

**Enrolled**  
**House Bill 3485**

Sponsored by COMMITTEE ON EMERGENCY MANAGEMENT, GENERAL GOVERNMENT, AND VETERANS (at the request of Oregon State Fire Marshal)

CHAPTER .....

AN ACT

Relating to the State Fire Marshal; creating new provisions; and amending ORS 238.082, 238A.005, 476.033, 476.040, 476.050, 476.250, 476.720 and 476.990.

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

**STATE FIRE MARSHAL DISCRETIONARY POWERS**

**SECTION 1.** ORS 476.033 is amended to read:  
476.033. The State Fire Marshal may:

**(1) Establish headquarters and regional offices of the Department of the State Fire Marshal at places the State Fire Marshal considers advisable for the protection of this state;**

**(2) Operate, and authorize chief deputy state fire marshals, deputy state fire marshals and assistants of the department to own and operate, emergency response vehicles;**

**(3) Use land and buildings for the accommodation of department employees and department vehicles and equipment;**

**[(1)] (4) Contract or otherwise cooperate with any person or public agency for the procurement of necessary services or property, including by entering into lease agreements and taking title to real property as necessary for the performance of the duties of the department;**

**(5) As an emergency services agency, control and regulate the acquisition, operation, use, maintenance and disposal of, and access to, motor vehicles and equipment for official state business;**

**[(2)] (6) Accept and distribute gifts, grants, donations and funds from any source, including services and property, to carry out the duties of the State Fire Marshal; and**

**[(3)] (7) Perform such other duties as required by law.**

**UNIFORMS, SUPPLIES AND EQUIPMENT**

**SECTION 2.** Section 3 of this 2023 Act is added to and made a part of ORS chapter 476.

**SECTION 3. (1) The Department of the State Fire Marshal shall provide department employees with standard uniforms, response apparatus, motor vehicles and all other emergency supplies and equipment necessary to carry out the duties of the department.**

**(2) The Oregon Department of Administrative Services may sell, transfer, recycle or otherwise dispose of surplus, obsolete or unused property of the Department of the State Fire Marshal, as described in ORS 279A.280.**

**(3) The State Fire Marshal shall specify a standard pattern and distinctive design for the uniforms described in subsection (1) of this section.**

**SECTION 4.** ORS 476.990 is amended to read:

**476.990. (1) The following are Class A misdemeanors:**

(a) Violation of ORS 476.150 (2) [*is a Class A misdemeanor*].

[(2)] (b) Violation of ORS 476.380 (1) **or 476.510 to 476.610** [*is a Class A misdemeanor*].

[(3) *Violation of ORS 476.410 to 476.440 is a Class C misdemeanor.*]

[(4) *Violation of any provision of ORS 476.510 to 476.610 is a Class A misdemeanor.*]

[(5)] **(2)** Subject to ORS 153.022, violation of ORS 476.710 or 476.715 or of any rule or regulation of the State Parks and Recreation Department promulgated thereunder is a Class B misdemeanor.

**(3) Violation of ORS 476.410 to 476.440 is a Class C misdemeanor.**

**SECTION 5.** ORS 476.720 is amended to read:

476.720. ORS 476.010 to 476.090, 476.155 to 476.170, 476.210 to 476.270, 476.990 [(1)] **(1)(a)** and 479.168 to 479.190 are remedial in nature and shall be construed liberally.

## **STATE FIRE MARSHAL APPOINTING AUTHORITY**

**SECTION 6.** ORS 476.040 is amended to read:

476.040. The State Fire Marshal shall appoint [a] chief deputy state fire [*marshal*] **marshals** and deputy state fire marshals whose duties shall be to assist in carrying into effect the provisions of ORS 476.010 to 476.090 and 476.155 to 476.170, 476.210 to 476.270 and 479.168 to 479.190. The State Fire Marshal may also employ such other assistants and employees and incur such other expenses as the State Fire Marshal may deem necessary in carrying into effect these provisions. The State Fire Marshal may remove any deputies or assistants for cause.

**SECTION 7.** ORS 476.050 is amended to read:

476.050. The salary of the chief deputy state fire [*marshal,*] **marshals and** deputy state fire marshals, compensation of clerks and other assistants and other expenses of the Department of the State Fire Marshal necessary in the performance of the duties imposed upon the State Fire Marshal shall be paid in the same manner as are other state officers and the expenses of other state departments, and shall not exceed the amount paid to the State Treasurer for the maintenance of the Department of the State Fire Marshal.

**SECTION 8.** ORS 476.250 is amended to read:

476.250. The district attorney may at the discretion of the district attorney, upon the application of the State Fire Marshal or a chief deputy state fire marshal, issue a subpoena to summon the attendance of witnesses before the district attorney to testify in relation to any matter which by law is a subject of inquiry and investigation, and require the production of any books, papers or documents the district attorney deems pertinent to an investigation of or relating to evidence pertaining to the cause of a fire.

**SECTION 9.** ORS 238A.005, as amended by section 3, chapter 83, Oregon Laws 2022, is amended to read:

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

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

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

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

(4) "Eligible employee" means a person who performs services for a participating public employer, including persons considered employees of a participating public employer under 26 U.S.C. 3121(d)(2), as in effect on January 1, 2022, and elected officials other than judges. "Eligible employee" does not include:

(a) Persons engaged as independent contractors;

- (b) Aliens working under a training or educational visa;
  - (c) Persons provided sheltered employment or make-work by a public employer;
  - (d) Persons categorized by a participating public employer as student employees;
  - (e) Any person who is in custody in a state institution;
  - (f) Employees of foreign trade offices of the Oregon Business Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);
  - (g) An employee actively participating in an alternative retirement program established under ORS 353.250 or an optional retirement plan established under ORS 341.551;
  - (h) Employees of a public university listed in ORS 352.002 who are actively participating in an optional retirement plan offered under ORS 243.815;
  - (i) Persons employed in positions classified as post-doctoral scholar positions by a public university listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370;
  - (j) Any employee who belongs to a class of employees that was not eligible on August 28, 2003, for membership in the system under the provisions of ORS chapter 238 or other law;
  - (k) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);
  - (L) Any person who is retired under ORS 238A.100 to 238A.250 or ORS chapter 238 and who continues to receive retirement benefits while employed; and
  - (m) Judges.
- (5) “Firefighter” means:
- (a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;
  - (b) The State Fire Marshal, [*the*] chief deputy state fire [*marshal*] **marshals** and deputy state fire marshals;
  - (c) An employee of the State Fire Marshal whose primary duties include fire investigation, fire prevention, fire safety, fire control or fire suppression;
  - (d) An employee of the State Forestry Department who is certified by the State Forester as a professional wildland firefighter and whose primary duties include the abatement of uncontrolled fires as described in ORS 477.064; and
  - (e) An employee of the Oregon Military Department whose primary duties include fighting structural, aircraft, wildland or other fires.
- (6) “Fund” means the Public Employees Retirement Fund.
- (7)(a) “Hour of service” means:
- (A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and
  - (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.
  - (b) “Hour of service” does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable unemployment compensation laws.
- (8) “Inactive member” means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan whose membership has not been terminated, who is not a retired member and who is not employed in a qualifying position.
- (9) “Individual account program” means the defined contribution individual account program of the Oregon Public Service Retirement Plan established under ORS 238A.025.
- (10) “Institution of higher education” means a public university listed in ORS 352.002, the Oregon Health and Science University or a community college, as defined in ORS 341.005.

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

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

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

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

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

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

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

(b) "Salary" includes the following amounts:

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

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

(C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit plan by the employer at the election of the employee and that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2021.

(D) Any amount that is contributed to a cash or deferred arrangement by the employer at the election of the employee and that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect on December 31, 2021.

(E) Retroactive payments described in ORS 238.008.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) "Workers' compensation benefits" means:

(a) Payments made under ORS chapter 656; or

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

## **EXCEPTION TO LIMITS ON HOURS WORKED BY RETIRED MEMBERS**

### **SECTION 10.** ORS 238.082 is amended to read:

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

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

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

(4) Except as provided in subsection (9) of this section, the limitations on employment imposed by subsections (2) and (3) of this section do not apply to a retired member who is employed as a teacher or as an administrator, as those terms are defined in ORS 342.120, if the retired member is employed by a school district or community college district located within a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census, or is employed by an education service district and the retired member's primary work duties are performed in a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census. A retired member who is employed under this subsection as a teacher, as

defined in ORS 342.120, by the same public employer that employed the member at the time of retirement remains in the same collective bargaining unit that included the member before retirement.

(5) Except as provided in subsection (9) of this section, the limitations on employment imposed by subsections (2) and (3) of this section do not apply to a retired member who is employed:

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

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

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

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

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

(f) As a deputy director or assistant director of the Department of Human Services, if the Governor approves the exemption for the person from the limitations on employment imposed in subsections (2) and (3) of this section;

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

(h) As a special campus security officer commissioned by the governing board of a public university listed in ORS 352.002 under ORS 352.118;

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

(j) By the Harney County Health District as a person licensed, registered or certified to provide health services[.]; **or**

**(k) By the Department of the State Fire Marshal for fire prevention, fire preparedness, fire risk mitigation, firefighting, emergency response or other response support functions.**

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

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

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

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

(b) Subsection (4) of this section applies to a person who retires under the provisions of ORS 238.280 (1), (2) or (3) as long as the person is absent from service with all participating public employers for at least six months before the date the person is employed under subsection (4) of this section.

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

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

**SECTION 11.** The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

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**Passed by House April 13, 2023**

**Received by Governor:**

**Repassed by House June 23, 2023**

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**Approved:**

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

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Tina Kotek, Governor

**Passed by Senate June 22, 2023**

**Filed in Office of Secretary of State:**

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Rob Wagner, President of Senate

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Secretary of State