

House Bill 2623

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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**.

Eliminates break in service provisions of Public Employees Retirement System.

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A BILL FOR AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 238A.025, 238A.165, 238A.305 and 243.800 and section 46b, chapter 733, Oregon Laws 2003; and repealing ORS 238.180 and 238A.157 and section 2a, chapter 733, Oregon Laws 2003.

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

SECTION 1. ORS 238A.025 is amended to read:

238A.025. (1) The Oregon Public Service Retirement Plan is established. The purpose of the Oregon Public Service Retirement Plan is to provide career public employees with a secure and fair retirement income at an affordable, stable and predictable cost to the taxpayers. The Oregon Public Service Retirement Plan is composed of a pension program and an individual account program. The pension program and the individual account program are separate accounts for purposes of federal income tax qualification, and the assets of each program must be held as part of the trust established by ORS 238.660 for the exclusive benefit of the participants and beneficiaries. It is the intent of the Legislative Assembly that pursuant to section 414(k) of the Internal Revenue Code the individual account program be established and maintained as a tax-qualified defined contribution governmental plan for the purposes of sections 72(d) and 415 of the Internal Revenue Code. The Public Employees Retirement Board may create separate accounts within the Public Employees Retirement Fund for the pension program and the individual account program.

(2) Notwithstanding any provision of ORS chapter 238, any person who is employed by a participating public employer on or after August 29, 2003, and who has not established membership in the Public Employees Retirement System before August 29, 2003, is entitled to receive only the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers on and after August 29, 2003, and has no right or claim to any benefit under ORS chapter 238 except as specifically provided by this chapter.

(3)[(a)] Any person who is [*an active*] a member of the Public Employees Retirement System on August 28, 2003, is entitled to receive the benefits provided by ORS chapter 238 for all service performed before, on and after August 29, 2003, **unless the person's membership in the system is subsequently terminated under ORS 238.095**[, *unless the person has a break in service on or after August 29, 2003*]. If the [*person has a break in service*] **person's membership in the system is terminated under ORS 238.095** on or after August 29, 2003, the person is entitled to receive [*the benefits provided by ORS chapter 238 for all creditable service performed before the break in service, and*] the benefits provided under the Oregon Public Service Retirement Plan for periods of service

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 with participating public employers after the [break in service] **termination of membership.**

2 *[(b) Except as provided in this subsection, a person has a break in service for the purposes of this*
3 *subsection if the person performs no service with a participating public employer in a qualifying posi-*
4 *tion for a period of six consecutive months.]*

5 *[(c) If a person leaves employment with a participating public employer for purposes that would*
6 *qualify the person for family leave under ORS 659A.150 to 659A.186, the person has a break in service*
7 *for the purposes of this subsection only if the person performs no service with a participating public*
8 *employer in a qualifying position for a period of 12 consecutive months after leaving employment with*
9 *the participating public employer.]*

10 *[(d) If a person leaves employment with a participating public employer for career development*
11 *purposes pursuant to written authorization of the participating public employer under a written policy*
12 *of the employer that applies generally to the class of employees to which the member belongs, the person*
13 *has a break in service for the purposes of this subsection only if the person performs no service with*
14 *a participating public employer in a qualifying position for a period of 12 consecutive months after*
15 *leaving employment with the participating public employer.]*

16 *[(e) A person does not have a break in service for the purposes of this subsection by reason of any*
17 *period of time during which the person leaves employment with a participating public employer for the*
18 *purpose of serving as a member of the Legislative Assembly during a legislative session.]*

19 *[(f) A person does not have a break in service for the purposes of this subsection by reason of any*
20 *period of time during which the person is absent from employment with a participating public employer*
21 *and receives a disability retirement allowance under ORS 238.320.]*

22 *[(g) A person does not have a break in service for the purposes of this subsection by reason of any*
23 *period of time during which the person leaves employment with a participating public employer based*
24 *on the seasonal nature of the person's employment as long as the person returns to employment with*
25 *the public employer before the expiration of 12 full calendar months.]*

26 (4) A person establishes membership in the system before August 29, 2003, for the purposes of
27 this section if:

28 (a) The person is a member of the system, or a judge member of the system, on August 28, 2003;
29 or

30 (b) The person performed any period of service for a participating public employer before August
31 29, 2003, that is credited to the six-month period of employment required of an employee under ORS
32 238.015 before an employee may become a member of the system.

33 (5) Except as provided in this chapter, ORS chapter 238 does not apply to the Oregon Public
34 Service Retirement Plan.

35 (6) The provisions of this section do not apply to a person elected or appointed as a judge as
36 defined in ORS 238.500.

37 **SECTION 2.** ORS 238A.165 is amended to read:

38 238A.165. (1) Except as provided in this section, earliest retirement age for a member of the
39 pension program is 55 years of age.

40 (2) Earliest retirement age for a member of the pension program who retires from service as a
41 police officer or firefighter is 50 years of age if the member has held a position as a police officer
42 or firefighter continuously for a period of not less than five years immediately before the effective
43 date of retirement. Earliest retirement date for a member described in this subsection is not later
44 than the date the member reaches 55 years of age.

45 *[(3) If a member has a break in service under ORS 238A.025 and is entitled to receive a retirement*

1 allowance under ORS chapter 238 in addition to a pension under this chapter, earliest retirement age
 2 under this chapter is the age attained by a member when the member could first make application for
 3 retirement under the provisions of ORS 238.280.]

4 [(4)] (3) A member of the pension program who has reached earliest retirement age may retire
 5 on an early retirement date that is the first day of any month on or after the member has reached
 6 earliest retirement age.

7 **SECTION 3.** ORS 238A.305 is amended to read:

8 238A.305. (1) Except as provided in subsection (2) of this section, all members of the Public
 9 Employees Retirement System who established membership in the Public Employees Retirement
 10 System before August 29, 2003, as described in ORS 238A.025 become members of the individual
 11 account program on January 1, 2004.

12 (2) A member of the Public Employees Retirement System may not be a member of the individual
 13 account program during any period of time during which the member is required to make contribu-
 14 tions to the system under ORS 238.200.

15 (3) Solely for the purpose of determining the amount of the employee contribution for persons
 16 who become members of the individual account program under this section, whether paid by the
 17 employee or by the employer, the Public Employees Retirement Board shall use the definition of
 18 "salary" provided by ORS 238.005. [If a person who is subject to this subsection has a break in service
 19 as described in ORS 238A.025, the board shall use the definition of "salary" provided by ORS
 20 238A.005 for the purpose of determining the amount of the employee contribution to the individual ac-
 21 count program for all service by the member after the break in service.]

22 **SECTION 4.** Section 46b, chapter 733, Oregon Laws 2003, is amended to read:

23 **Sec. 46b.** (1) Except as provided in subsection (2) of this section, [section 46a of this 2003 Act]
 24 **ORS 237.650** applies to all members of the Legislative Assembly who take office on or after [the ef-
 25 fective date of this 2003 Act] **August 29, 2003**.

26 (2) In addition to the options provided by [section 46a of this 2003 Act] **ORS 237.650**, any person
 27 who is a member of the Legislative Assembly on [the effective date of this 2003 Act] **August 29, 2003**,
 28 and who is a member of the Public Employees Retirement System on [the effective date of this 2003
 29 Act] **August 29, 2003**, may elect to remain a member of the system under ORS chapter 238 for so
 30 long as the member remains in continuous service as a member of the Legislative Assembly. An
 31 election under this subsection must be made in the manner provided by [section 46a (2) of this 2003
 32 Act] **ORS 237.650 (2)**.

33 (3) A member of the Legislative Assembly remains in continuous service as a member of the
 34 Legislative Assembly for the purposes of subsection (2) of this section [for so long as the member
 35 continues in office without a break in service as described in sections 2 and 2a of this 2003 Act] **until**
 36 **the person resigns or otherwise leaves office**.

37 **SECTION 5.** ORS 243.800 is amended to read:

38 243.800. (1) Notwithstanding any provision of ORS chapter 238 or 238A or ORS 243.910 to
 39 243.945, the State Board of Higher Education shall establish and administer an Optional Retirement
 40 Plan for administrative and academic employees of the Oregon University System who are eligible
 41 for membership in the Public Employees Retirement System. The Optional Retirement Plan must be
 42 a qualified plan under the Internal Revenue Code, capable of accepting funds transferred under
 43 subsection (7) of this section without the transfer being treated as a taxable event under the Inter-
 44 nal Revenue Code, and willing to accept those funds. Retirement and death benefits shall be pro-
 45 vided under the plan by the purchase of annuity contracts, fixed or variable or a combination

1 thereof, or by contracts for investments in mutual funds.

2 (2) The State Board of Higher Education shall select at least two life insurance companies pro-
3 viding fixed and variable annuities and at least two investment companies providing mutual funds,
4 but not more than five companies in total, for the purpose of providing benefits under the Optional
5 Retirement Plan. The State Board of Higher Education shall establish selection criteria for the
6 purpose of this subsection.

7 (3) An administrative or academic employee may make an irrevocable election to participate in
8 the Optional Retirement Plan within six months after being employed. An election under this sub-
9 section is effective on the first day of the month following six full months of employment.

10 (4) An administrative or academic employee who does not elect to participate in the Optional
11 Retirement Plan:

12 (a) Remains or becomes a member of the Public Employees Retirement System in accordance
13 with ORS chapters 238 and 238A; or

14 (b) Continues to be assisted by the State Board of Higher Education under ORS 243.920 if the
15 employee is being so assisted.

16 (5) Except as provided in subsection (6) of this section, employees who elect to participate in the
17 Optional Retirement Plan are ineligible for active membership in the Public Employees Retirement
18 System or for any assistance by the State Board of Higher Education under ORS 243.920 as long as
19 those employees are employed in the Oregon University System and the plan is in effect.

20 (6)(a) An administrative or academic employee who elects to participate in the Optional Retire-
21 ment Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who
22 is not vested shall be considered by the Public Employees Retirement Board to be a terminated
23 member under the provisions of ORS 238.095 as of the effective date of the election, and the amount
24 credited to the member account of the member shall be transferred directly to the Optional Retire-
25 ment Plan by the Public Employees Retirement Board in the manner provided by subsection (7) of
26 this section.

27 (b) An administrative or academic employee who elects to participate in the Optional Retirement
28 Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is
29 vested shall be considered to be an inactive member by the Public Employees Retirement Board and
30 shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes
31 a written request to the Public Employees Retirement Board for a transfer of the amounts credited
32 to the member account of the member to the Optional Retirement Plan. A request for a transfer
33 must be made at the time the member elects to participate in the Optional Retirement Plan. Upon
34 receiving the request, the Public Employees Retirement Board shall transfer all amounts credited
35 to the member account of the member directly to the Optional Retirement Plan, and shall terminate
36 all rights, privileges and options of the employee under ORS chapter 238.

37 (c) An administrative or academic employee who elects to participate in the Optional Retirement
38 Plan, and who is not a vested member of the pension program of the Oregon Public Service Retire-
39 ment Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be
40 considered to be a terminated member of the pension program by the Public Employees Retirement
41 Board as of the effective date of the election.

42 (d) An administrative or academic employee who elects to participate in the Optional Retirement
43 Plan, and who is a vested member of the pension program of the Oregon Public Service Retirement
44 Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be consid-
45 ered an inactive member of the pension program by the Public Employees Retirement Board as of

1 the effective date of the election. An employee who is subject to the provisions of this paragraph
2 retains all the rights, privileges and options of an inactive member of the pension program. If the
3 actuarial equivalent of the employee's benefit under the pension program at the time that the
4 election becomes effective is \$5,000 or less, the employee may make a written request to the Public
5 Employees Retirement Board for a transfer of the employee's interest under the pension program to
6 the Optional Retirement Plan. The request must be made at the time the member elects to partic-
7 ipate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement
8 Board shall transfer the amount determined to be the actuarial equivalent of the employee's benefit
9 under the pension program directly to the Optional Retirement Plan, and shall terminate the mem-
10 bership of the employee in the pension program.

11 (e) An administrative or academic employee who elects to participate in the Optional Retirement
12 Plan, and who is a vested member of the individual account program of the Oregon Public Service
13 Retirement Plan as described in ORS 238A.320 on the date that the election becomes effective, shall
14 be considered an inactive member of the individual account program by the Public Employees Re-
15 tirement Board as of the effective date of the election. An employee who is subject to the provisions
16 of this paragraph retains all the rights, privileges and options of an inactive member of the indi-
17 vidual account program. An administrative or academic employee who elects to participate in the
18 Optional Retirement Plan, and who is a member of the individual account program of the Oregon
19 Public Service Retirement Plan, may make a written request to the Public Employees Retirement
20 Board that all amounts in the member's employee account, rollover account and employer account,
21 to the extent the member is vested in those accounts under ORS 238A.320, be transferred to the
22 Optional Retirement Plan. The request must be made at the time the member elects to participate
23 in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement
24 Board shall transfer the amounts directly to the Optional Retirement Plan, and shall terminate the
25 membership of the employee in the individual account program upon making the transfer.

26 (f) Notwithstanding paragraphs (b), (d) and (e) of this subsection, the Public Employees Retire-
27 ment Board shall not treat any employee as an inactive member under the provisions of this sub-
28 section for the purpose of receiving any benefit under ORS chapter 238 or 238A that requires that
29 the employee be separated from all service with participating public employers and with employers
30 who are treated as part of a participating public employer's controlled group under the federal laws
31 and rules governing the status of the system and the Public Employees Retirement Fund as a qual-
32 ified governmental retirement plan and trust.

33 (7) Any amounts transferred from the Public Employees Retirement Fund under subsection (6)
34 of this section shall be transferred directly to the Optional Retirement Plan by the Public Employees
35 Retirement Board and shall not be made available to the employee.

36 (8) An employee participating in the Optional Retirement Plan shall contribute monthly an
37 amount equal to the percentage of the employee's salary that the employee would otherwise have
38 contributed as an employee contribution to the Public Employees Retirement System if the employee
39 had not elected to participate in the Optional Retirement Plan.

40 (9) The State Board of Higher Education shall contribute monthly to the Optional Retirement
41 Plan the percentage of salary of each employee participating in the plan equal to the percentage
42 of salary that would otherwise have been contributed as an employer contribution on behalf of the
43 employee to the Public Employees Retirement System, before any offset under ORS [238.225 (9)]
44 **238.229 (2)**, if the employee had not elected to participate in the Optional Retirement Plan.

45 (10) Both employee and employer contributions to an Optional Retirement Plan shall be remitted

1 directly to the companies that have issued annuity contracts to the participating employees or di-
 2 rectly to the mutual funds.

3 (11) Benefits under the Optional Retirement Plan are payable to employees who elect to partic-
 4 ipate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accord-
 5 ance with the terms of the annuity contracts or the terms of the contract with the mutual fund.
 6 Employees electing to participate in the plan agree that benefits payable under the plan are not
 7 obligations of the State of Oregon or of the Public Employees Retirement System.

8 *[(12) The percentage of salary contributed by the State Board of Higher Education under sub-*
 9 *section (9) of this section on behalf of an employee is not affected by reason of the employee having a*
 10 *break in service, as described by ORS 238A.025.]*

11 **SECTION 6. (1) The amendments to ORS 238A.025, 238A.165, 238A.305 and 243.800 and**
 12 **section 46b, chapter 733, Oregon Laws 2003, by sections 1, 2, 3, 4 and 5 of this 2007 Act, and**
 13 **the repeal of ORS 238.180 and 238A.157 and section 2a, chapter 733, Oregon Laws 2003, by**
 14 **section 7 of this 2007 Act, apply to all service by members of the Public Employees Retire-**
 15 **ment System, whether performed before, on or after August 29, 2003.**

16 (2) As soon as possible after the effective date of this 2007 Act, the Public Employees
 17 Retirement Board shall recalculate the benefits of any person who retired before the effec-
 18 tive date of this 2007 Act if the benefits of the person were affected by the application of ORS
 19 238A.025, as in effect immediately before the effective date of this 2007 Act.

20 (3) As soon as possible after the effective date of this 2007 Act, the Public Employees
 21 Retirement Board shall adjust the service credit of any active or inactive member who was
 22 affected by the application of ORS 238A.025, as in effect immediately before the effective date
 23 of this 2007 Act.

24 (4) As soon as possible after the effective date of this 2007 Act, the Public Employees
 25 Retirement Board shall adjust contributions and account balances of the individual accounts
 26 described in ORS 238A.350 for any active or inactive member who was affected by the appli-
 27 cation of ORS 238A.025, as in effect immediately before the effective date of this 2007 Act.
 28 The board may refund contributions, or require additional contributions, for adjustments to
 29 account balances made under this subsection.

30 **SECTION 7. ORS 238.180 and 238A.157 and section 2a, chapter 733, Oregon Laws 2003, as**
 31 **amended by section 8, chapter 332, Oregon Laws 2005, are repealed.**

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