

Senate Bill 551

Sponsored by Senator KNOPP, Representative ZIKA (Pre-session filed.)

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**.

Redirects employee contributions made by member of system from individual account program to account to be used to pay for member's pension or other retirement benefits accrued on or after January 1, 2020.

For years beginning in 2020, caps at \$100,000 annual salary used to calculate final average salary for purposes of Public Employees Retirement System.

Directs Public Employees Retirement Board to recalculate employer contribution rates to reflect savings attributable to Act.

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

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; and amending ORS 238.005, 238.229,
3 238.265, 238.580, 238.660, 238A.005, 238A.025, 238A.300, 238A.320, 238A.330 and 238A.340.

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

5 **SECTION 1.** ORS 238A.300 is amended to read:

6 238A.300. (1) Except as provided in ORS 238A.100 (2) and subsection (2) of this section, an eli-
7 gible employee who is employed in a qualifying position on or after August 29, 2003, by a public
8 employer that is participating in the individual account program and who will not receive benefits
9 under ORS chapter 238 for service with the participating public employer pursuant to the provisions
10 of ORS 238A.025 becomes a member of the individual account program on the first day of the month
11 after the employee completes six full calendar months of employment. The six-month probationary
12 period may not be interrupted by more than 30 consecutive working days.

13 (2) An inactive member of the pension program who terminated membership in the individual
14 account program pursuant to ORS 238A.310 (2) becomes a member of the individual account program
15 immediately upon reemployment in a qualifying position.

16 **(3) Notwithstanding subsections (1) and (2) of this section, a person may not become a**
17 **member of the individual account program on or after January 1, 2020.**

18 **SECTION 2.** ORS 238A.330 is amended to read:

19 238A.330. (1) A member of the [*individual account program*] **Public Employees Retirement**
20 **System** must make employee contributions [*to the individual account program*] of six percent of the
21 member's salary.

22 (2) Employee contributions made by a member [*of the individual account program*] under this
23 section shall be credited by the **Public Employees Retirement** Board to the [*employee*] account
24 established for the member under [*ORS 238A.350 (2)*] **section 5 of this 2019 Act.**

25 (3) A new member [*of the individual account program*] shall first make contributions under this
26 section for those wages that are attributable to services performed by the employee during the first
27 full pay period following the six-month probationary period required under ORS 238A.300, without

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 regard to when those wages are considered earned for other purposes under this chapter.

2 **SECTION 3.** ORS 238A.340 is amended to read:

3 238A.340. (1) A participating public employer may agree, by a written employment policy or
4 agreement, to make employer contributions for members of the individual account program employed
5 by the employer. The percentage of salary paid as employer contributions may not be less than one
6 percent of salary or more than six percent of salary, and must be a whole number. A participating
7 public employer may make an agreement under this section for specific groups of employees em-
8 ployed by the public employer.

9 (2) If a participating public employer makes employer contributions under this section and the
10 member for which the contributions are made fails to vest in the employer account under the pro-
11 visions of ORS 238A.320, the Public Employees Retirement Board shall apply the contributions in
12 the employer account against other obligations of the employer under the Oregon Public Service
13 Retirement Plan.

14 **(3) Notwithstanding subsections (1) and (2) of this section, an employer may not make**
15 **contributions under this section on or after January 1, 2020.**

16 **SECTION 4.** Sections 5 and 6 of this 2019 Act are added to and made a part of ORS
17 **chapter 238A.**

18 **SECTION 5.** (1) **The Public Employees Retirement Board shall establish an account for**
19 **each active member of the Public Employees Retirement System.**

20 (2) **Each account established under this section shall be adjusted at least annually in ac-**
21 **cordance with rules adopted by the board to reflect any net earnings or losses on the**
22 **amounts in the account. The adjustments described in this subsection shall continue until**
23 **the account is withdrawn or applied against the costs of the pension or other retirement**
24 **benefits payable to the member.**

25 (3) **Unless the amounts in an account established under this section are withdrawn under**
26 **section 6 of this 2019 Act, the amounts in the account shall be applied by the board to pay**
27 **the costs of the pension or other retirement benefits payable to or on behalf of the member**
28 **that accrue on or after January 1, 2020.**

29 **SECTION 6.** (1) **An inactive member may elect to receive a distribution of the amounts**
30 **in the member's account established under section 5 of this 2019 Act if the inactive member**
31 **has separated from all service with participating public employers and with employers that**
32 **are treated as part of a participating public employer's controlled group under the federal**
33 **laws and rules governing the status of the Public Employees Retirement System and the**
34 **Public Employees Retirement Fund as a qualified governmental retirement plan and trust.**

35 (2) **A member who is vested in the pension program established under this chapter and**
36 **who is eligible to withdraw from the pension program under ORS 238A.120 may make an**
37 **election under this section only if the member also withdraws from the pension program.**

38 **SECTION 7.** ORS 238A.320 is amended to read:

39 238A.320. (1) A member of the individual account program becomes vested in the employee ac-
40 count established for the member under ORS 238A.350 (2) on the date the employee account is es-
41 tablished.

42 (2) A member who makes rollover contributions becomes vested in the rollover account estab-
43 lished for the member under ORS 238A.350 (4) on the date the rollover account is established.

44 (3) Except as provided in subsection (4) of this section, if an employer makes employer contri-
45 butions for a member under ORS 238A.340 the member becomes vested in the employer account es-

1 tabulated under ORS 238A.350 (3) on the earliest of the following dates:

2 (a) The date on which the member completes at least 600 hours of service in each of five cal-
3 endar years. The five calendar years need not be consecutive, but are subject to the provisions of
4 subsection (5) of this section.

5 (b) The date on which an active member reaches the normal retirement age for the member
6 under ORS 238A.160.

7 (c) If the individual account program is terminated, the date on which termination becomes ef-
8 fective, but only to the extent the account is then funded.

9 (d) The date on which an active member becomes disabled, as described in ORS 238A.155 (5).

10 (e) The date on which an active member dies.

11 (4) If on the date that a person becomes an active member the person has already reached the
12 normal retirement age for the person under ORS 238A.160, and the employer makes employer con-
13 tributions for the member under ORS 238A.340, the person is vested in the employer account es-
14 tablished under ORS 238A.350 (3) on that date.

15 (5) If a member of the individual account program who is not vested in the employer account
16 performs fewer than 600 hours of service in each of five consecutive calendar years, hours of service
17 performed before the first calendar year of the period of five consecutive calendar years shall be
18 disregarded for purposes of determining whether the member is vested under subsection (3)(a) of this
19 section.

20 (6) Solely for purposes of determining whether a member is vested under subsection (3)(a) of this
21 section, hours of service include creditable service, as defined in ORS 238.005, performed by the
22 person before the person became an eligible employee, as long as the membership of the person
23 under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date
24 the person becomes an eligible employee.

25 **(7) A member becomes vested in the account established for the member under section**
26 **5 of this 2019 Act on the date the account is established.**

27 **SECTION 8.** ORS 238A.025 is amended to read:

28 238A.025. (1) The Oregon Public Service Retirement Plan is established. The purpose of the
29 Oregon Public Service Retirement Plan is to provide career public employees with a secure and fair
30 retirement income at an affordable, stable and predictable cost to the taxpayers. [*The Oregon Public*
31 *Service Retirement Plan is composed of a pension program and an individual account program.*] The
32 pension program and the individual account program **of the Oregon Public Service Retirement**
33 **Plan** are separate accounts for purposes of federal income tax qualification, and the assets of each
34 program must be held as part of the trust established by ORS 238.660 for the exclusive benefit of
35 the participants and beneficiaries. It is the intent of the Legislative Assembly that pursuant to sec-
36 tion 414(k) of the Internal Revenue Code the individual account program be established and main-
37 tained as a tax-qualified defined contribution governmental plan for the purposes of sections 72(d)
38 and 415 of the Internal Revenue Code. The Public Employees Retirement Board may create separate
39 accounts within the Public Employees Retirement Fund for the pension program and the individual
40 account program.

41 (2) Notwithstanding any provision of ORS chapter 238, any person who is employed by a par-
42 ticipating public employer on or after August 29, 2003, and who has not established membership in
43 the Public Employees Retirement System before August 29, 2003, is entitled to receive only the
44 benefits provided under the Oregon Public Service Retirement Plan for periods of service with par-
45 ticipating public employers on and after August 29, 2003, and has no right or claim to any benefit

1 under ORS chapter 238 except as specifically provided by this chapter.

2 (3) Any person who is a member of the Public Employees Retirement System on August 28, 2003,
3 is entitled to receive the benefits provided by ORS chapter 238 for all service performed before, on
4 and after August 29, 2003, unless the person's membership in the system is subsequently terminated
5 under ORS 238.095. If the person's membership in the system is terminated under ORS 238.095 on
6 or after August 29, 2003, the person is entitled to receive the benefits provided under the Oregon
7 Public Service Retirement Plan for periods of service with participating public employers after the
8 termination of membership.

9 (4) A person establishes membership in the system before August 29, 2003, for the purposes of
10 this section if:

11 (a) The person is a member of the system, or a judge member of the system, on August 28, 2003;
12 or

13 (b) The person performed any period of service for a participating public employer before August
14 29, 2003, that is credited to the six-month period of employment required of an employee under ORS
15 238.015 before an employee may become a member of the system.

16 (5) Except as provided in this chapter, ORS chapter 238 does not apply to the Oregon Public
17 Service Retirement Plan.

18 (6) The provisions of this section do not apply to a person elected or appointed as a judge as
19 defined in ORS 238.500.

20 **SECTION 9.** ORS 238.229 is amended to read:

21 238.229. (1) If a participating public employer is grouped with any other public employer for the
22 purpose of computing employer contributions under ORS 238.225 and the individual public employer
23 makes a lump sum payment that is in addition to the normal employer contribution of the public
24 employer, the Public Employees Retirement Board shall adjust the amount of employer contributions
25 to be made by the individual public employer to ensure that the benefit of the lump sum payment
26 accrues only to the individual public employer making the payment. An individual public employer
27 that makes a lump sum payment under the provisions of this subsection shall remain grouped with
28 other public employers as provided by ORS 238.227 and 238A.220 for the purpose of all liabilities
29 of the employer that are not paid under this subsection. The board by rule may establish a minimum
30 lump sum payment that must be made by an individual public employer before adjusting employer
31 contributions under this subsection. Notwithstanding any minimum lump sum payment established
32 by the board, the board must allow an individual public employer to make a lump sum payment un-
33 der this subsection if the payment is equal to the full amount of the individual public employer's
34 accrued unfunded liabilities under this section and ORS chapter 238A.

35 (2) The board shall establish one or more separate accounts within the Public Employees Re-
36 tirement Fund for one or more lump sum payments made under this section by an individual public
37 employer. The board shall credit to each account all interest and other income received from in-
38 vestment of the account funds during the calendar year. Except as provided in subsection (3) of this
39 section, the board may not collect any administrative expense or other charge from the account or
40 from earnings on the account. Except as provided in subsections (5) and (6) of this section, the ac-
41 count shall be used to offset contributions to the system that the public employer would otherwise
42 be required to make for the liabilities against which the lump sum payment is applied.

43 (3) The board may charge a participating public employer expenses for administration of an ac-
44 count established under subsection (2) of this section in an amount not to exceed \$2,500 for the
45 calendar year in which the account is established and for the immediately following two calendar

1 years, and in an amount not to exceed \$1,000 per year for all subsequent years.

2 (4) If a participating public employer has any liabilities that are attributable to creditable ser-
 3 vice by employees of the employer before the participating public employer was grouped with other
 4 public employers under ORS 238.227, whether under this section or pursuant to board rule, any lump
 5 sum payment made under this section must be applied first against those liabilities, with the oldest
 6 liability being paid first. Any amounts remaining after application under this subsection must be
 7 deposited in a separate account established under subsection (2) of this section.

8 (5) Except as provided in subsection (6) of this section, if the board determines at any time after
 9 an actuarial study that the amounts in an account established under subsection (2) of this section
 10 exceed the amounts necessary to fund the employer's actuarial liabilities under the system, upon
 11 request of the employer, the board shall apply the excess amounts to offset contributions [*to the in-*
 12 *dividual account program*] that the employer has agreed to pay under ORS 238A.335 or 238A.340.
 13 The board may apply excess amounts to offset contributions [*to the individual account program*] un-
 14 der this subsection only to the extent that the application will not result in the balance in the ac-
 15 count being reduced to less than the outstanding principal balance owed on the bonds issued to fund
 16 the account. If the request is made by a school district, the school district must attach to the re-
 17 quest a copy of a resolution adopted by the district school board for the district authorizing the
 18 request. The board shall adopt rules governing offsets under the provisions of this subsection.

19 (6) The board shall apply any excess amounts in an account established under subsection (2) of
 20 this section to offset contributions [*to the individual account program*] pursuant to subsection (5) of
 21 this section only if the board has determined that applying the excess amounts does not cause the
 22 system or the Public Employees Retirement Fund to lose qualification as a qualified governmental
 23 retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant
 24 to the Internal Revenue Code.

25 **SECTION 10.** ORS 238.265 is amended to read:

26 238.265. (1) Except as otherwise provided in this section, a member of the Public Employees
 27 Retirement System may withdraw from the Public Employees Retirement Fund the amount credited
 28 to the member account, if any, for the member if:

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

30 (b) The member is separated from all service with employers who are treated as part of a partic-
 31 ipating public employer's controlled group under the federal laws and rules governing the status
 32 of the system and the fund as a qualified governmental retirement plan and trust;

33 (c) The member has not attained earliest service retirement age; and

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

35 (2) If a member wishes to withdraw the member account, if any, of the member under this sec-
 36 tion, the member must transmit to the Public Employees Retirement Board a withdrawal request.
 37 The board shall deny the withdrawal, or shall take all reasonable steps to recover withdrawn
 38 amounts, if:

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

40 (b) The member fails to remain absent from the service of all employers described in subsection
 41 (1) of this section for at least one calendar month following the month in which the member sepa-
 42 rates from service.

43 (3) If a member has contributed to the fund in each of five calendar years and has separated
 44 from all service in the manner described in subsection (1) of this section before reaching earliest
 45 service retirement age, the member may elect to withdraw the member account of the member under

1 this section at any time before reaching earliest service retirement age. If the inactive member does
2 not make an election to withdraw under this section, the member shall be paid the benefits or re-
3 tirement allowances described in ORS 238.425.

4 (4) A member who is vested in the pension program established under ORS chapter 238A and
5 who is eligible to withdraw from the pension program under ORS 238A.120 may withdraw a member
6 account under this section only if the member also withdraws from the pension program. A member
7 who has an individual account or accounts in the individual account program established under ORS
8 chapter 238A **or an account established under section 5 of this 2019 Act** may withdraw a mem-
9 ber account under this section only if the member also withdraws all [*individual*] accounts pursuant
10 to ORS 238A.375 **and section 6 of this 2019 Act**. A member who has an account established under
11 ORS 238.440 may withdraw a member account under this section only if the member also withdraws
12 the account established under ORS 238.440.

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

15 **SECTION 11.** ORS 238.660 is amended to read:

16 238.660. (1) The Public Employees Retirement Fund is declared to be a trust fund, separate and
17 distinct from the General Fund, for the uses and purposes set forth in this chapter and ORS chapter
18 238A and ORS 237.950 to 237.980, and for no other use or purpose, except that this provision shall
19 not be deemed to amend or impair the force or effect of any law of this state specifically authorizing
20 the investment of moneys from the fund. Interest earned by the fund shall be credited to the fund.
21 Except as otherwise specifically provided by law, the Public Employees Retirement Board estab-
22 lished by ORS 238.630 is declared to be the trustee of the fund. Consistent with the legislative intent
23 expressed in ORS 238.601, and to the extent it is consistent with the board's fiduciary duties, the
24 board shall give equal consideration to the interests of participating public employers and the in-
25 terests of members. Nothing in this subsection shall be construed to impose a fiduciary duty on the
26 board to consider the interests of public employers, and the board shall consider the interests of
27 public employers only with respect to matters unrelated to the board's fiduciary duties as trustee
28 of the fund.

29 (2) Until all liabilities to members and their beneficiaries are satisfied, assets of the fund may
30 not be diverted or otherwise put to any use that is not for the exclusive benefit of members and
31 their beneficiaries. This subsection does not limit return of employer contributions for health bene-
32 fits in the manner provided by ORS 238.410, 238.415 and 238.420 upon satisfaction of all liabilities
33 for health benefits under those sections.

34 (3) The State of Oregon and other public employers that make contributions to the fund have
35 no proprietary interest in the fund or in the contributions made to the fund by them. The state and
36 other public employers disclaim any right to reclaim those contributions and waive any right of
37 reclamation they may have in the fund. This subsection does not prohibit alteration or refund of
38 employer contributions if the alteration or refund is authorized under this chapter or ORS chapter
39 238A and is due to erroneous payment or decreased liability for employer contributions under the
40 system. This subsection does not prohibit the offset of contributions [*to the individual account pro-*
41 *gram*] under ORS 238.229 (5).

42 (4) The board may accept gifts of money or other property from any source, given for the uses
43 and purposes of the system. Money so received shall be paid into the fund. Money or other property
44 so received shall be used for the purposes for which received. Unless otherwise prescribed by the
45 source from which the money or other property is received, the money shall be considered as income

1 of the fund and the other property shall be retained, managed and disposed of as are investments
2 of the fund.

3 (5) All moneys paid into the fund shall be deposited with the State Treasurer, who shall be
4 custodian of the fund and pay all warrants drawn on it in compliance with law. No such warrant
5 shall be paid until the claim for which it is drawn is first approved by the director or designee and
6 otherwise audited and verified as required by law. Monthly, each beneficiary's gross benefit shall
7 be calculated; applicable deductions made for taxes, insurance and other withholdings; and the net
8 amount paid to the beneficiary, by check or by electronic funds transfer (EFT) to the beneficiary's
9 bank. A deduction summary shall be made, by type, and a check issued for the aggregate of each
10 type for transmittal to the appropriate taxing jurisdiction, vendor or institution. A voucher shall be
11 prepared and transmitted to the Oregon Department of Administrative Services for reimbursement
12 of the checking account, and the department shall draw a warrant on the State Treasurer, payable
13 to the Public Employees Retirement System, for the amount thereof.

14 (6) Any warrant, check or order for the payment of benefits or refunds under the system out of
15 the fund issued by the board which is canceled, declared void or otherwise made unpayable pursuant
16 to law because it is outstanding and unpaid for a period of more than two years, may be reissued
17 by the board without bond if the payee is located after such warrant, check or order is canceled,
18 declared void or otherwise made unpayable pursuant to law.

19 (7) All references in this chapter to checks or warrants are subject to the provisions of ORS
20 291.001.

21 (8) The board shall provide for an annual audit of the retirement fund and for an annual report
22 to the Legislative Assembly and to all members of, retirees of, and all employers participating in,
23 the system. The annual report must contain financial statements prepared in accordance with gen-
24 erally accepted accounting principles. The financial statements must include the report of any in-
25 dependent auditor.

26 (9) The board may review legislative proposals for changes in the benefits provided under this
27 chapter and ORS chapter 238A and may make recommendations to committees of the Legislative
28 Assembly on those proposed changes. In making recommendations under this subsection, the board
29 acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommen-
30 dations under this subsection on the Oregon Public Service Retirement Plan established by ORS
31 chapter 238A, the board shall seek to maintain the balance between benefits and costs, and the
32 relative risk borne by employers and employees with respect to investment performance, reflected
33 in ORS chapter 238A as in effect on January 1, 2004.

34 (10) The board shall appoint a committee to advise the board on legislative proposals for
35 changes in the benefits provided under this chapter and ORS chapter 238A. The committee must
36 have an equal number of members representing labor and management. No costs of reviewing leg-
37 islative proposals and making recommendations under this subsection may be charged to the fund.
38 Any member of the committee who is an active member of the system shall be released by the par-
39 ticipating public employer who employs the member for the purpose of conducting the official busi-
40 ness of the committee, and the wages or salary of the member may not be reduced by the employer
41 during periods that the member is released from duty for the purpose of conducting the official
42 business of the committee.

43 **SECTION 12.** ORS 238.005, as amended by section 4, chapter 54, Oregon Laws 2018, is amended
44 to read:

45 238.005. For purposes of this chapter:

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

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

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

7 (4) "Calendar year" means 12 calendar months commencing on January 1 and ending on De-
8 cember 31 following.

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

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

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

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

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

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

27 (a) Persons engaged as independent contractors.

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

30 (c) Persons provided sheltered employment or made-work by a public employer in an employment
31 or industries program maintained for the benefit of such persons.

32 (d) Persons employed and paid from federal funds received under a federal program intended
33 primarily to alleviate unemployment. However, any such person shall be considered an "employee"
34 if not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects
35 to have the person so considered by an irrevocable written notice to the board.

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

39 (f) Persons employed in positions classified as post-doctoral scholar positions by a public uni-
40 versity listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370.

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

42 (a) The average salary per calendar year paid by one or more participating public employers to
43 an employee who is an active member of the system in three of the calendar years of membership
44 before the effective date of retirement of the employee, in which three years the employee was paid
45 the highest salary. The three calendar years in which the employee was paid the largest total salary

1 may include calendar years in which the employee was employed for less than a full calendar year.
2 If the number of calendar years of active membership before the effective date of retirement of the
3 employee is three or fewer, the final average salary for the employee is the average salary per cal-
4 endar year paid by one or more participating public employers to the employee in all of those years,
5 without regard to whether the employee was employed for the full calendar year.

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

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

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

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

14 (11) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-
15 lowing.

16 (12) "Fund" means the Public Employees Retirement Fund.

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

20 (14) "Institution of higher education" means a public university listed in ORS 352.002, the
21 Oregon Health and Science University and a community college, as defined in ORS 341.005.

22 (15) "Member" means a person who has established membership in the system and whose mem-
23 bership has not been terminated as described in ORS 238.095. "Member" includes active, inactive
24 and retired members.

25 (16) "Member account" means the regular account and the variable account.

26 (17) "Normal retirement age" means:

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

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

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

36 (19) "Police officer" includes:

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

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

44 (c) Employees of the Oregon Liquor Control Commission who are classified as regulatory spe-
45 cialists by the administrator of the commission.

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

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

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

7 (g) Parole and probation officers employed by the Department of Corrections, parole and pro-
8 bation officers who are transferred to county employment under ORS 423.549 and adult parole and
9 probation officers, as defined in ORS 181A.355, who are classified as police officers for the purposes
10 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
11 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
12 ented by a labor organization, any proposal by the county to change that classification or to cease
13 to classify adult parole and probation officers as police officers for the purposes of this chapter is
14 a mandatory subject of bargaining.

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

16 (i) Employees of the Port of Portland who are classified as airport police by the Board of Com-
17 missioners of the Port of Portland.

18 (j) Employees of the State Department of Agriculture who are classified as livestock police of-
19 ficers by the Director of Agriculture.

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

22 (L) Investigators of the Criminal Justice Division of the Department of Justice.

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

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

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

27 (p) An employee who for seven consecutive years has been classified as a police officer as de-
28 fined by this section, and who is employed or transferred by the Department of Corrections to fill
29 a position designated by the Director of the Department of Corrections as being eligible for police
30 officer status.

31 (q) An employee of the Department of Corrections classified as a police officer on or prior to
32 July 27, 1989, whether or not that classification was authorized by law, as long as the employee
33 remains in the position held on July 27, 1989. The initial classification of an employee under a sys-
34 tem implemented pursuant to ORS 240.190 does not affect police officer status.

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

38 (s) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,
39 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who
40 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the
41 Department of Corrections or the Oregon Youth Authority.

42 (t) Employees at youth correction facilities as defined in ORS 420.005 whose primary job de-
43 scription involves the custody, control, treatment, investigation or supervision of juveniles placed
44 in such facilities.

45 (u) Employees of the Oregon Youth Authority who are classified as juvenile parole and pro-

1 bation officers.

2 (v) Employees of the Department of Human Services who are prohibited from striking under ORS
3 243.726 and whose duties include the care of residents of residential facilities, as defined in ORS
4 443.400, that house individuals with intellectual or developmental disabilities.

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

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

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

17 (23) "Regular account" means the account established for each active and inactive member un-
18 der ORS 238.250.

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

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

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

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

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

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

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

32 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
33 652.190.

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

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

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

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

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

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

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

45 (G) Payments for periods of leave of absence after the date the employer and employee have

1 agreed that no future services qualifying pursuant to ORS 238.015 (3) will be performed, except for
2 sick leave and vacation;

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

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

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

11 (K) Compensation described and authorized under ORS 352.232 that is not paid by the public
12 university employing the officer or employee; [or]

13 (L) Compensation described and authorized under ORS 353.270 that is not paid by Oregon Health
14 and Science University[.]; or

15 **(M) For years beginning on or after January 1, 2020, any amount in excess of \$100,000 for**
16 **a calendar year. If any period over which salary is determined is less than 12 months, the**
17 **\$100,000 limitation for that period shall be multiplied by a fraction, the numerator of which**
18 **is the number of months in the determination period and the denominator of which is 12.**

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

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

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

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

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

26 **SECTION 13.** ORS 238A.005, as amended by section 5, chapter 54, Oregon Laws 2018, and sec-
27 tion 2, chapter 101, Oregon Laws 2018, is amended to read:

28 238A.005. For the purposes of this chapter:

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

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

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

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

37 (a) Persons engaged as independent contractors;

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

39 (c) Persons provided sheltered employment or make-work by a public employer;

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

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

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

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

1 (h) Employees of a public university listed in ORS 352.002 who are actively participating in an
2 optional retirement plan offered under ORS 243.800;

3 (i) Persons employed in positions classified as post-doctoral scholar positions by a public uni-
4 versity listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370;

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

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

9 (L) Any person who is retired under ORS 238A.100 to 238A.250 or ORS chapter 238 and who
10 continues to receive retirement benefits while employed; and

11 (m) Judges.

12 (5) "Firefighter" means:

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

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

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

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

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

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

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

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

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

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

37 (10) "Institution of higher education" means a public university listed in ORS 352.002, the
38 Oregon Health and Science University or a community college, as defined in ORS 341.005.

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

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

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

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

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

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

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

14 (b) "Salary" includes the following amounts:

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

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

19 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit
20 plan by the employer at the election of the employee and that is not includable in the taxable in-
21 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2017.

22 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
23 election of the employee and that is not included in the taxable income of the employee by reason
24 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2017.

25 (E) Retroactive payments described in ORS 238.008.

26 (F) The amount of an employee contribution to the [*individual account program*] **account es-**
27 **tablished under section 5 of this 2019 Act** that is paid by the employer and deducted from the
28 compensation of the employee, as provided under ORS 238A.335 (1) and (2)(a).

29 (G) The amount of an employee contribution to the [*individual account program*] **account es-**
30 **tablished under section 5 of this 2019 Act** that is not paid by the employer under ORS 238A.335.

31 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
32 652.190.

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

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

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

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

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

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

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

44 (G) Payments for instructional services rendered to public universities listed in ORS 352.002 or
45 the Oregon Health and Science University when those services are in excess of full-time employment

1 subject to this chapter. A person employed under a contract for less than 12 months is subject to
2 this subparagraph only for the months covered by the contract.

3 (H) The amount of an employee contribution to the [*individual account program*] **account es-**
4 **tablihed under section 5 of this 2019 Act** that is paid by the employer and is not deducted from
5 the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(b).

6 (I) Compensation described and authorized under ORS 341.556 that is not paid by the community
7 college employing the faculty member.

8 (J) Compensation described and authorized under ORS 352.232 that is not paid by the public
9 university employing the officer or employee.

10 (K) Compensation described and authorized under ORS 353.270 that is not paid by Oregon
11 Health and Science University.

12 (L) **For years before 2020**, any amount in excess of \$200,000 for a calendar year. If any period
13 over which salary is determined is less than 12 months, the \$200,000 limitation for that period shall
14 be multiplied by a fraction, the numerator of which is the number of months in the determination
15 period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit
16 to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

17 (M) **For years beginning on or after January 1, 2020, any amount in excess of \$100,000 for**
18 **a calendar year. If any period over which salary is determined is less than 12 months, the**
19 **\$100,000 limitation for that period shall be multiplied by a fraction, the numerator of which**
20 **is the number of months in the determination period and the denominator of which is 12.**

21 (18) "System" means the Public Employees Retirement System.

22 (19) "Workers' compensation benefits" means:

23 (a) Payments made under ORS chapter 656; or

24 (b) Payments provided in lieu of workers' compensation benefits under ORS 656.027 (6).

25 **SECTION 14.** ORS 238.580 is amended to read:

26 238.580. (1) **Except as provided in subsection (3) of this section**, ORS 238.005 (4) and (26),
27 238.025, 238.078, 238.082, 238.092, 238.115 (1), 238.250, 238.255, 238.260, 238.350, 238.364, 238.410,
28 238.415, 238.420, 238.445, 238.458, 238.460, 238.465, 238.475, 238.600, 238.605, 238.610, 238.618, 238.630,
29 238.635, 238.645, 238.650, 238.655, 238.660, 238.665, 238.670 and 238.705 and the increases provided
30 by ORS 238.366 for members of the system who are serving as other than police officers or fire-
31 fighters apply in respect to service as a judge member.

32 (2) This chapter applies in respect to persons described in ORS 238.505 (1) and in respect to
33 service as a judge member only as specifically provided in ORS 238.500 to 238.585.

34 (3) **ORS 238.005 (26)(c)(M) does not apply in respect to service as a judge member.**

35 **SECTION 15.** (1) **As soon as practicable after the effective date of this 2019 Act, the**
36 **Public Employees Retirement Board shall:**

37 (a) **Determine the amount of savings in employer contributions that are attributable to**
38 **the provisions of this 2019 Act; and**

39 (b) **Recalculate the contribution rates of all employers, pursuant to ORS 238.225, to re-**
40 **fect the provisions of this 2019 Act.**

41 (2) **The board shall issue corrected contribution rate orders to employers affected by**
42 **rates recalculated under this section as soon as is practicable after the effective date of this**
43 **2019 Act. The corrected rates are effective July 1, 2019.**

44 **SECTION 16.** (1) **Jurisdiction is conferred upon the Supreme Court to determine in the**
45 **manner provided by this section whether this 2019 Act breaches any contract between**

1 members of the Public Employees Retirement System and their employers or violates any
 2 provision of the Oregon Constitution or of the United States Constitution, including but not
 3 limited to impairment of contract rights of members of the Public Employees Retirement
 4 System under Article I, section 21, of the Oregon Constitution, or Article I, section 10, clause
 5 1, of the United States Constitution.

6 (2) A person who is adversely affected by this 2019 Act or who will be adversely affected
 7 by this 2019 Act may institute a proceeding for review by filing with the Supreme Court a
 8 petition that meets the following requirements:

9 (a) The petition must be filed within 60 days after the effective date of this 2019 Act.

10 (b) The petition must include the following:

11 (A) A statement of the basis of the challenge; and

12 (B) A statement and supporting affidavit showing how the petitioner is adversely af-
 13 fected.

14 (3) The petitioner shall serve a copy of the petition by registered or certified mail upon
 15 the Public Employees Retirement Board, the Attorney General and the Governor.

16 (4) Proceedings for review under this section shall be given priority over all other mat-
 17 ters before the Supreme Court.

18 (5) The Supreme Court shall allow public employers participating in the Public Employees
 19 Retirement System to intervene in any proceeding under this section.

20 (6)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene
 21 in any proceeding relating to this 2019 Act. After a member intervenes in a proceeding re-
 22 lating to this 2019 Act, the member has standing to participate in the proceeding even if the
 23 member ceases to be a member of the Legislative Assembly.

24 (b) A member of the Senate or the House of Representatives who intervenes in a pro-
 25 ceeding under this subsection may not use public funds to pay legal expenses incurred in
 26 intervening in or participating in the proceeding.

27 (7) In the event the Supreme Court determines that there are factual issues in the peti-
 28 tion, the Supreme Court may appoint a special master to hear evidence and to prepare re-
 29 commended findings of fact.

30 (8) The Supreme Court may not award attorney fees to a petitioner in a proceeding under
 31 this section.

32