

A-Engrossed
Senate Bill 111

Ordered by the Senate March 26
Including Senate Amendments dated March 26

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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.

Modifies provisions relating to public employee retirement.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; and amending ORS 238.082, 238.105,
3 238.395, 238.730, 238A.005, 238A.120, 238A.230, 238A.375, 338.135 and 353.100 and section 2,
4 chapter 105, Oregon Laws 2018, and sections 35 and 37, chapter 355, Oregon Laws 2019.

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

6 **SECTION 1.** ORS 238.082 is amended to read:

7 238.082. (1) Subject to the limitations in this section, any public employer may employ any
8 member who is retired for service if the administrative head of the public employer is satisfied that
9 such employment is in the public interest.

10 (2) Except as provided in this section, the period or periods of employment by one or more
11 public employers of a retired member who is reemployed under this section may not total 1,040
12 hours or more in any calendar year.

13 (3) A retired member who is receiving old-age, survivors or disability insurance benefits under
14 the federal Social Security Act may be employed under this section for the number of hours per-
15 mitted by subsection (2) of this section, or for the number of hours for which the salary equals the
16 maximum allowed for receipt of the full amount of those benefits to which the person is entitled,
17 whichever is greater.

18 (4) Except as provided in subsection (9) of this section, the limitations on employment imposed
19 by subsections (2) and (3) of this section do not apply to a retired member who is employed as a
20 teacher or as an administrator, as those terms are defined in ORS 342.120, if the retired member is
21 employed by a school district or community college district located within a county with a popu-
22 lation of not more than 35,000 inhabitants according to the latest federal decennial census, or is
23 employed by an education service district and the retired member's primary work duties are per-
24 formed in a county with a population of not more than 35,000 inhabitants according to the latest
25 federal decennial census. A retired member who is employed under this subsection as a teacher, as
26 defined in ORS 342.120, by the same public employer that employed the member at the time of re-
27 tirement remains in the same collective bargaining unit that included the member before retirement.

28 (5) Except as provided in subsection (9) of this section, the limitations on employment imposed

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 by subsections (2) and (3) of this section do not apply to a retired member who is employed:

2 (a) By the sheriff of a county with a population of fewer than 75,000 inhabitants, according to
3 the latest federal decennial census;

4 (b) By the municipal police department of a city with a population of fewer than 15,000 inhab-
5 itants, according to the latest federal decennial census;

6 (c) By the state or a county for work in a correctional institution located in a county with a
7 population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

8 (d) By the Black Butte Ranch Rural Fire Protection District, the Black Butte Ranch Service
9 District or the Sunriver Service District;

10 (e) By the Oregon State Police for work in a county with a population of fewer than 75,000 in-
11 habitants, according to the latest federal decennial census;

12 (f) As a deputy director or assistant director of the Department of Human Services, if the Gov-
13 ernor approves the exemption for the person from the limitations on employment imposed in sub-
14 sections (2) and (3) of this section;

15 (g) As a deputy director or assistant director of the Oregon Health Authority, if the Governor
16 approves the exemption for the person from the limitations on employment imposed in subsections
17 (2) and (3) of this section;

18 (h) As a special campus security officer commissioned by the governing board of a public uni-
19 versity listed in ORS 352.002 under ORS 352.118;

20 (i) As a security officer for a community college, as defined in ORS 341.005; or

21 (j) By the Harney County Health District as a person licensed, registered or certified to provide
22 health services.

23 (6) Except as provided in subsection (9) of this section, the limitations on employment imposed
24 by subsections (2) and (3) of this section do not apply to a retired member who is employed to tem-
25 porarily replace an employee who serves in the National Guard or in a reserve component of the
26 Armed Forces of the United States and who is called to federal active duty.

27 (7) Except as provided in subsection (9) of this section, the limitations on employment imposed
28 by subsections (2) and (3) of this section do not apply to a retired member who is employed by a road
29 assessment district organized under ORS 371.405 to 371.535.

30 (8) Except as provided in subsection (9) of this section, the limitations on employment imposed
31 by subsections (2) and (3) of this section do not apply to a retired member who is a nurse and is
32 employed by a public employer as a nurse or for the purpose of teaching nursing during the period
33 in which a nursing workforce shortage declared by the Legislative Assembly or the Governor is in
34 effect.

35 (9)(a) Except as provided in paragraph (b) of this subsection, subsections (4) to (8) of this section
36 do not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3).

37 (b) Subsection (4) of this section applies to a person who retires under the provisions of ORS
38 238.280 (1), (2) or (3) as long as the *[person's date of retirement is more than]* **person is absent from**
39 **service with all participating public employers for at least** six months before the date the person
40 is employed under subsection (4) of this section.

41 (10) Employment under this section does not affect the status of a person as a retired member
42 of the system and a recipient of retirement benefits under this chapter.

43 (11) Hours worked by a person employed under subsections (4) to (8) of this section shall not
44 be counted for the purpose of the limitations on employment imposed by subsections (2) and (3) of
45 this section.

1 **SECTION 2.** Section 35, chapter 355, Oregon Laws 2019, is amended to read:

2 **Sec. 35.** (1) Notwithstanding ORS [238.082 (2)] **237.650 and any provision of this chapter** and
3 subject to the limitations in this section, during calendar year 2020, 2021, 2022, 2023 or 2024, a
4 participating public employer may employ any retired member without limitation on the hours
5 worked by the retired member if the administrative head of the public employer is satisfied that the
6 employment is in the public interest.

7 (2) A public employer that employs a retired member [*under ORS 238.082 or 238.088 (2)*] during
8 calendar year 2020, 2021, 2022, 2023 or 2024 shall contribute to the Public Employees Retirement
9 Board the percentage of the member's wages that would have been contributed to the board under
10 ORS 238.225 if the member were an active member of the Public Employees Retirement System.
11 Employer contributions made under this section are in addition to employer contributions made
12 under ORS 238.225. The board shall apply contributions made by a public employer under this sub-
13 section against the liabilities of the public employer. The board shall adopt rules governing pay-
14 ments made under this subsection.

15 [*(3) A retired member who is receiving old-age, survivors or disability insurance benefits under the*
16 *federal Social Security Act may be employed during calendar year 2020, 2021, 2022, 2023 or 2024 for*
17 *no more than the number of hours for which the salary equals the maximum allowed for receipt of the*
18 *full amount of those benefits to which the person is entitled.*]

19 [*(4)*] **(3)** This section does not apply to any member who retires under the provisions of ORS
20 238.280 (1), (2) or (3), unless the [*person's date of retirement is more than*] **person is absent from**
21 **employment with all participating public employers for at least** six months before the date the
22 person is employed under this section.

23 [*(5)*] **(4)** Employment under this section does not affect the status of a person as a retired
24 member of the system and a recipient of retirement benefits under this chapter.

25 **SECTION 3.** Section 37, chapter 355, Oregon Laws 2019, is amended to read:

26 **Sec. 37.** (1) Notwithstanding ORS [238A.245] **237.650 and any provision of this chapter** and
27 subject to the limitations in this section, during calendar year 2020, 2021, 2022, 2023 or 2024, a
28 participating public employer may employ any retired member without limitation on the hours
29 worked by the retired member if the administrative head of the public employer is satisfied that the
30 employment is in the public interest. The Public Employees Retirement Board shall continue making
31 pension payments to a retired member of the pension program who is reemployed under this section.

32 (2) A public employer that employs a retired member during calendar year 2020, 2021, 2022, 2023
33 or 2024 shall contribute to the board the percentage of the member's wages that would have been
34 contributed to the board under ORS 238A.220 if the member were an active member of the Public
35 Employees Retirement System. Employer contributions made under this section are in addition to
36 employer contributions made under ORS 238A.220. The board shall apply contributions made by a
37 public employer under this subsection against the liabilities of the public employer. The board shall
38 adopt rules governing payments made under this subsection.

39 [*(3) A retired member who is receiving old-age, survivors or disability insurance benefits under the*
40 *federal Social Security Act may be employed during calendar year 2020, 2021, 2022, 2023 or 2024 for*
41 *no more than the number of hours for which the salary equals the maximum allowed for receipt of the*
42 *full amount of those benefits to which the person is entitled.*]

43 [*(4)*] **(3)** This section does not apply to any member who retires under the provisions of ORS
44 238A.185, unless the [*person's date of retirement is more than*] **person is absent from employment**
45 **with all participating public employers for at least** six months before the date the person is em-

1 ployed under this section.

2 [(5)] (4) Employment under this section does not affect the status of a person as a retired
3 member of the pension program and a recipient of retirement benefits under this chapter.

4 **SECTION 4.** ORS 238A.120 is amended to read:

5 238A.120. [A *vested*] **An** inactive member who withdraws from the individual account program
6 under ORS 238A.375 cancels the person's membership in the Public Employees Retirement System.
7 If the person is thereafter reemployed by a participating public employer:

8 (1) The person may reestablish membership in the pension program only for the purpose of ser-
9 vice performed after the person is reemployed; and

10 (2) Any service performed before the withdrawal may not be credited toward the period of ser-
11 vice required by ORS 238A.100 or 238A.115 or toward the accrual of retirement credit under ORS
12 238A.140, 238A.150 or 238A.155.

13 **SECTION 5.** ORS 238A.375 is amended to read:

14 238A.375. (1)(a) An inactive member of the individual account program may elect to receive a
15 distribution of the amounts in the member's employee account, rollover account, employer account
16 and employee pension stability account to the extent the member is vested in those accounts under
17 ORS 238A.320 if the inactive member:

18 (A) Has [*separated*] **a bona fide separation** from all service with participating public employers
19 [*and with*];

20 (B) **Is not employed with, or has a bona fide separation from, all** employers who are treated
21 as part of a participating public employer's controlled group under the federal laws and rules gov-
22 erning the status of the Public Employees Retirement System and the Public Employees Retirement
23 Fund as a qualified governmental retirement plan and trust; **and**

24 (C) **Has not attained earliest retirement age.**

25 (b) **The board shall deny the distribution, or take all steps necessary to recover distrib-**
26 **uted amounts, if the board determines that the member's separation is not a bona fide sep-**
27 **aration.**

28 (2) If an inactive member of the individual account program who is not vested in the employer
29 account receives a distribution under subsection (1) of this section, the employer account of the
30 member is permanently forfeited as of the date of the distribution.

31 (3) A member may not make an election under this section for less than all of the member's in-
32 dividual accounts described in ORS 238A.350, and the member's employee pension stability account
33 described in ORS 238A.353, in which the member is vested.

34 (4) A member who is [*vested in*] **also a member of** the pension program established under this
35 chapter and who withdraws the member's accounts under this section cancels all membership rights
36 in the system.

37 (5) A member who has a member account established under ORS chapter 238 may make an
38 election under this section only if the member also withdraws that member account in the manner
39 provided by ORS 238.265. A member who has an account established under ORS 238.440 may make
40 an election under this section only if the member also withdraws the account established under ORS
41 238.440.

42 (6) If an inactive member receives a distribution under subsection (1) of this section and is
43 subsequently reemployed by a participating public employer, any service performed before the date
44 the member became an inactive member may not be used toward the period of service required for
45 vesting in the employer account under ORS 238A.320.

1 **SECTION 6.** ORS 238.105 is amended to read:

2 238.105. (1) Whenever, within five years after the employee is separated from all service entitling
3 the employee to membership in the Public Employees Retirement System, an employee who has
4 withdrawn the amount credited to the member account of the member reenters the service of an
5 employer participating in the system, the employee's rights in the system that were forfeited by the
6 withdrawal shall be restored upon repaying to the Public Employees Retirement Board within one
7 year after reentering the service of the employer, the full amount so withdrawn, **including the**
8 **amount withdrawn from the member's account established under ORS 238A.353**, together with
9 the interest that would have been accumulated on the sum had the amount not been withdrawn.

10 (2) Restoration of rights under this section does not affect any forfeiture of rights of a person
11 by reason of[:]

12 [(a)] withdrawal of an account established under ORS 238.440[; or]

13 [(b) *Withdrawal of individual accounts pursuant to ORS 238A.375*].

14 **SECTION 7.** ORS 238.730 is amended to read:

15 238.730. (1) The Public Employees Retirement Board shall establish an Unfunded Actuarial Li-
16 ability Resolution Program. Under the program, the board shall provide technical expertise [*to*
17 *participating public employers in developing funding plans to improve the employers' funded status*
18 *and*] to manage projected employer contribution rate changes. Funding plans developed under the
19 program must be based on actuarial reports prepared under ORS 238.605.

20 (2) A participating public employer shall participate in the program.

21 (3) The board may use moneys in the Employer Incentive Fund established in section 1, chapter
22 105, Oregon Laws 2018, for reasonable administrative costs incurred under this section.

23 **SECTION 8.** ORS 238.730, as amended by section 55, chapter 355, Oregon Laws 2019, is
24 amended to read:

25 238.730. (1) The Public Employees Retirement Board shall establish an Unfunded Actuarial Li-
26 ability Resolution Program. Under the program, the board shall provide technical expertise [*to*
27 *participating public employers in developing funding plans to improve the employers' funded status*
28 *and*] to manage projected employer contribution rate changes. Funding plans developed under the
29 program must be based on actuarial reports prepared under ORS 238.605.

30 (2) A participating public employer shall participate in the program.

31 **SECTION 9.** Section 2, chapter 105, Oregon Laws 2018, as amended by section 47, chapter 355,
32 Oregon Laws 2019, is amended to read:

33 **Sec. 2.** (1)(a) The Public Employees Retirement Board shall establish a process for distributing
34 the moneys in the Employer Incentive Fund established under section 1, chapter 105, Oregon Laws
35 2018.

36 (b) The process must allow a participating public employer to apply to reserve matching
37 amounts in the Employer Incentive Fund by committing to make a qualifying lump sum payment of
38 at least \$25,000 to an account established under ORS 238.229.

39 (2) The board shall adopt rules establishing:

40 (a) The percentage of a lump sum payment that may be matched by distributions from the fund,
41 not to exceed 25 percent of a qualifying lump sum payment.

42 (b) The maximum matching amount that may be reserved by a participating public employer, not
43 to exceed the greater of:

44 (A) Five percent of the unfunded actuarial liability attributable to the employer, as determined
45 in the most recent report prepared under ORS 238.605; or

1 (B) \$300,000.

2 (c) The qualifications for lump sum payments that may be matched under this section, including
3 a requirement that a qualifying lump sum payment may not be a payment from moneys borrowed
4 by the employer.

5 (d) A requirement that the participating public employer participate in the Unfunded Actuarial
6 Liability Resolution Program to develop a plan under [section 26, chapter 105, Oregon Laws 2018]
7 **ORS 238.730.**

8 (3)(a) For 90 days after the board begins accepting applications under subsection (1) of this
9 section, a participating public employer may apply to reserve matching amounts from the Employer
10 Incentive Fund under subsection (1) of this section only if the unfunded actuarial liability attribut-
11 able to the employer, as determined in the most recent report prepared under ORS 238.605, is more
12 than 200 percent of the employer's payroll for members of the Public Employees Retirement System.

13 (b) After the 90-day period described in paragraph (a) of this subsection, any participating public
14 employer may apply to reserve matching funds from the Employer Incentive Fund under subsection
15 (1) of this section.

16 (4)(a) The board shall approve applications that meet the qualifications established under sub-
17 section (2) of this section in the order in which the applications are submitted. The board shall
18 continue approving applications as long as adequate moneys in the Employer Incentive Fund are
19 [projected to become] available.

20 (b) After all of the moneys [projected to become] available in the Employer Incentive Fund are
21 reserved for matching under paragraph (a) of this subsection, the board may establish a waiting list
22 for the remaining timely submitted applications and, if sufficient moneys in the Employer Incentive
23 Fund become available, shall approve, in the order in which the applications were submitted, appli-
24 cations that meet the qualifications established under subsection (2) of this section.

25 (5) The board shall transfer matching amounts approved under subsection (4) of this section from
26 the Employer Incentive Fund to the approved employers' accounts established under ORS 238.229.

27 (6) The board may transfer moneys from the Employer Incentive Fund to the Public Employees
28 Retirement Fund established under ORS 238.660 for crediting to the reserves for pension accounts
29 and annuities as provided in ORS 238.670 (2).

30 (7) The board may use moneys in the Employer Incentive Fund for reasonable administrative
31 costs incurred under this section.

32 **SECTION 10.** ORS 238.395 is amended to read:

33 238.395. (1)(a) In addition to any other benefits under this chapter, a death benefit, provided by
34 contributions of the public employer under ORS 238.225 and, for benefits that accrue on or after July
35 1, 2020, amounts in the employee pension stability account established for the member under ORS
36 238A.353, shall be paid to the beneficiaries designated under ORS 238.390 (1) of a person who is an
37 active or inactive member of the Public Employees Retirement System and who dies as a result of
38 injuries received while employed in the service of the public employer or within 120 days after ter-
39 mination from service with a participating public employer. A member who is on a leave of absence
40 without pay from employment with a participating public employer has not terminated service with
41 that participating public employer for the purposes of this section.

42 (b) The death benefit under this subsection is an amount equal to the amount in the member
43 account of the deceased member at the time of death.

44 (c) In the event that a beneficiary has not been named as provided in paragraph (a) of this
45 subsection and ORS 238.390 (1), the death benefit under this subsection shall be paid in the manner

1 provided for payment of money credited to the member account of the member in ORS 238.390 (2).

2 (d) The beneficiary designated under paragraph (a) of this subsection and ORS 238.390 (1) may
3 elect to receive the amount payable in actuarially determined monthly payments for the life of such
4 beneficiary as long as such monthly payments, plus the monthly amount if elected under ORS 238.390
5 (3), are at least \$200.

6 (e) Interest upon the death benefit provided by this subsection accrues until the date that the
7 benefit is distributed. The Public Employees Retirement Board shall establish procedures for com-
8 puting interest to be credited on the benefit for the period between the date of death and date of
9 distribution.

10 (2)(a) If a member of the system dies while employed in the service of a participating public
11 employer or within 120 days after termination from service with a participating public employer and
12 the member's spouse is the member's beneficiary under ORS 238.390, the member's spouse may elect
13 to receive the benefit provided under this subsection in lieu of the death benefits provided under
14 ORS 238.390 and subsection (1) of this section.

15 (b) The member's spouse must notify the board in writing of an election under this section no
16 later than 60 days after the date of death of the member.

17 *[(c) The death benefit to be paid under this subsection is for the life of the member's spouse and*
18 *is the actuarial equivalent of 50 percent of the service retirement allowance that would otherwise have*
19 *been paid to the deceased member, which shall be calculated:]*

20 *[(A) As of the date of death, if the member dies after the earliest retirement date for the member*
21 *under ORS 238.280; or]*

22 *[(B) As if the member became an inactive member on the date of death and retired at the earliest*
23 *retirement date for the member under ORS 238.280.]*

24 **(c) The death benefit to be paid under this subsection is for the life of the member's**
25 **spouse and is:**

26 **(A) If the member dies before the earliest retirement date for the member under ORS**
27 **238.280, the actuarial equivalent of 50 percent of the service retirement allowance that would**
28 **otherwise have been paid to the deceased member, which shall be calculated as if the mem-**
29 **ber became an inactive member on the date of death and retired at the earliest retirement**
30 **date for the member under ORS 238.280;**

31 **(B) If the member dies on or after the earliest retirement date for the member under**
32 **ORS 238.280 and before normal retirement age, as defined in ORS 238.005, the actuarial**
33 **equivalent of the service retirement allowance that would otherwise have been paid to the**
34 **deceased member, which shall be calculated as if the member retired under ORS 238.280 and**
35 **as if the member's retirement date was the first of the month following the date of death**
36 **of the member; or**

37 **(C) If the member dies on or after reaching normal retirement age as defined in ORS**
38 **238.005, the actuarial equivalent of the benefit that would otherwise have been paid to the**
39 **deceased member, which shall be calculated under ORS 238.300 as if the member's retirement**
40 **date was the first of the month following the date of death of the member.**

41 (d) The death benefit provided under this subsection **shall be funded in the same manner as**
42 **described under ORS 238.300 and** is first effective on the first day of the month following *[the*
43 *election of the member's spouse to receive the death benefit under this subsection]* **the date of death**
44 **of the member.** The member's spouse may elect to delay payment of the death benefit, **which shall**
45 **be actuarially adjusted for age and interest when payments commence,** but payment must

1 commence no later than December 31 of the calendar year in which the deceased member would
2 have reached 70-1/2 years of age.

3 (3) Payment by the board of additional death benefits in the manner provided by this section
4 completely discharges the board and system on account of the death, and shall hold the board and
5 system harmless from any claim for wrongful payment.

6 **SECTION 11.** ORS 238A.230 is amended to read:

7 238A.230. (1) If a member of the pension program who is vested dies before the member's effec-
8 tive date of retirement, the Public Employees Retirement Board shall pay the death benefit provided
9 for in this section to:

10 (a) The spouse of the member to the extent not provided to a former spouse in accordance with
11 a judgment or order under ORS 238.465;

12 (b) The former spouse of the member as provided in a judgment or order under ORS 238.465; or

13 (c) Any other person who is constitutionally required to be treated in the same manner as a
14 spouse for the purpose of retirement benefits.

15 *[(2)(a) The death benefit to be paid under this section shall be for the life of the spouse, former
16 spouse or other person who is constitutionally required to be treated in the same manner as a spouse,
17 and shall be the actuarial equivalent of 50 percent of the pension that would otherwise have been paid
18 to the deceased member.]*

19 *[(b) For the purpose of paragraph (a) of this subsection, the amount of the pension that would
20 otherwise have been paid to the deceased member shall be calculated:]*

21 *[(A) As of the date of death if the member dies after the earliest retirement date for the member
22 under ORS 238A.165; or]*

23 *[(B) As if the member became an inactive member on the date of death and thereafter retired at the
24 earliest retirement date if the member dies before the earliest retirement date for the member under
25 ORS 238A.165.]*

26 **(2) The death benefit to be paid under this subsection is for the life of the member's**
27 **spouse, former spouse or other person who is constitutionally required to be treated in the**
28 **same manner as a spouse, and is:**

29 **(a) If the member dies before the earliest retirement date for the member under ORS**
30 **238A.165, the actuarial equivalent of 50 percent of the pension that would otherwise have**
31 **been paid to the deceased member, which shall be calculated as if the member became an**
32 **inactive member on the date of death and retired at the earliest retirement date for the**
33 **member as described in ORS 238A.165;**

34 **(b) If the member dies on or after the earliest retirement date for the member under**
35 **ORS 238A.165 and before normal retirement age under ORS 238A.160, the actuarial equivalent**
36 **of the pension that would otherwise have been paid to the deceased member, which shall be**
37 **calculated as if the member retired under ORS 238A.185 and as if the member's retirement**
38 **date was the first of the month following the date of death of the member; or**

39 **(c) If the member dies on or after reaching normal retirement age as described in ORS**
40 **238A.160, the actuarial equivalent of the pension that would otherwise have been paid to the**
41 **deceased member, which shall be calculated under ORS 238A.125 as if the member's retire-**
42 **ment date was the first of the month following the date of death of the member.**

43 (3) The death benefit provided under this section is first effective on the first day of the month
44 following the date of death of the member. The surviving spouse, former spouse or other person
45 entitled to the death benefit may elect to delay payment of the death benefit, **which shall be**

1 **actuarially adjusted for age and interest when payments commence**, but payment must com-
2 mence no later than December 31 of the calendar year in which the member would have reached
3 70-1/2 years of age.

4 (4) Notwithstanding any other provision of ORS 238A.100 to 238A.250, distributions of death
5 benefits under the pension program must comply with the minimum distribution requirements of 26
6 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on December 31, 2018.
7 The board shall adopt rules implementing those minimum distribution requirements.

8 **SECTION 12.** ORS 238A.005 is amended to read:

9 238A.005. For the purposes of this chapter:

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

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

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

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

18 (a) Persons engaged as independent contractors;

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

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

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

22 (e) Any person who is in custody in a state institution;

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

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

27 (h) Employees of a public university listed in ORS 352.002 who are actively participating in an
28 optional retirement plan offered under ORS 243.815;

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

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

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

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

37 (m) Judges.

38 (5) "Firefighter" means:

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

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

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

45 (d) An employee of the Oregon Military Department whose primary duties include fighting

1 structural, aircraft, wildland or other fires.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (17)(a) "Salary" means the remuneration paid to an active member in return for services to the
36 participating public employer, including remuneration in the form of living quarters, board or other
37 items of value, to the extent the remuneration is, **or would be if the member were an Oregon**
38 **resident**, includable in the employee's taxable income under Oregon law. "Salary" includes the ad-
39 ditional amounts specified in paragraph (b) of this subsection, but does not include the amounts
40 specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in
41 taxable income.

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

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

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

1 employee.

2 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit
3 plan by the employer at the election of the employee and that is not includable in the taxable in-
4 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2018.

5 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
6 election of the employee and that is not included in the taxable income of the employee by reason
7 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2018.

8 (E) Retroactive payments described in ORS 238.008.

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

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

14 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
15 652.190.

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

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

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

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

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

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

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

27 (G) Payments for instructional services rendered to public universities listed in ORS 352.002 or
28 the Oregon Health and Science University when those services are in excess of full-time employment
29 subject to this chapter. A person employed under a contract for less than 12 months is subject to
30 this subparagraph only for the months covered by the contract.

31 (H) The amount of an employee contribution to the individual account program that is paid by
32 the employer and is not deducted from the compensation of the employee, as provided under ORS
33 238A.335 (1) and (2)(b).

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

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

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

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

45 (M) For years beginning on or after January 1, 2020, any amount in excess of \$195,000 for a

1 calendar year. If any period over which salary is determined is less than 12 months, the \$195,000
2 limitation for that period shall be multiplied by a fraction, the numerator of which is the number
3 of months in the determination period and the denominator of which is 12. On January 1 of each
4 year, the board shall adjust the dollar limit provided by this subparagraph to reflect any percentage
5 changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as pub-
6 lished by the Bureau of Labor Statistics of the United States Department of Labor.

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

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

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

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

11 **SECTION 13.** ORS 353.100 is amended to read:

12 353.100. (1) The provisions of ORS chapters 35, 190, 192, 244 and 295 and ORS 30.260 to 30.460,
13 200.005 to 200.025, 200.045 to 200.090, 236.605 to 236.640, 243.650 to 243.806, 297.040, 307.090 and
14 307.112 apply to Oregon Health and Science University under the same terms as they apply to public
15 bodies other than the state.

16 (2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 240, 270, 273,
17 276, 279A, 279B, 279C, 283, 291, 292, 293, 294 and 297 and ORS 35.550 to 35.575, 180.060, 180.210 to
18 180.235, 183.710 to 183.730, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105,
19 200.035, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010
20 to 282.150, 283.085 to 283.092, 357.805 to 357.895 and 656.017 (2) do not apply to the university or
21 any not-for-profit organization or other entity if the equity of the entity is owned exclusively by the
22 university and if the organization or entity is created by the university to advance any of the
23 university's statutory missions.

24 (3) The university, as a distinct governmental entity, or any organization or entity described in
25 subsection (2) of this section is not subject to any provision of law enacted after January 1, 1995,
26 with respect to any governmental entity, unless the provision specifically provides that it applies to
27 the university or to the organization or entity.

28 **(4) For purposes of determining the salary, as defined in ORS 238A.005 (17), paid between**
29 **August 29, 2003, and January 1, 2020, to a member of the Public Employees Retirement Sys-**
30 **tem, remuneration paid to a member of the system in return for services to the university**
31 **is deemed includable in the member's taxable income under Oregon law during a period of**
32 **continuous employment with the Oregon Health and Science University if:**

33 **(a) The member was hired in a qualifying position, as defined in ORS 238A.005, by the**
34 **university on or after August 29, 2003; and**

35 **(b) The remuneration was, or would have been if the member were an Oregon resident,**
36 **includable in the member's taxable income under Oregon law during the period of continuous**
37 **employment.**

38 **SECTION 14.** ORS 338.135 is amended to read:

39 338.135. (1) Employee assignment to a public charter school shall be voluntary.

40 (2)(a) A public charter school or the sponsor of the public charter school is considered the em-
41 ployer of any employees of the public charter school. If a school district board is not the sponsor
42 of the public charter school, the school district board may not be the employer of the employees of
43 the public charter school and the school district board may not collectively bargain with the em-
44 ployees of the public charter school. The public charter school governing body shall control the
45 selection of employees at the public charter school.

1 (b) If a virtual public charter school or the sponsor of a virtual public charter school contracts
2 with a for-profit entity to provide educational services through the virtual public charter school, the
3 for-profit entity may not be the employer of any employees of the virtual public charter school un-
4 less:

5 (A) The employee is an administrator who does not have any teaching responsibilities; and

6 (B) Both the executive officer of the sponsor and the public charter school governing body ap-
7 prove employment by the for-profit entity. The executive officer or governing body may choose to
8 grant approval under this subparagraph:

9 (i) For all employees of the for-profit entity who meet the description in subparagraph (A) of this
10 paragraph;

11 (ii) Based on the job categories of the employees who meet the description in subparagraph (A)
12 of this paragraph; or

13 (iii) On a case-by-case basis for each employee who meets the description in subparagraph (A)
14 of this paragraph.

15 (3) The school district board of the school district within which the public charter school is lo-
16 cated shall grant a leave of absence to any employee who chooses to work in the public charter
17 school. The length and terms of the leave of absence shall be set by negotiated agreement or by
18 board policy. However, the length of the leave of absence may not be less than two years unless:

19 (a) The charter of the public charter school is terminated or the public charter school is dis-
20 solved or closed during the leave of absence; or

21 (b) The employee and the school district board have mutually agreed to a different length of
22 time.

23 (4) An employee of a public charter school operating within a school district who is granted a
24 leave of absence from the school district and returns to employment with the school district shall
25 retain seniority and benefits as an employee pursuant to the terms of the leave of absence.
26 Notwithstanding ORS 243.650 to 243.806, a school district that was the employer of an employee of
27 a public charter school not operating within the school district may make provisions for the return
28 of the employee to employment with the school district.

29 (5)(a) For purposes of ORS chapters 238 and 238A, a public charter school shall be considered
30 a public employer and as such shall participate in the Public Employees Retirement System.

31 **(b) For purposes of determining the salary paid between August 29, 2003, and January 1,**
32 **2020, to a member of the Public Employees Retirement System under ORS 238A.005 (17),**
33 **remuneration paid to a member in return for services to a public charter school is deemed**
34 **includable in the member's taxable income under Oregon law during a period of continuous**
35 **employment with any public charter school if:**

36 **(A) The member was hired in a qualifying position by any public charter school on or**
37 **after August 29, 2003;**

38 **(B) The remuneration was, or would have been if the member were an Oregon resident,**
39 **includable in the member's taxable income under Oregon law during the period of continuous**
40 **employment; and**

41 **(C) The member resided and performed services in the United States during the period**
42 **of continuous employment.**

43 **(c) As used in this subsection, "continuous employment" means employment with a**
44 **public charter school that is not interrupted by a period of more than 30 consecutive calen-**
45 **dar days.**

1 (6) For teacher licensing, employment experience in public charter schools shall be considered
2 equivalent to experience in public schools.

3 (7)(a) Any person employed as an administrator in a public charter school shall be licensed or
4 registered to administer by the Teacher Standards and Practices Commission.

5 (b) Any person employed as a teacher in a public charter school shall be licensed or registered
6 to teach by the commission.

7 (c) Notwithstanding paragraph (a) or (b) of this subsection, at least one-half of the total full-time
8 equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by
9 the commission pursuant to ORS 342.125.

10 (8) Notwithstanding ORS 243.650, a public charter school shall be considered a school district
11 for purposes of ORS 243.650 to 243.806. An employee of a public charter school may be a member
12 of a labor organization or organize with other employees to bargain collectively. Bargaining units
13 at the public charter school may be separate from other bargaining units of the sponsor or of the
14 school district in which the public charter school is located. Employees of a public charter school
15 may be part of the bargaining units of the sponsor or of the school district in which the public
16 charter school is located.

17 (9) An entity described in ORS 338.005 (4) may not waive the right to sponsor a public charter
18 school in a collective bargaining agreement.

19 **SECTION 15. The amendments to ORS 238.082 and sections 35 and 37, chapter 355, Oregon**
20 **Laws 2019, by sections 1 to 3 of this 2021 Act apply to determinations made under ORS**
21 **238.082 and sections 35 and 37, chapter 355, Oregon Laws 2019, on or after the effective date**
22 **of this 2021 Act for all service performed by a retired member employed by a participating**
23 **public employer, whether performed before, on or after the effective date of this 2021 Act.**

24 **SECTION 16. The amendments to ORS 238A.005 by section 12 of this 2021 Act apply to**
25 **remuneration paid to an active member of the Public Employees Retirement System on or**
26 **after January 1, 2020.**

27