

House Bill 3385

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**.

Classifies certain employees as police officers for purposes of benefits under Public Employees Retirement System.

Applies to all service in position, whether rendered before, on or after effective date of Act, if person is employed in position on effective date of Act.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; and amending ORS 238.005 and
3 353.050.

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) "Annuity" means payments for life derived from contributions made by a member as provided
8 in this chapter.

9 (2) "Board" means the Public Employees Retirement Board.

10 (3) "Calendar year" means 12 calendar months commencing on January 1 and ending on De-
11 cember 31 following.

12 (4) "Continuous service" means service not interrupted for more than five years, except that
13 such continuous service shall be computed without regard to interruptions in the case of:

14 (a) An employee who had returned to the service of the employer as of January 1, 1945, and
15 who remained in that employment until having established membership in the Public Employees
16 Retirement System.

17 (b) An employee who was in the armed services on January 1, 1945, and returned to the service
18 of the employer within one year of the date of being otherwise than dishonorably discharged and
19 remained in that employment until having established membership in the Public Employees Retire-
20 ment System.

21 (5) "Creditable service" means any period of time during which an active member is being paid
22 a salary by a participating public employer and for which benefits under this chapter are funded by
23 employer contributions and earnings on the fund. For purposes of computing years of "creditable
24 service," full months and major fractions of a month shall be considered to be one-twelfth of a year
25 and shall be added to all full years. "Creditable service" includes all retirement credit received by
26 a member.

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

29 (7) "Employee" includes, in addition to employees, public officers, but does not include:

30 (a) Persons engaged as independent contractors.

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

3 (c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, pro-
4 vided sheltered employment or made-work by a public employer in an employment or industries
5 program maintained for the benefit of such persons.

6 (d) Persons employed and paid from federal funds received under the Emergency Job and Un-
7 employment Assistance Act of 1974 (Public Law 93-567) or any other federal program intended pri-
8 marily to alleviate unemployment. However, any such person shall be considered an "employee" if
9 not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects to
10 have the person so considered by an irrevocable written notice to the board.

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

14 (8) "Final average salary" means whichever of the following is greater:

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

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

27 (9) "Firefighter" does not include a volunteer firefighter, but does include:

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

29 (b) An employee of the State Forestry Department who is certified by the State Forester as a
30 professional wildland firefighter and whose primary duties include the abatement of uncontrolled
31 fires as described in ORS 477.064.

32 (10) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-
33 lowing.

34 (11) "Fund" means the Public Employees Retirement Fund.

35 (12)(a) "Member" means a person who has established membership in the system and whose
36 membership has not been terminated as described in ORS 238.095. "Member" includes active, inac-
37 tive and retired members.

38 (b) "Active member" means a member who is presently employed by a participating public em-
39 ployer in a qualifying position and who has completed the six-month period of service required by
40 ORS 238.015.

41 (c) "Inactive member" means a member who is not employed in a qualifying position, whose
42 membership has not been terminated in the manner described by ORS 238.095, and who is not retired
43 for service or disability.

44 (d) "Retired member" means a member who is retired for service or disability.

45 (13)(a) "Member account" means the regular account and the variable account.

1 (b) "Regular account" means the account established for each active and inactive member under
 2 ORS 238.250.

3 (c) "Variable account" means the account established for a member who participates in the
 4 Variable Annuity Account under ORS 238.260.

5 (14) "Normal retirement age" means:

6 (a) For a person who establishes membership in the system before January 1, 1996, as described
 7 in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter
 8 or 58 years of age if the employee retires at that age as other than a police officer or firefighter.

9 (b) For a person who establishes membership in the system on or after January 1, 1996, as de-
 10 scribed in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or
 11 firefighter or 60 years of age if the employee retires at that age as other than a police officer or
 12 firefighter.

13 (15) "Pension" means annual payments for life derived from contributions by one or more public
 14 employers.

15 (16) "Police officer" includes:

16 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions
 17 whose duties, as assigned by the Director of the Department of Corrections, include the custody of
 18 persons committed to the custody of or transferred to the Department of Corrections and employees
 19 of the Department of Corrections who were classified as police officers on or before July 27, 1989,
 20 whether or not such classification was authorized by law.

21 (b) Employees of the Department of State Police who are classified as police officers by the
 22 Superintendent of State Police.

23 (c) Employees of the Oregon Liquor Control Commission who are classified as enforcement of-
 24 ficers by the administrator of the commission.

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

27 (e) Police chiefs and police personnel of a city who are classified as police officers by the
 28 council or other governing body of the city.

29 (f) Parole and probation officers employed by the Department of Corrections, parole and pro-
 30 bation officers who are transferred to county employment under ORS 423.549 and adult parole and
 31 probation officers, as defined in ORS 181.610, who are classified as police officers for the purposes
 32 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
 33 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
 34 ented by a labor organization, any proposal by the county to change that classification or to cease
 35 to classify adult parole and probation officers as police officers for the purposes of this chapter is
 36 a mandatory subject of bargaining.

37 (g) Police officers appointed under ORS 276.021 or 276.023.

38 (h) Employees of the Port of Portland who are classified as airport police by the Board of
 39 Commissioners of the Port of Portland.

40 (i) Employees of the State Department of Agriculture who are classified as livestock police of-
 41 ficers by the Director of Agriculture.

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

44 (k) Investigators of the Criminal Justice Division of the Department of Justice.

45 (L) Corrections officers as defined in ORS 181.610.

1 (m) Employees of the Oregon State Lottery Commission who are classified by the Director of the
 2 Oregon State Lottery as enforcement agents pursuant to ORS 461.110.

3 (n) The Director of the Department of Corrections.

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

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

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

15 (r) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,
 16 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who
 17 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the
 18 Department of Corrections or the Oregon Youth Authority.

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

22 (t) Employees of the Oregon Youth Authority who are classified as juvenile parole and probation
 23 officers.

24 **(u) Any person appointed as a dog control officer under ORS 609.030 or commissioned by**
 25 **a sheriff of a county to perform dog control duties.**

26 **(v) Employees of Oregon Health and Science University who are responsible for campus**
 27 **security.**

28 **(w) Employees of the Judicial Department who are responsible for security in the courts.**

29 (17) "Public employer" means the state, one of its agencies, any city, county, or municipal or
 30 public corporation, any political subdivision of the state or any instrumentality thereof, or an agency
 31 created by one or more such governmental organizations to provide governmental services. For
 32 purposes of this chapter, such agency created by one or more governmental organizations is a gov-
 33 ernmental instrumentality and a legal entity with power to enter into contracts, hold property and
 34 sue and be sued.

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

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

41 (20) "Retirement credit" means a period of time that is treated as creditable service for the
 42 purposes of this chapter.

43 (21)(a) "Salary" means the remuneration paid an employee in cash out of the funds of a public
 44 employer in return for services to the employer, plus the monetary value, as determined by the
 45 Public Employees Retirement Board, of whatever living quarters, board, lodging, fuel, laundry and

1 other advantages the employer furnishes the employee in return for services.

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

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

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

7 (C) Retroactive payments made to an employee to correct a clerical error or pursuant to an
8 award by a court or by order of or a conciliation agreement with an administration agency charged
9 with enforcing federal or state law protecting the employee's rights to employment or wages, which
10 shall be allocated to and deemed paid in the periods in which the work was done or in which it
11 would have been done; and

12 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
13 652.190.

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

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

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

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

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

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

23 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement
24 gratuitous payment;

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

28 (H) Payments for instructional services rendered to institutions of the Department of Higher
29 Education or the Oregon Health and Science University when such services are in excess of full-
30 time employment subject to this chapter. A person employed under a contract for less than 12
31 months is subject to this subparagraph only for the months to which the contract pertains; or

32 (I) Payments made by an employer for insurance coverage provided to a domestic partner of an
33 employee.

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

35 (23) "System" means the Public Employees Retirement System.

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

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

39 **SECTION 2.** ORS 353.050 is amended to read:

40 353.050. Except as otherwise provided in this chapter, the Oregon Health and Science University
41 Board of Directors, or university officials acting under the authority of the board, shall exercise all
42 the powers of the Oregon Health and Science University and shall govern the university. In carrying
43 out its powers, rights and privileges, the university shall be a governmental entity performing gov-
44 ernmental functions and exercising governmental powers. The university or the board may either
45 within or outside the state:

- 1 (1) Determine or approve policies for the organization, administration and development of the
2 university.
- 3 (2) Appoint and employ any instructional, administrative, professional, trade, occupational and
4 other personnel as are necessary or appropriate to carry out the missions of the university, and
5 prescribe their compensation and terms of office or employment.
- 6 (3) Make any and all contracts and agreements, enter into any partnership, joint venture or
7 other business arrangement, create and participate fully in the operation of any business structure,
8 including but not limited to the development of business structures for health care delivery systems
9 and networks with any public or private government, nonprofit or for-profit person or entity that in
10 the judgment of the university or the board is necessary or appropriate to carry out the university's
11 missions and goals.
- 12 (4) Acquire, purchase, receive, hold, control, convey, sell, manage, operate, lease, license, lend,
13 invest, improve, develop, use, dispose of and hold title to real and personal property of any nature,
14 including intellectual property, in its own name.
- 15 (5) Sue in its own name and be sued, plead and be impleaded in all actions, suits or proceedings
16 in any forum brought by or against it by any and all private or state, local, federal or other public
17 entities, agencies or persons.
- 18 (6) Encourage gifts and donations for the benefit of the university, and subject to the terms of
19 the gift, retain, invest and use such gifts as deemed appropriate by the university or the board.
- 20 (7) Acquire, receive, hold, keep, pledge, control, convey, manage, use, lend, expend and invest
21 all funds, appropriations, gifts, bequests, stock and revenue from any source to the university.
- 22 (8) Borrow money for the needs of the university, in such amounts and for such time and upon
23 such terms as may be determined by the university or the board.
- 24 (9) Erect, construct, improve, develop, repair, maintain, equip, furnish, lease, lend, convey, sell,
25 manage, operate, use, dispose of and hold title to buildings, structures and lands for the university.
- 26 (10) Purchase any and all insurance, operate a self-insurance program or otherwise arrange for
27 the equivalent of insurance coverage of any nature and the indemnity and defense of its officers,
28 agents and employees or other persons designated by the university to carry out or further the
29 missions of the university.
- 30 (11) Create, develop, supervise, control and adopt academic programs, including standards,
31 qualifications, policies or practices relating to admissions, curriculum, academic advancement,
32 grading policy, student conduct, credits and scholarships and the granting of academic degrees,
33 certificates and other forms of recognition.
- 34 (12) Authorize, create, eliminate, establish, operate, reorganize, reduce or expand any program,
35 school, institute, health care facility or other unit of operation.
- 36 (13) Establish, charge, collect and use charges for enrollment into the university, including
37 charges such as tuition for education and general services, incidental fees and such other charges
38 found by the university to be necessary to carry out its educational programs. Fees realized in ex-
39 cess of amounts allocated and exceeding required reserves shall be considered surplus incidental
40 fees and shall be allocated for programs under the control of the board and found to be advanta-
41 geous to the cultural or physical development of students of the university upon the recommendation
42 of the recognized student government of the university.
- 43 (14) Establish, charge, collect and use charges and fees for university services and the use of
44 university facilities.
- 45 (15) Impose charges, fines, fees and such other regulations considered convenient or necessary

1 to control and regulate traffic and parking of vehicles to the same extent allowed the State Board
 2 of Higher Education. This authority includes the authority to enforce the regulations of the uni-
 3 versity in a court to the extent allowed the State Board of Higher Education in enforcing the state
 4 board's regulations as provided in ORS 352.360 (7).

5 (16) Commission as special campus security officers one or more individuals who will have
 6 probable cause arrest authority and the accompanying immunities as set forth in ORS 133.310 and
 7 133.315 when acting in the scope of their duties, provided that such individuals are trained and
 8 certified by the Department of Public Safety Standards and Training, and provided further that such
 9 officers shall not be authorized to carry firearms as police officers and shall not be considered police
 10 officers for purposes of ORS 181.610, [238.005,] 243.005 or 243.736. The university shall be considered
 11 a criminal justice agency for purposes of ORS 181.715 and 181.720.

12 (17) Enforce and recover for payment to the university any fines that are authorized by this
 13 chapter.

14 (18) Adopt, amend or repeal bylaws, administrative rules, regulations and orders applicable to
 15 the matters that are the subject of this chapter.

16 (19) Contract with any state agency for the performance of such duties, functions and powers
 17 as is appropriate. A state agency shall not charge the university for such services an amount that
 18 is greater than the actual cost of the services.

19 (20) Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage,
 20 lend, pledge, invest in or otherwise dispose of and deal in or with the shares, stock or other equity
 21 or interests in or obligations of any other entity. Separate funds may be established for such in-
 22 vestments. The State of Oregon shall have no proprietary or other interest in such investments or
 23 such funds.

24 (21) Make available, by lease or otherwise, or control access to any health care facilities or
 25 services or other of its properties and assets to such persons, firms, partnerships, associations or
 26 corporations and on such terms as considered appropriate, charge and collect rent or other fees or
 27 charges therefor and terminate or deny any such access or any such lease or other agreement for
 28 such reasons as considered appropriate and as may be consistent with its obligations under any such
 29 lease or other agreement.

30 (22) Contract for the operation of any department, section, equipment or holdings of the uni-
 31 versity and enter into any agreements with any person, firm or corporation for the management by
 32 said person, firm or corporation on behalf of the university of any of its properties or for the more
 33 efficient or economical performance of clerical, accounting, administrative and other functions re-
 34 lating to its health care facilities.

35 (23) Select and appoint faculty as medical and dental staff members and others licensed to
 36 practice the healing arts, delineate and define the privileges granted each such individual, adopt and
 37 direct a plan for faculty clinical income and set the terms and conditions of that plan (including
 38 such modifications to any such existing plan as considered necessary or appropriate upon expiration
 39 of the term of such plan), and determine the extent to which and the terms upon which each such
 40 individual may provide teaching, research, consulting or other services at the university or any
 41 other health care facility.

42 (24) Enter into affiliation, cooperation, territorial, management or other similar agreements with
 43 other public or private universities or health care providers for the sharing, division, allocation or
 44 furnishing of services on an exclusive or a nonexclusive basis, referral of patients, management of
 45 facilities, formation of health care delivery systems and other similar activities.

1 (25) Perform any other acts that in the judgment of the board or university are requisite, nec-
2 essary or appropriate in accomplishing the purposes described in or carrying out the powers granted
3 by this chapter.

4 (26) Exercise these powers, notwithstanding that as a consequence of the exercise of such pow-
5 ers, the university engages in activities that might otherwise be deemed anticompetitive within the
6 contemplation of state or federal antitrust laws.

7 **SECTION 3. (1) The amendments to ORS 238.005 by section 1 of this 2007 Act apply only**
8 **to a person who is employed in a position described in ORS 238.005 (16)(u), (v) or (w) on the**
9 **effective date of this 2007 Act, or who becomes employed in a position described in ORS**
10 **238.005 (16)(u), (v) or (w) after the effective date of this 2007 Act.**

11 **(2) Any person who is employed in a position described in ORS 238.005 (16)(u), (v) or (w)**
12 **on the effective date of this 2007 Act is entitled to creditable service in the Public Employees**
13 **Retirement System as a police officer for all service performed in that position, whether**
14 **performed before, on or after the effective date of this 2007 Act.**

15