable ac-  
12 count.

13 (17) “Normal retirement age” means:

14 (a) For a person who establishes membership in the system before January  
15 1, 1996, as described in ORS 238.430, 55 years of age if the employee retires  
16 at that age as a police officer or firefighter or 58 years of age if the employee  
17 retires at that age as other than a police officer or firefighter.

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

22 (18) “Pension” means annual payments for life derived from contributions  
23 by one or more public employers.

24 (19) “Police officer” includes:

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

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

3 (c) Employees of the Oregon Liquor Control Commission who are classi-  
4 fied as regulatory specialists by the administrator of the commission.

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

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

10 (f) Police officers who are commissioned by a university under ORS  
11 352.121 or 353.125 and who are classified as police officers by the university.

12 (g) Parole and probation officers employed by the Department of Cor-  
13 rections, parole and probation officers who are transferred to county em-  
14 ployment under ORS 423.549 and adult parole and probation officers, as  
15 defined in ORS 181A.355, who are classified as police officers for the pur-  
16 poses of this chapter by the county governing body. If a county classifies  
17 adult parole and probation officers as police officers for the purposes of this  
18 chapter, and the employees so classified are represented by a labor organ-  
19 ization, any proposal by the county to change that classification or to cease  
20 to classify adult parole and probation officers as police officers for the pur-  
21 poses of this chapter is a mandatory subject of bargaining.

22 (h) Police officers appointed under ORS 276.021 or 276.023.

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

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

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

30 (L) Investigators of the Criminal Justice Division of the Department of  
31 Justice.

1 (m) Corrections officers as defined in ORS 181A.355.

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

5 (o) The Director of the Department of Corrections.

6 (p) An employee who for seven consecutive years has been classified as  
7 a police officer as defined by this section, and who is employed or transferred  
8 by the Department of Corrections to fill a position designated by the Direc-  
9 tor of the Department of Corrections as being eligible for police officer sta-  
10 tus.

11 (q) An employee of the Department of Corrections classified as a police  
12 officer on or prior to July 27, 1989, whether or not that classification was  
13 authorized by law, as long as the employee remains in the position held on  
14 July 27, 1989. The initial classification of an employee under a system im-  
15 plemented pursuant to ORS 240.190 does not affect police officer status.

16 (r) Employees of a school district who are appointed and duly sworn  
17 members of a law enforcement agency of the district as provided in ORS  
18 332.531 or otherwise employed full-time as police officers commissioned by  
19 the district.

20 (s) Employees at youth correction facilities and juvenile detention facili-  
21 ties under ORS 419A.050, 419A.052 and 420.005 to 420.915 who are required  
22 to hold valid Oregon teaching licenses and who have supervisory, control or  
23 teaching responsibilities over juveniles committed to the custody of the De-  
24 partment of Corrections or the Oregon Youth Authority.

25 (t) Employees at youth correction facilities as defined in ORS 420.005  
26 whose primary job description involves the custody, control, treatment, in-  
27 vestigation or supervision of juveniles placed in such facilities.

28 (u) Employees of the Oregon Youth Authority who are classified as juve-  
29 nile parole and probation officers.

30 (v) Employees of the Department of Human Services who are prohibited  
31 from striking under ORS 243.726 and whose duties include the care of resi-

1 dents of residential facilities, as defined in ORS 443.400, that house individ-  
2 uals with intellectual or developmental disabilities.

3 **(w) District attorneys and deputy district attorneys.**

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

6 (21) "Public employer" means the state, one of its agencies, any city,  
7 county, or municipal or public corporation, any political subdivision of the  
8 state or any instrumentality thereof, or an agency created by one or more  
9 such governmental organizations to provide governmental services. For pur-  
10 poses of this chapter, such agency created by one or more governmental or-  
11 ganizations is a governmental instrumentality and a legal entity with power  
12 to enter into contracts, hold property and sue and be sued.

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

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

20 (24) "Retired member" means a member who is retired for service or dis-  
21 ability.

22 (25) "Retirement credit" means a period of time that is treated as credit-  
23 able service for the purposes of this chapter.

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

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

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

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

3 (C) Retroactive payments described in ORS 238.008; and

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

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

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

9 (B) Payments for insurance coverage by an employer on behalf of em-  
10 ployee or employee and dependents, for which the employee has no cash op-  
11 tion;

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

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

14 (E) Any accelerated payment of an employment contract for a future pe-  
15 riod or an advance against future wages;

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

18 (G) Payments for periods of leave of absence after the date the employer  
19 and employee have agreed that no future services qualifying pursuant to ORS  
20 238.015 (3) will be performed, except for sick leave and vacation;

21 (H) Payments for instructional services rendered to public universities  
22 listed in ORS 352.002 or the Oregon Health and Science University when  
23 such services are in excess of full-time employment subject to this chapter.  
24 A person employed under a contract for less than 12 months is subject to this  
25 subparagraph only for the months to which the contract pertains;

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

28 (J) Compensation described and authorized under ORS 341.556 that is not  
29 paid by the community college employing the faculty member;

30 (K) Compensation described and authorized under ORS 352.232 that is not  
31 paid by the public university employing the officer or employee; or

1 (L) Compensation described and authorized under ORS 353.270 that is not  
2 paid by Oregon Health and Science University.

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

5 (28) "System" means the Public Employees Retirement System.

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

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

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

12 **SECTION 2. (1) The amendments to ORS 238.005 by section 1 of this**  
13 **2019 Act apply only to a person who:**

14 **(a) Is employed as a district attorney or a deputy district attorney**  
15 **on the effective date of this 2019 Act; or**

16 **(b) Becomes employed as a district attorney or a deputy district**  
17 **attorney after the effective date of this 2019 Act.**

18 **(2) A person who is employed as a district attorney or a deputy**  
19 **district attorney on or after the effective date of this 2019 Act is enti-**  
20 **tled to service under the Public Employees Retirement System as a**  
21 **police officer only for service performed as a district attorney or dep-**  
22 **uty district attorney on or after the effective date of this 2019 Act.**

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