

# House Bill 2054

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Multnomah County Prosecuting Attorneys Association)

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

## A BILL FOR AN ACT

1  
2 Relating to the status of district attorneys in the Public Employees Retirement System; creating new  
3 provisions; and amending ORS 238.005.

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 Retirement  
23 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  
31 could first make application for retirement under the provisions of ORS 238.280.

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

4 (a) Persons engaged as independent contractors.

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

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

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

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

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

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

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

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

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

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

33 (b) An employee of the State Fire Marshal whose primary duties include fire investigation, fire  
34 prevention, fire safety, fire control or fire suppression;

35 (c) 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 (d) 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 and Cannabis Commission who are classified as regulatory  
 26 specialists 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 (w) Employees appointed as judicial marshals under ORS 1.177 who are certified under ORS  
 32 181A.540.

33 **(x) District attorneys and deputy district attorneys.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (M) For years beginning on or after January 1, 2020, any amount in excess of \$195,000 for a  
45 calendar year. If any period over which salary is determined is less than 12 months, the \$195,000

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

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

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

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

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

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

13 **SECTION 2. (1) The amendments to ORS 238.005 by section 1 of this 2023 Act apply only**  
14 **to a person who:**

15 **(a) Is employed as a district attorney or a deputy district attorney on the effective date**  
16 **of this 2023 Act; or**

17 **(b) Becomes employed as a district attorney or a deputy district attorney after the ef-**  
18 **fective date of this 2023 Act.**

19 **(2) A person who is employed as a district attorney or a deputy district attorney on or**  
20 **after the effective date of this 2023 Act is entitled to service under the Public Employees**  
21 **Retirement System as a police officer only for service performed as a district attorney or a**  
22 **deputy district attorney on or after the effective date of this 2023 Act.**

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