

Senate Bill 112

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Public Employees Retirement System)

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**.

Provides that common law employees are employees for purposes of Public Employees Retirement System.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; amending ORS 238.005 and 238A.005; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 238.005 is amended to read:

6 238.005. For purposes of this chapter:

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

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

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

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

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

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

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

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

30 (7) "Earliest service retirement age" means the age attained by a member when the member

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 could first make application for retirement under the provisions of ORS 238.280.

2 (8) "Employee" [*includes, in addition to employees,*] **means a person who performs services**
3 **for a participating public employer, including persons considered employees of a participating**
4 **public employer under 26 U.S.C. 3121(d)(2), as in effect on December 31, 2019, and public**
5 **officers[, but does not include]. "Employee" does not include:**

6 (a) Persons engaged as independent contractors.

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

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

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

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

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

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

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

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

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

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

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

38 (c) An employee of the Oregon Military Department whose primary duties include fighting
39 structural, aircraft, wildland or other fires.

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

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

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

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

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

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

7 (17) "Normal retirement age" means:

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

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

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

17 (19) "Police officer" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (u) Employees of the Oregon Youth Authority who are classified as juvenile parole and pro-
27 bation officers.

28 (v) Employees of the Department of Human Services who are prohibited from striking under ORS
29 243.726 and whose duties include the care of residents of residential facilities, as defined in ORS
30 443.400, that house individuals with intellectual or developmental disabilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (L) Compensation described and authorized under ORS 353.270 that is not paid by Oregon Health
40 and Science University; or

41 (M) For years beginning on or after January 1, 2020, any amount in excess of \$195,000 for a
42 calendar year. If any period over which salary is determined is less than 12 months, the \$195,000
43 limitation for that period shall be multiplied by a fraction, the numerator of which is the number
44 of months in the determination period and the denominator of which is 12. On January 1 of each
45 year, the board shall adjust the dollar limit provided by this subparagraph to reflect any percentage

1 changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as pub-
 2 lished by the Bureau of Labor Statistics of the United States Department of Labor.

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

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

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

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

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

10 **SECTION 2.** ORS 238A.005 is amended to read:

11 238A.005. For the purposes of this chapter:

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

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

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

18 (4) "Eligible employee" means a person who performs services for a participating public em-
 19 ployer, including **persons considered employees of a participating public employer under 26**
 20 **U.S.C. 3121(d)(2), as in effect on December 31, 2019, and** elected officials other than judges.

21 "Eligible employee" does not include:

22 (a) Persons engaged as independent contractors;

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

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

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

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

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

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

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

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

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

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

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

41 (m) Judges.

42 (5) "Firefighter" means:

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

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

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

4 (d) An employee of the Oregon Military Department whose primary duties include fighting
5 structural, aircraft, wildland or other fires.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (E) Retroactive payments described in ORS 238.008.

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

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

17 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
18 652.190.

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

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

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

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

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

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

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

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

34 (H) The amount of an employee contribution to the individual account program that is paid by
35 the employer and is not deducted from the compensation of the employee, as provided under ORS
36 238A.335 (1) and (2)(b).

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

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

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

43 (L) For years before 2020, any amount in excess of \$200,000 for a calendar year. If any period
44 over which salary is determined is less than 12 months, the \$200,000 limitation for that period shall
45 be multiplied by a fraction, the numerator of which is the number of months in the determination

1 period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit
2 to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

3 (M) For years beginning on or after January 1, 2020, any amount in excess of \$195,000 for a
4 calendar year. If any period over which salary is determined is less than 12 months, the \$195,000
5 limitation for that period shall be multiplied by a fraction, the numerator of which is the number
6 of months in the determination period and the denominator of which is 12. On January 1 of each
7 year, the board shall adjust the dollar limit provided by this subparagraph to reflect any percentage
8 changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as pub-
9 lished by the Bureau of Labor Statistics of the United States Department of Labor.

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

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

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

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

14 **SECTION 3. This 2021 Act being necessary for the immediate preservation of the public**
15 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
16 **on its passage.**

17
