

Enrolled
Senate Bill 112

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CHAPTER

AN ACT

Relating to reemployment of retired members of Public Employees Retirement System; creating new provisions; amending ORS 238.078, 238.082, 238.092 and 399.075 and section 2, chapter 499, Oregon Laws 2007, and section 3, chapter 774, Oregon Laws 2007; and declaring an emergency.

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

SECTION 1. ORS 238.082 is amended to read:

238.082. (1) Subject to the limitations in subsection (2) of this section, any public employer may employ any person receiving a service retirement allowance if the administrative head of such employer is satisfied that such employment is in the public interest.

(2) The period or periods of employment by one or more public employers of any person receiving a service retirement allowance may not total 1,040 hours or more in any calendar year; but if the person is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the person may be employed for the number of hours for which the salary equals the maximum allowed for receipt of the full amount of those benefits to which the person is entitled.

(3) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member who is employed as a teacher or as an administrator, as those terms are defined in ORS 342.120, if the retired member is employed by a school district or community college district located within a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census, or is employed by an education service district and the retired member's primary work duties are performed in a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census. A retired member who is employed under this subsection as a teacher, as defined in ORS 342.120, by the same public employer that employed the member at the time of retirement remains in the same collective bargaining unit that included the member before retirement.

(4) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member who is employed:

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

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

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

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

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

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

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

(6) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member who is employed by a road assessment district organized under ORS 371.405 to 371.535.

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

(8)(a) Except as provided in paragraph (b) of this subsection, subsections (3) to (7) of this section do not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3).

(b) Subsection (3) of this section applies to a person who retires under the provisions of ORS 238.280 (1) or (3) as long as the person's date of retirement is more than six months before the date the person is employed under subsection (3) of this section.

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

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

SECTION 2. ORS 399.075 is amended to read:

399.075. (1) The Adjutant General, with the approval of the Governor, may order members of the organized militia to active state duty. Members, while on active state duty, shall receive not less than the pay and allowances of their corresponding grades in the Armed Forces of the United States in accordance with a schedule approved by the Adjutant General for the period of time in active state duty. Active state duty under this subsection includes, but is not limited to, support of federal, state and local drug eradication, interdiction and other counterdrug operations under a counterdrug support plan approved by the Governor, and reasons related to homeland security. When participating in such support operations, and to the extent authorized by 32 U.S.C. 112, applicable regulations of the National Guard Bureau and the Oregon Counterdrug Support Plan, the Oregon Military Department is designated as a law enforcement agency for the purpose of carrying out federal asset forfeiture laws only.

(2) Members of the organized militia serving on courts-martial, courts of inquiry, efficiency boards, medical boards or other special duty requiring absence from their stations or business under competent orders may be reimbursed for necessary expenses incurred at the rate established for state employees under appropriate travel regulations issued by the Oregon Department of Administrative Services.

(3) In lieu of other provisions of this chapter, a medical examiner may be paid for services and necessary disbursements and a properly appointed judge advocate may be paid for legal services and necessary disbursements in any suit, action or proceeding, such amounts as shall be approved by the Governor.

(4) Members of the organized militia shall not receive from the state the pay or the pay and allowances provided for by this section when eligible for such pay and allowances from federal funds.

(5) Notwithstanding any of the provisions of this chapter, members of the organized militia may with their consent perform without pay or without pay and allowances any of the types of military duty prescribed in this chapter and ORS chapters 396 and 398 pursuant to orders issued by competent military authority; provided however, that necessary traveling expenses, subsistence and per diem allowances may be furnished such members within the discretion of the Adjutant General and within the amount appropriated therefor.

(6) All pay and allowances provided for by this chapter, except per diem, mileage and expenses while traveling under orders shall be subject to be applied to the payment of penalties and fines imposed by military courts, and to the payment of any shortage of or injury to state or United States property or funds for which a member of the organized militia is responsible or accountable where such responsibility has been fixed by competent authority.

(7)(a) Except as provided in paragraph (b) of this subsection, members of the organized militia who are ordered to active state duty shall be considered temporary employees of the military department.

(b) Members of the organized militia who are ordered to active state duty are not subject to ORS chapter 240 and ORS 243.650 to 243.782.

(8) The limitations on employment imposed by ORS 238.082 (2) do not apply to a retired member of the Public Employees Retirement System who has attained normal retirement age and is on active state duty. **Hours served by a person under this subsection shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2).**

SECTION 3. Section 2, chapter 499, Oregon Laws 2007, is amended to read:

Sec. 2. (1) The limitations on employment imposed by ORS 238.082 (2) do not apply to a retired member who is a registered nurse and who is employed by a public employer as a nursing instructor.

(2) The limitations on employment imposed by ORS 238.082 (2) do not apply to a retired member who is employed by the Department of Public Safety Standards and Training for the purpose of providing training under ORS 181.610 to 181.712.

(3) This section does not apply to any member who retires under the provisions of ORS 238.280 (1) or (3).

(4) Hours worked by a person employed under this section shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2).

[4] (5) Employment under this section does not affect the status of a person as a retired member of the Public Employees Retirement System and a recipient of retirement benefits under this chapter.

SECTION 4. Section 3, chapter 774, Oregon Laws 2007, is amended to read:

Sec. 3. (1) The limitations on employment imposed by ORS 238.082 (2) do not apply to a retired member who is employed by a school district or education service district to provide services as a speech-language pathologist or speech-language pathologist assistant.

(2) This section does not apply to any member who retires under the provisions of ORS 238.280 (1) or (3) unless the person's date of retirement is more than six months before the date the person is employed under this section.

(3) Hours worked by a person employed under this section shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2).

[3] (4) Employment under this section does not affect the status of a person as a retired member of the Public Employees Retirement System and a recipient of retirement benefits under this chapter.

SECTION 5. The amendments to ORS 238.082 and 399.075 and section 2, chapter 499, Oregon Laws 2007, and section 3, chapter 774, Oregon Laws 2007, by sections 1 to 4 of this 2009 Act apply to all hours of work or service by a retired member of the Public Employees Retirement System performed on or after January 1, 2004.

SECTION 6. ORS 238.078 is amended to read:

238.078. (1)(a) A [retired] member who has been retired for **service for** more than six consecutive calendar months may be reemployed by a participating public employer in the manner provided by this subsection.

(b) Any person reemployed as provided in this subsection shall resume making **employee** contributions [to the retirement fund], and the employer shall make contributions on behalf of the person as provided in ORS 238.225. **Except as provided in paragraph (c) of this subsection**, payments of retirement allowance **and other benefits** received by [such person during separation from the service] **the person, including lump sum or installment payments received by the person under ORS 238.305 (2) or (3)**, shall not be repaid into the retirement fund after the person reenters public employment [except as provided in paragraph (c) of this subsection; but the amount of such payment shall be deducted from such employee's reserve in the retirement fund and the remainder shall be credited pro rata to the funds from which it was derived]. **Upon reemployment under this subsection, the board shall cease making payments of retirement allowance and other benefits to the person, including installment payments to the person under ORS 238.305 (4). The board shall reestablish the member account of the person and reduce the account by all payments of retirement allowance and other benefits, including installment payments, that were previously received by the person and that were derived from the member account. Amounts that were credited to the reserve established by the board for the payment of the person's benefits that were not derived from the member account shall be credited pro rata to the funds from which the amounts were derived.**

(c) Upon [reentering public employment as provided in] **reemployment under** this subsection, the former retirement of [such] **the reemployed** person and any election of option for payment of retirement benefits [theretofore] made by the person shall be canceled. [; and thereafter upon retiring such person] **When the person again retires the person** may elect any option for payment of retirement benefits authorized by this chapter, except that a person who elected to receive [lump sum payment of benefits] **a service retirement benefit** pursuant to ORS 238.305 (2) or (3) at the time of former retirement may not elect any other option at the time of subsequent retirement unless an amount equal to the lump sum and the interest that would have accumulated on the sum has been repaid by the employee to the fund. Upon such subsequent retirement any prior service pension due the employee shall be derived from the unused portion of the prior service credit reserve and shall be calculated on the basis of then attained age.

(2) A [retired] member who has been retired for **service for** less than six consecutive calendar months may be reemployed by a participating public employer only upon immediate repayment in a lump sum by the member of the amount of retirement benefits drawn. The member account of the member shall be reestablished just as it was at the time of [earlier] **former** retirement after the lump sum repayment is made.

(3) If a member of the system who retired before August 21, 1981, is reemployed, as provided in subsection (1) or (2) of this section, beginning on or after August 21, 1981, the service retirement allowance received upon subsequent retirement by the member shall be:

(a) For service before August 21, 1981, an allowance including a current service pension computed on the basis of ORS 237.147 (2) (1979 Replacement Part).

(b) For service on or after August 21, 1981, an allowance including a current service pension computed on the basis of ORS 238.300 (2).

(4) A person may be reemployed by a public employer that is not participating in the system, or may be employed by a participating public employer in a position that is in a class of employees that was not designated by the public employer under ORS 238.035 as a class of employees that become members of the system, without affecting the person's status as a retired member or the person's continued receipt of retirement benefits.

(5) Subsection (4) of this section does not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3).

SECTION 7. ORS 238.082, as amended by section 1 of this 2009 Act, is amended to read:

238.082. (1) Subject to the limitations in [subsection (2) of] this section, any public employer may employ any [person receiving a service retirement allowance] **member who is retired for service** if the administrative head of [such] **the public** employer is satisfied that such employment is in the public interest.

[2] *The period or periods of employment by one or more public employers of any person receiving a service retirement allowance may not total 1,040 hours or more in any calendar year; but if the person is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the person may be employed for the number of hours for which the salary equals the maximum allowed for receipt of the full amount of those benefits to which the person is entitled.*

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

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

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

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

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

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

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

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

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

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

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

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

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

[(8)(a)] **(9)(a)** Except as provided in paragraph (b) of this subsection, subsections [(3) to (7)] **(4) to (8)** of this section do not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3).

(b) Subsection [(3)] **(4)** of this section applies to a person who retires under the provisions of ORS 238.280 (1), **(2)** or (3) as long as the person's date of retirement is more than six months before the date the person is employed under subsection [(3)] **(4)** of this section.

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

[(10)] **(11)** Hours worked by a person employed under subsections [(4) to (8)] **(5) to (9)** of this section shall not be counted for the purpose of the limitations on employment imposed by subsections (2) **and (3)** of this section.

SECTION 8. ORS 238.092 is amended to read:

238.092. (1) Notwithstanding any other provision of this chapter:

(a) A retired member of the system who has retired as other than a member of the Legislative Assembly and who thereafter becomes a member of the Legislative Assembly and elects to become an active member of the system as a member of the Legislative Assembly may also elect, by giving the board written notice of desire to do so, to receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and be an active member of the system as a member of the Legislative Assembly for the period the member holds office as a member of the Legislative Assembly. The notice provided for in this paragraph shall be given within 30 days after the retired member takes office as a member of the Legislative Assembly.

(b) A member of the Legislative Assembly who is a member of the system as a member of the Legislative Assembly and who becomes eligible to retire by reason of service as other than a member of the Legislative Assembly, without regard to when that service was performed, may elect, by giving the board written notice of desire to do so, to retire and receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and to continue, for the period the member holds office as a member of the Legislative Assembly, as an active member of the system as a member of the Legislative Assembly.

(c) Upon receipt of the notice provided for in paragraphs (a) and (b) of this subsection, the board shall determine that portion of the accumulated contributions, if any, of the member and interest thereon attributable to service as other than a member of the Legislative Assembly, which shall be used in determining the amount of the annuity the member shall receive for that service. The portion of the accumulated contributions, if any, of the member and interest thereon attributable to service as a member of the Legislative Assembly shall remain in the member account of the member and, together with any subsequent contributions and interest thereon, be used in determining the amount of the additional annuity the member shall receive for that service upon ceasing to hold office as a member of the Legislative Assembly. If the member does not have a member account, the board shall determine the member's retirement allowance for nonlegislative service based on the number of years of nonlegislative service, and shall determine any additional benefit to be received after the member ceases to hold office as a member of the Legislative Assembly based on the number of years of service in the Legislative Assembly.

(2) If a retired member of the system is employed by the Legislative Assembly, or by the Oregon State Police, for the purpose of service during a regular or special session of the Legislative Assembly, the hours worked during the session shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) **and (3)**.

SECTION 9. ORS 399.075, as amended by section 2 of this 2009 Act, is amended to read:

399.075. (1) The Adjutant General, with the approval of the Governor, may order members of the organized militia to active state duty. Members, while on active state duty, shall receive not less than the pay and allowances of their corresponding grades in the Armed Forces of the United States in accordance with a schedule approved by the Adjutant General for the period of time in active state duty. Active state duty under this subsection includes, but is not limited to, support of federal, state and local drug eradication, interdiction and other counterdrug operations under a counterdrug support plan approved by the Governor, and reasons related to homeland security. When participating in such support operations, and to the extent authorized by 32 U.S.C. 112, applicable regulations of the National Guard Bureau and the Oregon Counterdrug Support Plan, the Oregon Military Department is designated as a law enforcement agency for the purpose of carrying out federal asset forfeiture laws only.

(2) Members of the organized militia serving on courts-martial, courts of inquiry, efficiency boards, medical boards or other special duty requiring absence from their stations or business under competent orders may be reimbursed for necessary expenses incurred at the rate established for state employees under appropriate travel regulations issued by the Oregon Department of Administrative Services.

(3) In lieu of other provisions of this chapter, a medical examiner may be paid for services and necessary disbursements and a properly appointed judge advocate may be paid for legal services and necessary disbursements in any suit, action or proceeding, such amounts as shall be approved by the Governor.

(4) Members of the organized militia shall not receive from the state the pay or the pay and allowances provided for by this section when eligible for such pay and allowances from federal funds.

(5) Notwithstanding any of the provisions of this chapter, members of the organized militia may with their consent perform without pay or without pay and allowances any of the types of military duty prescribed in this chapter and ORS chapters 396 and 398 pursuant to orders issued by competent military authority; provided however, that necessary traveling expenses, subsistence and per diem allowances may be furnished such members within the discretion of the Adjutant General and within the amount appropriated therefor.

(6) All pay and allowances provided for by this chapter, except per diem, mileage and expenses while traveling under orders shall be subject to be applied to the payment of penalties and fines imposed by military courts, and to the payment of any shortage of or injury to state or United States property or funds for which a member of the organized militia is responsible or accountable where such responsibility has been fixed by competent authority.

(7)(a) Except as provided in paragraph (b) of this subsection, members of the organized militia who are ordered to active state duty shall be considered temporary employees of the military department.

(b) Members of the organized militia who are ordered to active state duty are not subject to ORS chapter 240 and ORS 243.650 to 243.782.

(8) The limitations on employment imposed by ORS 238.082 (2) **and** (3) do not apply to a retired member of the Public Employees Retirement System who has attained normal retirement age and is on active state duty. Hours served by a person under this subsection shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) **and** (3).

SECTION 10. Section 2, chapter 499, Oregon Laws 2007, as amended by section 3 of this 2009 Act, is amended to read:

Sec. 2. (1) The limitations on employment imposed by ORS 238.082 (2) **and** (3) do not apply to a retired member who is a registered nurse and who is employed by a public employer as a nursing instructor.

(2) The limitations on employment imposed by ORS 238.082 (2) **and** (3) do not apply to a retired member who is employed by the Department of Public Safety Standards and Training for the purpose of providing training under ORS 181.610 to 181.712.

(3) This section does not apply to any member who retires under the provisions of ORS 238.280 (1) or (3).

(4) Hours worked by a person employed under this section shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) **and (3)**.

(5) Employment under this section does not affect the status of a person as a retired member of the Public Employees Retirement System and a recipient of retirement benefits under this chapter.

SECTION 11. Section 3, chapter 774, Oregon Laws 2007, as amended by section 4 of this 2009 Act, is amended to read:

Sec. 3. (1) The limitations on employment imposed by ORS 238.082 (2) **and (3)** do not apply to a retired member who is employed by a school district or education service district to provide services as a speech-language pathologist or speech-language pathologist assistant.

(2) This section does not apply to any member who retires under the provisions of ORS 238.280 (1) or (3) unless the person's date of retirement is more than six months before the date the person is employed under this section.

(3) Hours worked by a person employed under this section shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) **and (3)**.

(4) Employment under this section does not affect the status of a person as a retired member of the Public Employees Retirement System and a recipient of retirement benefits under this chapter.

SECTION 12. (1) The amendments to ORS 238.078, 238.082, 238.092 and 399.075 and section 2, chapter 499, Oregon Laws 2007, and section 3, chapter 774, Oregon Laws 2007, by sections 6 to 11 of this 2009 Act become operative January 1, 2010.

(2) The amendments to ORS 238.078, 238.082, 238.092 and 399.075 and section 2, chapter 499, Oregon Laws 2007, and section 3, chapter 774, Oregon Laws 2007, by sections 6 to 11 of this 2009 Act apply to any retired member of the Public Employees Retirement System who is employed by a participating public employer before January 1, 2010, and who is an employee of the employer on January 1, 2010, and to any retired member who is employed by a participating public employer on or after January 1, 2010.

SECTION 13. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate April 27, 2009

Repassed by Senate June 5, 2009

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Secretary of Senate

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President of Senate

Passed by House June 3, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State