

# Senate Bill 663

Sponsored by Senator KNOPP (Presession filed.)

## 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**.

Changes calculation of final average salary for purposes of Public Employees Retirement System to use five years of salary instead of three years, for salary paid on and after January 1, 2024.

Directs Public Employees Retirement Board to recalculate employer contribution rates to reflect savings attributable to Act.

Provides for expedited review of Act by Supreme Court upon petition by adversely affected party.

## A BILL FOR AN ACT

1  
2 Relating to the calculation of final average salary under the Public Employees Retirement System;  
3 creating new provisions; and amending ORS 238.005, 238.350, 238.435 and 238A.130.

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.

**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 (7) "Earliest service retirement age" means the age attained by a member when the member  
2 could first make application for retirement under the provisions of ORS 238.280.

3 (8) "Employee" means a person who performs services for a participating public employer, in-  
4 cluding persons considered employees of a participating public employer under 26 U.S.C. 3121(d)(2),  
5 as in effect on December 31, 2019, and public officers. "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 **and before January 1, 2024**, in which three  
24 years the employee was paid the highest salary. The three calendar years in which the employee  
25 was paid the largest total salary may include calendar years in which the employee was employed  
26 for less than a full calendar year. If the number of calendar years of active membership before the  
27 effective date of retirement of the employee is three or fewer, the final average salary for the em-  
28 ployee is the average salary per calendar year paid by one or more participating public employers  
29 to the employee in all of those years, without regard to whether the employee was employed for the  
30 full calendar year.

31 **(b) The average salary per calendar year paid by one or more participating public em-**  
32 **ployers to an employee who is an active member of the system in five of the calendar years**  
33 **of membership before the effective date of retirement of the employee, in which five years**  
34 **the employee was paid the highest salary. The five calendar years in which the employee was**  
35 **paid the largest total salary may include calendar years in which the employee was employed**  
36 **for less than a full calendar year. If the number of calendar years of active membership be-**  
37 **fore the effective date of retirement of the employee is five or fewer, the final average salary**  
38 **for the employee is the average salary per calendar year paid by one or more participating**  
39 **public employers to the employee in all of those years, without regard to whether the em-**  
40 **ployee was employed for the full calendar year.**

41 [(b)] (c) One-third of the total salary paid by a participating public employer to an employee  
42 who is an active member of the system in the last 36 calendar months of active membership before  
43 the effective date of retirement of the employee **and before January 1, 2024**.

44 **(d) One-fifth of the total salary paid by a participating public employer to an employee**  
45 **who is an active member of the system in the last 60 calendar months of active membership.**

- 1 (10) “Firefighter” does not include a volunteer firefighter, but does include:
- 2 (a) The State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals;
- 3 (b) An employee of the State Fire Marshal whose primary duties include fire investigation, fire  
4 prevention, fire safety, fire control or fire suppression;
- 5 (c) An employee of the State Forestry Department who is certified by the State Forester as a  
6 professional wildland firefighter and whose primary duties include the abatement of uncontrolled  
7 fires as described in ORS 477.064; and
- 8 (d) An employee of the Oregon Military Department whose primary duties include fighting  
9 structural, aircraft, wildland or other fires.
- 10 (11) “Fiscal year” means 12 calendar months commencing on July 1 and ending on June 30 fol-  
11 lowing.
- 12 (12) “Fund” means the Public Employees Retirement Fund.
- 13 (13) “Inactive member” means a member who is not employed in a qualifying position, whose  
14 membership has not been terminated in the manner described by ORS 238.095 and who is not retired  
15 for service or disability.
- 16 (14) “Institution of higher education” means a public university listed in ORS 352.002, the  
17 Oregon Health and Science University and a community college, as defined in ORS 341.005.
- 18 (15) “Member” means a person who has established membership in the system and whose mem-  
19 bership has not been terminated as described in ORS 238.095. “Member” includes active, inactive  
20 and retired members.
- 21 (16) “Member account” means the regular account and the variable account.
- 22 (17) “Normal retirement age” means:
- 23 (a) For a person who establishes membership in the system before January 1, 1996, as described  
24 in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter  
25 or 58 years of age if the employee retires at that age as other than a police officer or firefighter.
- 26 (b) For a person who establishes membership in the system on or after January 1, 1996, as de-  
27 scribed in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or  
28 firefighter or 60 years of age if the employee retires at that age as other than a police officer or  
29 firefighter.
- 30 (18) “Pension” means annual payments for life derived from contributions by one or more public  
31 employers.
- 32 (19) “Police officer” includes:
- 33 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions  
34 whose duties, as assigned by the Director of the Department of Corrections, include the custody of  
35 persons committed to the custody of or transferred to the Department of Corrections and employees  
36 of the Department of Corrections who were classified as police officers on or before July 27, 1989,  
37 whether or not such classification was authorized by law.
- 38 (b) Employees of the Department of State Police who are classified as police officers by the  
39 Superintendent of State Police.
- 40 (c) Employees of the Oregon Liquor and Cannabis Commission who are classified as regulatory  
41 specialists by the administrator of the commission.
- 42 (d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified  
43 by the sheriff, are the regular duties of police officers or corrections officers.
- 44 (e) Police chiefs and police personnel of a city who are classified as police officers by the  
45 council or other governing body of the city.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (s) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,  
35 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who  
36 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the  
37 Department of Corrections or the Oregon Youth Authority.

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

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

43 (v) Employees of the Department of Human Services who are prohibited from striking under ORS  
44 243.726 and whose duties include the care of residents of residential facilities, as defined in ORS  
45 443.400, that house individuals with intellectual or developmental disabilities.

1 (w) Employees appointed as judicial marshals under ORS 1.177 who are certified under ORS  
2 181A.540.

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

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

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

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

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

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

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

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

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

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

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

30 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
31 652.190.

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

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

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

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

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

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

41 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement  
42 gratuitous payment;

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

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

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

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

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

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

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

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

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

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

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

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

27 **SECTION 2.** ORS 238.435 is amended to read:

28 238.435. (1) Notwithstanding the definition of "salary" or "other advantages" provided by ORS  
 29 238.005, for the purpose of calculating the retirement allowance of a person who establishes mem-  
 30 bership in the system on or after January 1, 1996, as described in ORS 238.430, the Public Employees  
 31 Retirement Board shall not include any lump sum payment for accrued vacation pay made to the  
 32 member during [*the last 36 calendar months of membership before the effective date of retirement of the*  
 33 *member, or during any period of time taken into account for purposes of determining the three years*  
 34 *in which the member was paid the highest salary for the purposes of]* **any period of time taken into**  
 35 **account in** determining the member's final average salary.

36 (2) Notwithstanding the definition of "final average salary" provided by ORS 238.005, for the  
 37 purpose of calculating the retirement allowance of a person who establishes membership in the  
 38 system on or after January 1, 1996, as described in ORS 238.430, and who is not employed by a local  
 39 government as defined in ORS 174.116, the term "final average salary" means whichever of the fol-  
 40 lowing is greater:

41 (a) The average salary per calendar year paid to a public employee who is an active member  
 42 of the system in three of the calendar years of membership before the effective date of retirement  
 43 of the employee **and before January 1, 2024**, in which three years the employee was paid the  
 44 highest salary. The three calendar years in which the employee was paid the largest total salary  
 45 may include calendar years in which the employee was employed for less than a full calendar year.

1 If the number of calendar years of active membership before the effective date of retirement of the  
2 employee is three or less, the final average salary for the employee is the average salary per cal-  
3 endar year paid to the public employee in all of those years, without regard to whether the employee  
4 was employed for full calendar years.

5 **(b) The average salary per calendar year paid to a public employee who is an active**  
6 **member of the system in five of the calendar years of membership before the effective date**  
7 **of retirement of the employee, in which five years the employee was paid the highest salary.**  
8 **The five calendar years in which the employee was paid the largest total salary may include**  
9 **calendar years in which the employee was employed for less than a full calendar year. If the**  
10 **number of calendar years of active membership before the effective date of retirement of the**  
11 **employee is five or less, the final average salary for the employee is the average salary per**  
12 **calendar year paid to the public employee in all of those years, without regard to whether**  
13 **the employee was employed for full calendar years.**

14 [(b)] (c) One-third of the total salary paid to a public employee who is an active member of the  
15 system in the last 36 calendar months of membership before the effective date of retirement of the  
16 employee **and before January 1, 2024.**

17 **(d) One-fifth of the total salary paid to a public employee who is an active member of the**  
18 **system in the last 60 calendar months of membership before the effective date of retirement**  
19 **of the employee.**

20 (3) For the purposes of calculating the final average salary of a member under subsection (2)  
21 of this section, the Public Employees Retirement Board shall:

22 (a) Include any salary paid in or for the calendar month of separation from employment;

23 (b) Exclude any salary for any pay period before the first full pay period that is included in the  
24 three calendar years of membership under subsection (2)(a) of this section **or the five calendar**  
25 **years of membership under subsection (2)(b) of this section** if the three **or five** calendar years  
26 were consecutive; and

27 (c) Exclude any salary for any pay period before the first full pay period that is included in the  
28 last 36 calendar months of membership under subsection [(2)(b)] (2)(c) of this section **or the last**  
29 **60 calendar months of membership under subsection (2)(d) of this section.**

30 (4) Notwithstanding the definition of “final average salary” provided by ORS 238.005, for the  
31 purpose of calculating the retirement allowance of a person who establishes membership in the  
32 system on or after January 1, 1996, as described in ORS 238.430, and who is employed by a local  
33 government as defined in ORS 174.116, the term “final average salary” means whichever of the fol-  
34 lowing is greater:

35 (a) The average salary per calendar year earned by a public employee who is an active member  
36 of the system in three of the calendar years of membership before the effective date of retirement  
37 of the employee **and before January 1, 2024**, in which three years the employee earned the highest  
38 salary. The three calendar years in which the employee earned the largest total salary may include  
39 calendar years in which the employee was employed for less than a full calendar year. If the number  
40 of calendar years of active membership before the effective date of retirement of the employee is  
41 three or less, the final average salary for the employee is the average salary per calendar year  
42 earned by the public employee in all of those years, without regard to whether the employee was  
43 employed for full calendar years.

44 **(b) The average salary per calendar year earned by a public employee who is an active**  
45 **member of the system in five of the calendar years of membership before the effective date**

1 of retirement of the employee, in which five years the employee earned the highest salary.  
 2 The five calendar years in which the employee earned the largest total salary may include  
 3 calendar years in which the employee was employed for less than a full calendar year. If the  
 4 number of calendar years of active membership before the effective date of retirement of the  
 5 employee is five or less, the final average salary for the employee is the average salary per  
 6 calendar year earned by the public employee in all of those years, without regard to whether  
 7 the employee was employed for full calendar years.

8 [(b)] (c) One-third of the total salary earned by a public employee who is an active member of  
 9 the system in the last 36 calendar months of membership before the effective date of retirement of  
 10 the employee **and before January 1, 2024.**

11 **(d) One-fifth of the total salary earned by a public employee who is an active member of**  
 12 **the system in the last 60 calendar months of membership before the effective date of re-**  
 13 **irement of the employee.**

14 (5) The normal retirement age is 60 years of age for a member who establishes membership in  
 15 the system on or after January 1, 1996, as described in ORS 238.430, and who retires as other than  
 16 a police officer or firefighter.

17 (6) ORS 238.255 does not apply to any person who establishes membership in the Public Em-  
 18 ployees Retirement System on or after January 1, 1996, as described in ORS 238.430.

19 (7) Except as provided in this section, all provisions of this chapter are applicable to persons  
 20 who establish membership in the system on or after January 1, 1996, as described in ORS 238.430.

21 **SECTION 3.** ORS 238A.130 is amended to read:

22 238A.130. (1) Except as provided in subsection (3) of this section, for purposes of the computa-  
 23 tion of pension program benefits under ORS 238A.125, "final average salary" means whichever of the  
 24 following is greater:

25 (a) The average salary per calendar year paid to an active member in the three consecutive  
 26 calendar years of membership **before January 1, 2024**, that produce the highest average salary,  
 27 including calendar years in which the member was employed for less than a full calendar year. If  
 28 the number of consecutive calendar years of active membership before the effective date of retire-  
 29 ment of the member is three or less, the final average salary for the member is the average salary  
 30 per calendar year paid to the member in all of those years, without regard to whether the member  
 31 was employed for full calendar years.

32 **(b) The average salary per calendar year paid to an active member in the five consecutive**  
 33 **calendar years of membership that produce the highest average salary, including calendar**  
 34 **years in which the member was employed for less than a full calendar year. If the number**  
 35 **of consecutive calendar years of active membership before the effective date of retirement**  
 36 **of the member is five or less, the final average salary for the member is the average salary**  
 37 **per calendar year paid to the member in all of those years, without regard to whether the**  
 38 **member was employed for full calendar years.**

39 [(b)] (c) One-third of the total salary paid to an active member in the last 36 calendar months  
 40 of membership before the effective date of retirement of the member **and before January 1, 2024.**

41 **(d) One-fifth of the total salary paid to an active member in the last 60 calendar months**  
 42 **of membership before the effective date of retirement of the member.**

43 (2) For the purposes of calculating the final average salary of a member under subsection (1)  
 44 of this section, the Public Employees Retirement Board shall:

45 (a) Include any salary paid in or for the calendar month of separation from employment;



1 (b) Exclude any salary for any pay period before the first full pay period that is included in the  
 2 three consecutive calendar years of membership under subsection (1)(a) of this section **or the five**  
 3 **consecutive calendar years of membership under subsection (1)(b) of this section;** and

4 (c) Exclude any salary for any pay period before the first full pay period that is included in the  
 5 last 36 calendar months of membership under subsection [(1)(b)] (1)(c) of this section **or the last**  
 6 **60 calendar months of membership under subsection (1)(d) of this section.**

7 (3) For purposes of the computation of pension program benefits under ORS 238A.125 of a person  
 8 employed by a local government as defined in ORS 174.116, “final average salary” means whichever  
 9 of the following is greater:

10 (a) The average salary per calendar year earned by an active member in the three consecutive  
 11 calendar years of membership **before January 1, 2024**, that produce the highest average salary,  
 12 including calendar years in which the member was employed for less than a full calendar year. If  
 13 the number of consecutive calendar years of active membership before the effective date of retire-  
 14 ment of the member is three or less, the final average salary for the member is the average salary  
 15 per calendar year earned by the member in all of those years, without regard to whether the mem-  
 16 ber was employed for full calendar years.

17 (b) **The average salary per calendar year earned by an active member in the five con-**  
 18 **secutive calendar years of membership that produce the highest average salary, including**  
 19 **calendar years in which the member was employed for less than a full calendar year. If the**  
 20 **number of consecutive calendar years of active membership before the effective date of re-**  
 21 **irement of the member is five or less, the final average salary for the member is the aver-**  
 22 **age salary per calendar year earned by the member in all of those years, without regard to**  
 23 **whether the member was employed for full calendar years.**

24 [(b)] (c) One-third of the total salary earned by an active member in the last 36 calendar months  
 25 of membership before the effective date of retirement of the member **and before January 1, 2024.**

26 (d) **One-fifth of the total salary earned by an active member in the last 60 calendar**  
 27 **months of membership before the effective date of retirement of the member.**

28 (4) For the purposes of calculating the final average salary of a member under this section, the  
 29 salary of the member does not include:

30 (a) Any amounts attributable to hours of overtime that exceed the average number of hours of  
 31 overtime for the same class of employees as established by rule of the Public Employees Retirement  
 32 Board. The Oregon Department of Administrative Services shall establish by rule more than one  
 33 overtime average for a class of state employees based on the geographic placement of the employees.

34 (b) Any increases in salary during the last [36] **60** calendar months of membership before the  
 35 effective date of retirement of the member that:

36 (A) Are made by an employer to pay for insurance coverage previously paid for by the employer;  
 37 and

38 (B) Are not offered to all employees in the same class of employees as established by rule of the  
 39 board under paragraph (a) of this subsection.

40 **SECTION 4.** ORS 238.350 is amended to read:

41 238.350. (1)(a) Upon the request by a public employer that its employees be compensated for  
 42 accumulated unused sick leave with pay in the form of increased retirement benefits upon service  
 43 or disability retirement, the board shall establish a procedure for adding to the gross amount of  
 44 salary used in determining final average salary the monetary value of one-half of the accumulated  
 45 unused sick leave with pay of each retiring employee of the requesting public employer and shall

1 establish benefits of the retiring employee on the basis of a final average salary reflecting that ad-  
2 dition.

3 (b) For employees of a common school district, a union high school district, an education service  
4 district or an institution of higher education engaged in teaching or other school activity, or em-  
5 ployees of the school operated under ORS 346.010 engaged in teaching or other school activity, who  
6 are employed under contract for a period of less than 12 consecutive months and who are entitled  
7 to sick leave with pay of less than 96 hours for a year, each hour of accumulated unused sick leave  
8 with pay shall be valued on the basis of the actual number of contract hours of employment during  
9 the last year of contributing membership of an employee before retiring and the salary of the em-  
10 ployee during the same period. This paragraph does not apply to any employee who is employed  
11 under contract for 12 consecutive months in [*any of the three or less years*] **the period or periods**  
12 used in determining the final average salary of the employee.

13 (c) For the purpose of this subsection, accumulated unused sick leave with pay includes unused  
14 sick leave with pay accumulated by an active member of the system while in the service of any  
15 public employer participating in the system that has the request described in paragraph (a) of this  
16 subsection in effect at the time of the member's separation from the service of the employer, whether  
17 that employer is or is not the employer of the member at the time of the member's retirement.

18 (d) The board shall establish rules requiring all public employers participating in the system to  
19 transmit to the board reports of unused sick leave with pay accumulated by their employees who  
20 are members of the system and to provide timely notification to each of those employees of unused  
21 sick leave with pay accumulated by the employee and reported to the board.

22 (2) Accumulated unused sick leave with pay may be considered for the purpose of subsection (1)  
23 of this section only in accordance with the following requirements:

24 (a) Sick leave not credited at the rate actually provided by the public employer may not be  
25 considered. The amount of sick leave exceeding an amount credited at the lowest rate in effect for  
26 any employee of the public employer who is normally entitled to sick leave, and in any event ex-  
27 ceeding an amount credited at a rate of eight hours for each full month worked, may not be con-  
28 sidered.

29 (b) Sick leave credited for periods when an employee was absent from employment on sabbatical  
30 leave, educational leave or any leave without pay may not be considered.

31 (c) Any period during which an employee was absent from employment for illness or injury that  
32 was charged against sick leave not qualified for consideration shall be deducted from sick leave  
33 qualified for consideration.

34 (d) Sick leave for any period for which the public employer provides no sick leave with pay for  
35 its employees may not be considered.

36 (e) Sick leave accumulated on and after July 1, 1973, may be considered only to the extent it is  
37 supported by records of accumulation and use pursuant to a plan adopted formally by the public  
38 employer.

39 (f) Accumulated unused sick leave for periods before July 1, 1973, may be considered as follows:

40 (A) If any department, bureau or other organizational unit of a public employer maintained  
41 formal records of accumulation and use even though the public employer did not require that those  
42 records be maintained, the accumulated unused sick leave shall be considered according to those  
43 records.

44 (B) Where the public employer provided sick leave before July 1, 1973, but formal records of  
45 accumulation and use were not required or if required, are unavailable or incomplete, or the sick

1 leave was subject to administrative limitations on total accumulation or transfer between public  
2 employers, accumulated unused sick leave for periods before July 1, 1973, may be considered as  
3 equal to 2.675 hours for each full month worked or an amount per month equal to the average  
4 monthly accumulation by an employee during the period beginning July 1, 1973, and ending at the  
5 time of retirement, whichever amount is greater, but reduced by the amount of any accumulated  
6 unused sick leave credited to the employee on July 1, 1973.

7 (g) The written certification of a member or former member of the Legislative Assembly shall  
8 constitute a formal record of accumulation and use in determining the amount of accumulated un-  
9 used sick leave of an employee of the Legislative Assembly, either of its houses or any of its com-  
10 mittees or officers for periods of employment before July 1, 1981. Sick leave accumulated on and  
11 after July 1, 1981, by employees of the Legislative Assembly, either of its houses or any of its com-  
12 mittees or officers may be considered only to the extent it is supported by records of accumulation  
13 and use maintained by the Legislative Administration Committee, or any statutory, standing, special  
14 or interim committee of the Legislative Assembly or either house thereof, or any constitutional or  
15 statutory office of the Legislative Assembly or either house thereof, pursuant to a plan adopted  
16 formally by the committee or officer.

17 (3)(a) As used in this subsection, "legislative employee" means any person employed by the  
18 Legislative Assembly, either of its houses or any of its committees or officers, but does not include  
19 a regular employee of a statutory committee or statutory office of the Legislative Assembly de-  
20 scribed in ORS 173.005 (1).

21 (b) Upon the request of a retiring legislative employee who is a member of the system, and the  
22 request of the public employer of the legislative employee, that the legislative employee be com-  
23 pensated for accumulated unused vacation with pay for periods of legislative employment in the form  
24 of increased retirement benefits upon service or disability retirement, the board shall add to the  
25 gross amount of salary used in determining final average salary of the legislative employee the  
26 monetary value of one-half of the accumulated unused vacation with pay of the legislative employee  
27 and shall establish the benefits of the legislative employee on the basis of a final average salary  
28 reflecting that addition.

29 (c) Accumulated unused vacation with pay may be considered for the purposes of paragraph (b)  
30 of this subsection only in accordance with the following requirements:

31 (A) Vacation not credited at the rate actually provided by the public employer may not be  
32 considered.

33 (B) Amounts of vacation exceeding amounts creditable to employees in the classified service of  
34 the state service pursuant to ORS 240.515 (1), and rules adopted pursuant thereto, in effect on June  
35 30, 1981, shall not be considered.

36 (C) Vacation accumulated before, on and after July 1, 1981, may be considered only to the extent  
37 it is supported by records of accumulation and use pursuant to a plan adopted formally by the public  
38 employer. However, the written certification of a member or former member of the Legislative As-  
39 sembly shall constitute a formal record of accumulation and use in determining the amount of ac-  
40 cumulated unused vacation of a legislative employee for periods of legislative employment before  
41 July 1, 1981.

42 (4) Employers with plans providing payments on account of sickness in lieu of sick leave with  
43 pay may request the board to consider the monetary value of accumulated unused payments on ac-  
44 count of sickness as if such payments were an equivalent amount of accumulated unused sick leave  
45 with pay under the same terms and conditions specified in subsections (1) and (2) of this section.

1       **SECTION 5.** The amendments to ORS 238.005, 238.350, 238.435 and 238A.130 by sections 1  
2 to 4 of this 2023 Act apply only to a member of the Public Employees Retirement System  
3 whose effective date of retirement is on or after January 1, 2024.

4       **SECTION 6.** (1) As soon as practicable after the effective date of this 2023 Act, the Public  
5 Employees Retirement Board shall:

6       (a) Determine the amount of savings in employer contributions that are attributable to  
7 the provisions of this 2023 Act; and

8       (b) Recalculate the contribution rates of all employers, pursuant to ORS 238.225, to re-  
9 flect the provisions of this 2023 Act.

10       (2) The board shall issue corrected contribution rate orders to employers affected by  
11 rates recalculated under this section as soon as is practicable after the effective date of this  
12 2023 Act. The corrected rates are effective July 1, 2023.

13       **SECTION 7.** (1) Jurisdiction is conferred on the Supreme Court to determine in the  
14 manner provided by this section whether this 2023 Act breaches any contract between  
15 members of the Public Employees Retirement System and their employers or violates any  
16 provision of the Oregon Constitution or of the United States Constitution, including but not  
17 limited to impairment of contract rights of members of the Public Employees Retirement  
18 System under Article I, section 21, of the Oregon Constitution, or Article I, section 10, clause  
19 1, of the United States Constitution.

20       (2) A person who is adversely affected by this 2023 Act or who will be adversely affected  
21 by this 2023 Act may institute a proceeding for review by filing with the Supreme Court a  
22 petition that meets the following requirements:

23       (a) The petition must be filed within 60 days after the effective date of this 2023 Act.

24       (b) The petition must include the following:

25       (A) A statement of the basis of the challenge; and

26       (B) A statement and supporting affidavit showing how the petitioner is adversely af-  
27 fected.

28       (3) The petitioner shall serve a copy of the petition by registered or certified mail upon  
29 the Public Employees Retirement Board, the Attorney General and the Governor.

30       (4) Proceedings for review under this section shall be given priority over all other mat-  
31 ters before the Supreme Court.

32       (5) The Supreme Court shall allow public employers participating in the Public Employees  
33 Retirement System to intervene in any proceeding under this section.

34       (6)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene  
35 in any proceeding relating to this 2023 Act. After a member intervenes in a proceeding re-  
36 lating to this 2023 Act, the member has standing to participate in the proceeding even if the  
37 member ceases to be a member of the Legislative Assembly.

38       (b) A member of the Senate or the House of Representatives who intervenes in a pro-  
39 ceeding under this subsection may not use public funds to pay legal expenses incurred in  
40 intervening or participating in the proceeding.

41       (7) In the event the Supreme Court determines that there are factual issues in the peti-  
42 tion, the Supreme Court may appoint a special master to hear evidence and to prepare re-  
43 commended findings of fact.

44       (8) The Supreme Court may not award attorney fees to a petitioner in a proceeding under  
45 this section.

