

# Senate Bill 112

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Public Employees Retirement System)

## 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**.

Allows member of Public Employees Retirement System who has been retired for service for more than six months, and who elected to receive lump sum payment or installment payments, to be reemployed by public employer without repayment of lump sum or installment amounts received by member.

Allows retired member who elected to receive lump sum payment or installment payments to be reemployed by public employer, subject to limitations on number of hours of employment.

## A BILL FOR AN ACT

1  
2 Relating to reemployment of retired members of Public Employees Retirement System; creating new  
3 provisions; and amending ORS 238.078, 238.082, 238.092 and 399.075 and section 2, chapter 499,  
4 Oregon Laws 2007, and section 3, chapter 774, Oregon Laws 2007.

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

6 **SECTION 1.** ORS 238.078 is amended to read:

7 238.078. (1)(a) A [*retired*] member who has been retired for **service for** more than six consec-  
8 utive calendar months may be reemployed by a participating public employer in the manner provided  
9 by this subsection.

10 (b) Any person reemployed as provided in this subsection shall resume making **employee** con-  
11 tributions [*to the retirement fund*], and the employer shall make contributions on behalf of the person  
12 as provided in ORS 238.225. **Except as provided in paragraph (c) of this subsection**, payments  
13 of retirement allowance **and other benefits** received by [*such person during separation from the*  
14 *service*] **the person, including lump sum or installment payments received by the person under**  
15 **ORS 238.305 (2) or (3)**, shall not be repaid into the retirement fund after the person reenters public  
16 employment [*except as provided in paragraph (c) of this subsection; but the amount of such payment*  
17 *shall be deducted from such employee's reserve in the retirement fund and the remainder shall be*  
18 *credited pro rata to the funds from which it was derived*]. **Upon reemployment under this sub-**  
19 **section, the board shall cease making payments of retirement allowance and other benefits**  
20 **to the person, including installment payments to the person under ORS 238.305 (4). The board**  
21 **shall reestablish the member account of the person and reduce the account by all payments**  
22 **of retirement allowance and other benefits, including installment payments, that were pre-**  
23 **viously received by the person and that were derived from the member account. Amounts**  
24 **that were credited to the reserve established by the board for the payment of the person's**  
25 **benefits that were not derived from the member account shall be credited pro rata to the**  
26 **funds from which the amounts were derived.**

27 (c) Upon [*reentering public employment as provided in*] **reemployment under** this subsection, the  
28 former retirement of [*such*] **the reemployed** person and any election of option for payment of re-

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

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

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

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

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

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

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

29 **SECTION 2.** ORS 238.082 is amended to read:

30 238.082. (1) Subject to the limitations in [*subsection (2) of*] this section, any public employer may  
 31 employ any [*person receiving a service retirement allowance*] **member who is retired for service** if  
 32 the administrative head of [*such*] **the public** employer is satisfied that such employment is in the  
 33 public interest.

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

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

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

1 **which the person is entitled, whichever is greater.**

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

13 [(4)] (5) **Except as provided in subsection (9) of this section,** the limitations on employment  
 14 imposed by [subsection (2)] **subsections (2) and (3)** of this section do not apply to a retired member  
 15 who is employed:

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

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

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

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

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

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

29 [(5)] (6) **Except as provided in subsection (9) of this section,** the limitations on employment  
 30 imposed by [subsection (2)] **subsections (2) and (3)** of this section do not apply to a retired member  
 31 who is employed to temporarily replace an employee who serves in the National Guard or in a re-  
 32 serve component of the Armed Forces of the United States and who is called to federal active duty.

33 [(6)] (7) **Except as provided in subsection (9) of this section,** the limitations on employment  
 34 imposed by [subsection (2)] **subsections (2) and (3)** of this section do not apply to a retired member  
 35 who is employed by a road assessment district organized under ORS 371.405 to 371.535.

36 [(7)] (8) **Except as provided in subsection (9) of this section,** the limitations on employment  
 37 imposed by [subsection (2)] **subsections (2) and (3)** of this section do not apply to a retired member  
 38 who is a nurse and is employed by a public employer as a nurse or for the purpose of teaching  
 39 nursing during the period in which a nursing workforce shortage declared by the Legislative As-  
 40 sembly or the Governor is in effect.

41 [(8)(a)] (9)(a) **Except as provided in paragraph (b) of this subsection, subsections [(3) to (7)] (4)**  
 42 **to (8)** of this section do not apply to any member who retires under the provisions of ORS 238.280  
 43 (1), (2) or (3).

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

1 the date the person is employed under subsection [(3)] (4) of this section.

2 [(9)] (10) Employment under this section does not affect the status of a person as a retired  
3 member of the system and a recipient of retirement benefits under this chapter.

4 **SECTION 3.** ORS 238.092 is amended to read:

5 238.092. (1) Notwithstanding any other provision of this chapter:

6 (a) A retired member of the system who has retired as other than a member of the Legislative  
7 Assembly and who thereafter becomes a member of the Legislative Assembly and elects to become  
8 an active member of the system as a member of the Legislative Assembly may also elect, by giving  
9 the board written notice of desire to do so, to receive the pension and annuity provided by this  
10 chapter for service as other than a member of the Legislative Assembly, and be an active member  
11 of the system as a member of the Legislative Assembly for the period the member holds office as a  
12 member of the Legislative Assembly. The notice provided for in this paragraph shall be given within  
13 30 days after the retired member takes office as a member of the Legislative Assembly.

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

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

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

38 **SECTION 4.** ORS 399.075 is amended to read:

39 399.075. (1) The Adjutant General, with the approval of the Governor, may order members of the  
40 organized militia to active state duty. Members, while on active state duty, shall receive not less  
41 than the pay and allowances of their corresponding grades in the Armed Forces of the United States  
42 in accordance with a schedule approved by the Adjutant General for the period of time in active  
43 state duty. Active state duty under this subsection includes, but is not limited to, support of federal,  
44 state and local drug eradication, interdiction and other counterdrug operations under a counterdrug  
45 support plan approved by the Governor, and reasons related to homeland security. When partic-

1 ipating in such support operations, and to the extent authorized by 32 U.S.C. 112, applicable regu-  
2 lations of the National Guard Bureau and the Oregon Counterdrug Support Plan, the Oregon  
3 Military Department is designated as a law enforcement agency for the purpose of carrying out  
4 federal asset forfeiture laws only.

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

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

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

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

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

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

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

33 (8) The limitations on employment imposed by ORS 238.082 (2) **and** (3) do not apply to a retired  
34 member of the Public Employees Retirement System who has attained normal retirement age and is  
35 on active state duty.

36 **SECTION 5.** Section 2, chapter 499, Oregon Laws 2007, is amended to read:

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

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

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

45 (4) Employment under this section does not affect the status of a person as a retired member

1 of the Public Employees Retirement System and a recipient of retirement benefits under this chap-  
2 ter.

3 **SECTION 6.** Section 3, chapter 774, Oregon Laws 2007, is amended to read:

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

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

10 (3) Employment under this section does not affect the status of a person as a retired member  
11 of the Public Employees Retirement System and a recipient of retirement benefits under this chap-  
12 ter.

13 **SECTION 7.** The amendments to ORS 238.078, 238.082, 238.092 and 399.075 and section 2,  
14 chapter 499, Oregon Laws 2007, and section 3, chapter 774, Oregon Laws 2007, by sections 1  
15 to 6 of this 2009 Act apply to any retired member of the Public Employees Retirement System  
16 who is employed by a participating public employer before the effective date of this 2009 Act  
17 and who is an employee of the employer on the effective date of this 2009 Act, and to any  
18 retired member who is employed by a participating public employer on or after the effective  
19 date of this 2009 Act.

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