

SB 42-1
(LC 436)
2/8/21 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 42**

1 On page 1 of the printed bill, delete lines 5 through 30 and delete pages
2 2 through 6 and insert:

3 **“SECTION 1.** ORS 238.005 is amended to read:

4 “238.005. For purposes of this chapter:

5 “(1) ‘Active member’ means a member who is presently employed by a
6 participating public employer in a qualifying position and who has completed
7 the six-month period of service required by ORS 238.015.

8 “(2) ‘Annuity’ means payments for life derived from contributions made
9 by a member as provided in this chapter.

10 “(3) ‘Board’ means the Public Employees Retirement Board.

11 “(4) ‘Calendar year’ means 12 calendar months commencing on January
12 1 and ending on December 31 following.

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

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

19 “(b) An employee who was in the armed services on January 1, 1945, and
20 returned to the service of the employer within one year of the date of being
21 otherwise than dishonorably discharged and remained in that employment

1 until having established membership in the Public Employees Retirement
2 System.

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

10 “(7) ‘Earliest service retirement age’ means the age attained by a member
11 when the member could first make application for retirement under the pro-
12 visions of ORS 238.280.

13 “(8) ‘Employee’ includes, in addition to employees, public officers, but
14 does not include:

15 “(a) Persons engaged as independent contractors.

16 “(b) Seasonal, emergency or casual workers whose periods of employment
17 with any public employer or public employers do not total 600 hours in any
18 calendar year.

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

22 “(d) Persons employed and paid from federal funds received under a fed-
23 eral program intended primarily to alleviate unemployment. However, any
24 such person shall be considered an ‘employee’ if not otherwise excluded by
25 paragraphs (a) to (c) of this subsection and the public employer elects to
26 have the person so considered by an irrevocable written notice to the board.

27 “(e) Persons who are employees of a railroad, as defined in ORS 824.020,
28 and who, as such employees, are included in a retirement plan under federal
29 railroad retirement statutes. This paragraph shall be deemed to have been
30 in effect since the inception of the system.

1 “(f) Persons employed in positions classified as post-doctoral scholar po-
2 sitions by a public university listed in ORS 352.002, or by the Oregon Health
3 and Science University, under ORS 350.370.

4 “(9) ‘Final average salary’ means whichever of the following is greater:

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

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

21 “(10) ‘Firefighter’ does not include a volunteer firefighter, but does in-
22 clude:

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

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

29 “(c) An employee of the Oregon Military Department whose primary du-
30 ties include fighting structural, aircraft, wildland or other fires.

1 “(11) ‘Fiscal year’ means 12 calendar months commencing on July 1 and
2 ending on June 30 following.

3 “(12) ‘Fund’ means the Public Employees Retirement Fund.

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

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

10 “(15) ‘Member’ means a person who has established membership in the
11 system and whose membership has not been terminated as described in ORS
12 238.095. ‘Member’ includes active, inactive and retired members.

13 “(16) ‘Member account’ means the regular account and the variable ac-
14 count.

15 “(17) ‘Normal retirement age’ means:

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

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

24 “(18) ‘Pension’ means annual payments for life derived from contributions
25 by one or more public employers.

26 “(19) ‘Police officer’ includes:

27 “(a) Employees of institutions defined in ORS 421.005 as Department of
28 Corrections institutions whose duties, as assigned by the Director of the
29 Department of Corrections, include the custody of persons committed to the
30 custody of or transferred to the Department of Corrections and employees

1 of the Department of Corrections who were classified as police officers on
2 or before July 27, 1989, whether or not such classification was authorized
3 by law.

4 “(b) Employees of the Department of State Police who are classified as
5 police officers by the Superintendent of State Police.

6 “(c) Employees of the Oregon Liquor Control Commission who are clas-
7 sified as regulatory specialists by the administrator of the commission.

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

11 “(e) Police chiefs and police personnel of a city who are classified as po-
12 lice officers by the council or other governing body of the city.

13 “(f) Police officers who are commissioned by a university under ORS
14 352.121 or 353.125 and who are classified as police officers by the university.

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

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

26 “(i) Employees of the Port of Portland who are classified as airport police
27 by the Board of Commissioners of the Port of Portland.

28 “(j) Employees of the State Department of Agriculture who are classified
29 as livestock police officers by the Director of Agriculture.

30 “(k) Employees of the Department of Public Safety Standards and Train-

1 ing who are classified by the department as other than secretarial or clerical
2 personnel.

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

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

6 “(n) Employees of the Oregon State Lottery Commission who are classi-
7 fied by the Director of the Oregon State Lottery as enforcement agents pur-
8 suant to ORS 461.110.

9 “(o) The Director of the Department of Corrections.

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

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

20 “(r) Employees of a school district who are appointed and duly sworn
21 members of a law enforcement agency of the district as provided in ORS
22 332.531 or otherwise employed full-time as police officers commissioned by
23 the district.

24 “(s) Employees at youth correction facilities and juvenile detention facil-
25 ities under ORS 419A.050, 419A.052 and 420.005 to 420.915 who are required
26 to hold valid Oregon teaching licenses and who have supervisory, control or
27 teaching responsibilities over juveniles committed to the custody of the De-
28 partment of Corrections or the Oregon Youth Authority.

29 “(t) Employees at youth correction facilities as defined in ORS 420.005
30 whose primary job description involves the custody, control, treatment, in-

1 vestigation or supervision of juveniles placed in such facilities.

2 “(u) Employees of the Oregon Youth Authority who are classified as ju-
3 venile parole and probation officers.

4 “(v) Employees of the Department of Human Services who are prohibited
5 from striking under ORS 243.726 and whose duties include the care of resi-
6 dents of residential facilities, as defined in ORS 443.400, that house individ-
7 uals with intellectual or developmental disabilities.

8 **“(w) Employees of the State Board of Parole and Post-Prison**
9 **Supervision who have delineated duties that include in-person contact**
10 **with adults in custody, adults on supervision or adults on the sex**
11 **offender registry, and who are classified by the board as other than**
12 **secretarial or clerical personnel.**

13 “(20) ‘Prior service credit’ means credit provided under ORS 238.442 or
14 under ORS 238.225 (2) to (6) (1999 Edition).

15 “(21) ‘Public employer’ means the state, one of its agencies, any city,
16 county, or municipal or public corporation, any political subdivision of the
17 state or any instrumentality thereof, or an agency created by one or more
18 such governmental organizations to provide governmental services. For pur-
19 poses of this chapter, such agency created by one or more governmental or-
20 ganizations is a governmental instrumentality and a legal entity with power
21 to enter into contracts, hold property and sue and be sued.

22 “(22) ‘Qualifying position’ means one or more jobs with one or more par-
23 ticipating public employers in which an employee performs 600 or more hours
24 of service in a calendar year, excluding any service in a job for which a
25 participating public employer does not provide benefits under this chapter
26 pursuant to an application made under ORS 238.035.

27 “(23) ‘Regular account’ means the account established for each active and
28 inactive member under ORS 238.250.

29 “(24) ‘Retired member’ means a member who is retired for service or dis-
30 ability.

1 “(25) ‘Retirement credit’ means a period of time that is treated as credit-
2 able service for the purposes of this chapter.

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

8 “(b) ‘Salary’ includes but is not limited to:

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

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

13 “(C) Retroactive payments described in ORS 238.008; and

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

16 “(c) ‘Salary’ or ‘other advantages’ does not include:

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

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

22 “(C) Payments made on account of an employee’s death;

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

24 “(E) Any accelerated payment of an employment contract for a future
25 period or an advance against future wages;

26 “(F) Any retirement incentive, retirement severance pay, retirement bonus
27 or retirement gratuitous payment;

28 “(G) Payments for periods of leave of absence after the date the employer
29 and employee have agreed that no future services qualifying pursuant to ORS
30 238.015 (3) will be performed, except for sick leave and vacation;

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

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

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

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

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

14 “(M) For years beginning on or after January 1, 2020, any amount in ex-
15 cess of \$195,000 for a calendar year. If any period over which salary is de-
16 termined is less than 12 months, the \$195,000 limitation for that period shall
17 be multiplied by a fraction, the numerator of which is the number of months
18 in the determination period and the denominator of which is 12. On January
19 1 of each year, the board shall adjust the dollar limit provided by this sub-
20 paragraph to reflect any percentage changes in the Consumer Price Index for
21 All Urban Consumers, West Region (All Items), as published by the Bureau
22 of Labor Statistics of the United States Department of Labor.

23 “(27) ‘School year’ means the period beginning July 1 and ending June 30
24 next following.

25 “(28) ‘System’ means the Public Employees Retirement System.

26 “(29) ‘Variable account’ means the account established for a member who
27 participates in the Variable Annuity Account under ORS 238.260.

28 “(30) ‘Vested’ means being an active member of the system in each of five
29 calendar years.

30 “(31) ‘Volunteer firefighter’ means a firefighter whose position normally

1 requires less than 600 hours of service per year.

2 **“SECTION 2. (1) The amendments to ORS 238.005 by section 1 of this**
3 **2021 Act apply only to a person who:**

4 **“(a) Is an employee of the State Board of Parole and Post-Prison**
5 **Supervision who has delineated duties that include in-person contact**
6 **with adults in custody, adults on supervision or adults on the sex**
7 **offender registry, and who is classified by the board as other than**
8 **secretarial or clerical personnel on the effective date of this 2021 Act;**
9 **or**

10 **“(b) Becomes an employee of the State Board of Parole and Post-**
11 **Prison Supervision who has delineated duties that include in-person**
12 **contact with adults in custody, adults on supervision or adults on the**
13 **sex offender registry, and who is classified by the board as other than**
14 **secretarial or clerical personnel after the effective date of this 2021**
15 **Act.**

16 **“(2) A person who is an employee of the State Board of Parole and**
17 **Post-Prison Supervision who has delineated duties that include in-**
18 **person contact with adults in custody, adults on supervision or adults**
19 **on the sex offender registry, and who is classified by the board as**
20 **other than secretarial or clerical personnel on the effective date of this**
21 **2021 Act is entitled to service in the Public Employees Retirement**
22 **System as a police officer only for service performed as an employee**
23 **of the State Board of Parole and Post-Prison Supervision who has de-**
24 **lineated duties that include in-person contact with adults in custody,**
25 **adults on supervision or adults on the sex offender registry, and who**
26 **is classified by the board as other than secretarial or clerical personnel**
27 **on and after the effective date of this 2021 Act.”.**

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