

# Senate Bill 897

Sponsored by COMMITTEE ON COMMERCE AND WORKFORCE DEVELOPMENT

## 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**.

Increases membership of Public Employees Retirement Board from five to seven members. Provides that one new member must be public employee who is in appropriate bargaining unit or retired member of Public Employees Retirement System who retired from position in appropriate bargaining unit. Provides that one new member must have experience in business management, pension management or investing and may not be member of system, beneficiary of member of system, or have any interest in benefits provided by system.

Allows member of system to request verification of retirement data before retirement. Provides that, at member's retirement, board may not use creditable service or final average salary less than that specified in verification, as adjusted by reason of member's service and salary after date specified in verification.

Provides that retired members of Oregon Public Service Retirement Plan are eligible for coverage under health insurance plans contracted for by Public Employees Retirement Board.

Requires that member receive retirement credit for certain retroactive payments of salary.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 238.005, 238.630, 238.640, 238A.005, 238A.050, 293.706 and 293.711; and declaring an emergency.

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

### MEMBERSHIP OF PUBLIC EMPLOYEES RETIREMENT BOARD

**SECTION 1.** ORS 238.630 is amended to read:

238.630. (1) The governing authority of the **Public Employees Retirement** System shall be a board known as the Public Employees Retirement Board and consisting of *[five]* **seven** members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Except as otherwise provided in ORS 238.640, the term of each member shall be three years. The Governor shall designate one member to serve as chairperson, who shall serve as chairperson at the pleasure of the Governor.

(2) The board shall have:

(a) The powers and privileges of a corporation, including the right to sue and be sued in its own name as such board; and

(b) The power and duty, subject to the limitations of this chapter and ORS chapter 238A, of managing the system.

(3) The board:

(a) Shall arrange for actuarial service for the system;

(b) Shall employ a director;

(c) Shall create such other positions as it deems necessary to sound and economical administration of the system, which positions the director shall fill by appointment;

**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 (d) Shall, with the approval of the Director of the Oregon Department of Administrative Ser-  
 2 vices, and as otherwise provided by law, fix the salaries of all persons employed for purposes of  
 3 administering the system;

4 (e) Shall publish and distribute to all employer and employee members of the system an annual  
 5 report including a summary of investments of moneys in the fund, investment earnings, significant  
 6 legislative or administrative changes in the system and other pertinent information on the operation  
 7 of the system for the preceding year;

8 (f) Shall determine the actuarial equivalency of optional forms of retirement allowances and  
 9 pensions and adopt for that purpose the necessary actuarial equivalency factor tables in the manner  
 10 provided by ORS 238.607, which shall constitute a part of the system; and

11 (g) Shall adopt rules and take all actions necessary to maintain qualification of the Public Em-  
 12 ployees Retirement System and the Public Employees Retirement Fund as a qualified governmental  
 13 retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant  
 14 to the Internal Revenue Code. Rules under this paragraph may impose limits on contributions to the  
 15 system, limits on benefits payable from the system and other limitations or procedures required or  
 16 imposed under federal law or regulation for the purpose of qualification of the Public Employees  
 17 Retirement System and Public Employees Retirement Fund under the Internal Revenue Code as a  
 18 governmental retirement plan and trust.

19 (4) The board established by this section shall succeed to all the duties and prerogatives of the  
 20 Public Employees Retirement Board created by chapter 401, Oregon Laws 1945, in relation to the  
 21 Public Employees Retirement Fund, and in addition shall perform all duties required of it by ORS  
 22 237.950 to 237.980, in regard to moneys payable to or from such fund.

23 (5) The board shall identify by rule those records that must be maintained by participating  
 24 public employers for the purposes of subsection (3)(g) of this section. A participating public employer  
 25 shall maintain records for all employees who are members of the system as required by board rules,  
 26 and shall provide that information to the board upon request.

27 **SECTION 2.** ORS 238.640 is amended to read:

28 238.640. (1) All members of the Public Employees Retirement Board must be at least 21 years  
 29 of age, be citizens of the United States and have been residents of the state for at least two years  
 30 immediately preceding appointment to the board.

31 (2) One member of the board must be:

32 (a) An employee of the state in a management position at the time of appointment and  
 33 throughout the term of appointment; or

34 (b) A person who holds an elective office, by election or appointment, in the governing body of  
 35 a participating public employer, other than the state.

36 (3) *[One]* **A second** member must be a public employee, as defined in ORS 243.650, who is in an  
 37 appropriate bargaining unit, as defined in ORS 243.650, and who has an exclusive representative at  
 38 the time of the member's appointment and throughout the term of the member. Membership on the  
 39 board does not affect the status of the person as a public employee, as defined in ORS 243.650.

40 **(4) A third member must either meet the qualifications specified in subsection (3) of this**  
 41 **section or be a retired member of the Public Employees Retirement System who retired from**  
 42 **a position in an appropriate bargaining unit as defined in ORS 243.650.**

43 *[(4)]* **(5) [Three] Four** members of the board must have experience in business management,  
 44 pension management or investing. A member appointed under this subsection may not be a member  
 45 of the Public Employees Retirement System or a beneficiary of a member of the system, and may

1 not have any interest in benefits provided by the system.

2 [(5)] (6) Notwithstanding the qualifications established for members of the board under this  
3 section, all members of the board have the same fiduciary duties and must exercise the same degree  
4 of independent judgment.

5 [(6)] (7) Any vacancy on the board shall be filled by appointment for the unexpired term of the  
6 member replaced. Members of the board may be reappointed.

7 [(7)] (8) Except as provided in subsection [(8)] (9) of this section, a member of the board is en-  
8 titled to compensation and expenses as provided in ORS 292.495 from the Public Employees Retirement  
9 Fund.

10 [(8)] (9) Any member of the board who is an active member of the system shall be released by  
11 the participating public employer who employs the member for the purpose of conducting the official  
12 business of the board. The wages or salary of the member shall not be reduced during periods that  
13 the member is released from duty for the purpose of conducting the official business of the board.  
14 The board shall reimburse a public employer for the cost of continuing the wages or salary of the  
15 member while the member is released from duty under this subsection. A member who continues to  
16 receive wages or salary under the provisions of this subsection shall not receive compensation under  
17 ORS 292.495, but shall receive travel and other expenses provided for under ORS 292.495. The  
18 provisions of this subsection do not apply to any person who is a member of the board and who  
19 holds another office that is subject to the provisions of section 10, Article II of the Oregon Consti-  
20 tution, prohibiting the holding of more than one lucrative office.

21 **SECTION 3.** ORS 293.706 is amended to read:

22 293.706. (1) There is created the Oregon Investment Council, consisting of five voting members  
23 and one nonvoting member.

24 (2) The Governor shall appoint four voting members, subject to Senate confirmation in the  
25 manner provided in ORS 171.562 and 171.565. The members appointed by the Governor must be  
26 qualified by training and experience in the field of investment or finance.

27 (3) The Governor may appoint a member of the council under subsection (2) of this section who  
28 is also a member of the Public Employees Retirement Board appointed under ORS 238.640 [(4)] (5).  
29 Except as provided in this subsection, members appointed by the Governor may not hold any other  
30 public office or public employment.

31 (4) The State Treasurer shall be a voting member.

32 (5) The Director of the Public Employees Retirement System shall be an ex officio member of  
33 the council with no voting power.

34 (6) The term of office of each appointed member of the council is four years, but each appointed  
35 member serves at the pleasure of the Governor. A vacancy in the appointed membership occurring  
36 other than by expiration of term shall be filled in the same manner as the original appointment, but  
37 for the unexpired term only.

38 (7) An appointed member may not be appointed to more than two full terms in any 12-year pe-  
39 riod.

40 **SECTION 4.** ORS 293.711 is amended to read:

41 293.711. (1) Except as provided in subsection (2) of this section, a member of the Oregon In-  
42 vestment Council is entitled to compensation and expenses as provided in ORS 292.495.

43 (2) A member of the council who is also a member of the Public Employees Retirement Board  
44 is entitled to compensation and expenses as provided in ORS 238.640 [(7) and (8)] (8) and (9).

45 (3) The council shall select one of its members as chairperson, for a term and with powers and

1 duties necessary for the performance of the functions of the office as the council determines.

2 (4) A person may not serve as chairperson of the council for more than four years in any 12-year  
3 period.

4 **SECTION 5. (1) The amendments to ORS 238.630, 238.640, 293.706 and 293.711 by sections  
5 1 to 4 of this 2009 Act become operative on January 1, 2010.**

6 (2) The terms of the two new members of the Public Employees Retirement Board pro-  
7 vided for in the amendments to ORS 238.630 and 238.640 by sections 1 and 2 of this 2009 Act  
8 commence on January 1, 2010.

9 (3) Notwithstanding subsection (1) of this section, the Governor may appoint the two new  
10 members required by ORS 238.630 and 238.640, as amended by sections 1 and 2 of this 2009  
11 Act, and the Senate may confirm the two new members in the manner provided in ORS  
12 171.562 and 171.565 before the operative date specified in subsection (1) of this section.

#### 13 VERIFICATION OF RETIREMENT BENEFITS

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15  
16 **SECTION 6. Section 7 of this 2009 Act is added to and made a part of ORS chapter 238.**

17 **SECTION 7. (1) Not earlier than two years before a member's earliest service retirement  
18 age, a member may request a verification of retirement data from the Public Employees  
19 Retirement Board. Upon receiving a request under this section, the board shall provide a  
20 verification that includes the following data, as reflected in the records of the Public Em-  
21 ployees Retirement System:**

22 (a) The years and months of creditable service accrued by the member as of a date  
23 specified in the verification.

24 (b) The member's final average salary as of a date specified in the verification.

25 (c) The member's regular account balance, and any variable account balance, as of the  
26 end of a calendar year specified in the verification.

27 (d) If applicable, the amount of unused sick leave accumulated by the member as of a  
28 date specified in the verification.

29 (e) A monthly service retirement allowance computed under ORS 238.300 as of a date  
30 specified in the verification using the data provided in the verification.

31 (2) A member of the system may dispute the accuracy of the data provided in the ver-  
32 ification by filing a written notice of dispute with the board not more than 60 days after the  
33 date on which the verification is provided to the member. Upon receiving a notice of dispute  
34 under this subsection, the board shall determine the accuracy of the disputed data and make  
35 a written decision either affirming the accuracy of the data and service retirement allowance  
36 computed based on that data, or changing the computation using corrected data. The board  
37 shall provide to the member a copy of the decision and a written explanation of any appli-  
38 cable statutes and rules. The member may seek judicial review of the decision as provided  
39 in ORS 183.484 and rules of the board.

40 (3) When a member who received a verification under this section retires, the creditable  
41 service and final average salary used in calculating the member's service retirement allow-  
42 ance may not be less than the creditable service and final average salary provided in the  
43 verification, plus any additional adjustments based on the member's service or salary after  
44 the date specified in the verification. The regular and variable accounts of the member shall  
45 be adjusted for earnings and losses credited to the accounts from the end of the calendar

1 year specified in the verification to the member’s effective retirement date, in accordance  
 2 with rules adopted by the board. The amount of unused sick leave at retirement shall be  
 3 adjusted for the leave used and accrued after the date specified in the verification.

4 (4) A member shall be provided with one verification under this section at no cost. The  
 5 board may establish procedures for recovering administrative costs from members for ser-  
 6 vices in providing additional verifications.

7  
 8 **PARTICIPATION OF OPSRP MEMBERS IN**  
 9 **PERS HEALTH INSURANCE PLANS**

10  
 11 **SECTION 8.** ORS 238A.050 is amended to read:

12 238A.050. (1) The Oregon Public Service Retirement Plan is part of the Public Employees Re-  
 13 tirement System and is administered by the Public Employees Retirement Board.

14 (2) **Section 7 of this 2009 Act and** ORS 238.225, 238.229, 238.231, **238.410**, 238.445, 238.450,  
 15 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630,  
 16 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696,  
 17 238.698, 238.700, 238.705, 238.710 and 238.715 apply to the Oregon Public Service Retirement Plan.

18 (3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retire-  
 19 ment Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4)  
 20 of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the  
 21 provisions of ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the indi-  
 22 vidual account program and pension program differently than the other assets of the Public Em-  
 23 ployees Retirement System.

24 (4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the  
 25 limitations imposed by ORS 293.726 (6).

26 (5) The board may contract with a private provider for the administration of the individual ac-  
 27 count program. The board is not subject to the provisions of ORS chapter 279A or 279B in awarding  
 28 a contract under the provisions of this subsection. The board shall establish procedures for inviting  
 29 proposals and awarding contracts under this subsection.

30  
 31 **RETIREMENT CREDIT FOR RETROACTIVE PAYMENTS**

32  
 33 **SECTION 9.** Section 10 of this 2009 Act is added to and made a part of ORS chapter 238.

34 **SECTION 10.** (1) **For the purpose of computing salary under this chapter and ORS chap-**  
 35 **ter 238A, the salary of a member includes retroactive payments made to an employee to**  
 36 **correct a clerical error.**

37 (2) **For the purpose of computing salary under this chapter and ORS chapter 238A, the**  
 38 **salary of a member includes retroactive payments made to an employee pursuant to a judg-**  
 39 **ment, administrative order, arbitration award, conciliation agreement or settlement agree-**  
 40 **ment that resolves a dispute or claim based on an employee’s rights under employment or**  
 41 **wage law or under a collective bargaining agreement.**

42 (3) **Retroactive payments included in a member’s salary under this subsection shall be**  
 43 **allocated to and deemed paid in the periods in which the work was done or in which the work**  
 44 **would have been done, and the member shall receive retirement credit for the period of time**  
 45 **to which the payment is allocated.**

1       **SECTION 11.** ORS 238.005 is amended to read:

2       238.005. For purposes of this chapter:

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

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

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

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

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

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

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

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

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

26       (a) Persons engaged as independent contractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (14) "Normal retirement age" means:

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

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

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

41 (16) "Police officer" includes:

42 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions  
43 whose duties, as assigned by the Director of the Department of Corrections, include the custody of  
44 persons committed to the custody of or transferred to the Department of Corrections and employees  
45 of the Department of Corrections who were classified as police officers on or before July 27, 1989,

1 whether or not such classification was authorized by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (r) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,  
42 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who  
43 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the  
44 Department of Corrections or the Oregon Youth Authority.

45 (s) Employees at youth correction facilities as defined in ORS 420.005 whose primary job de-



1 description involves the custody, control, treatment, investigation or supervision of juveniles placed  
2 in such facilities.

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

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

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

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

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

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

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

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

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

28 (C) Retroactive payments [*made to an employee to correct a clerical error or pursuant to an award*  
29 *by a court or by order of or a conciliation agreement with an administration agency charged with en-*  
30 *forcing federal or state law protecting the employee's rights to employment or wages, which shall be*  
31 *allocated to and deemed paid in the periods in which the work was done or in which it would have*  
32 *been done*] **described in section 10 of this 2009 Act**; and

33 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
34 652.190.

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

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

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

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

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

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

44 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement  
45 gratuitous payment;

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

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

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

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

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

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

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

15 **SECTION 12.** ORS 238A.005 is amended to read:

16 238A.005. For the purposes of this chapter:

17 (1) "Active member" means a member of the pension program or the individual account program  
 18 of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

19 (2) "Actuarial equivalent" means a payment or series of payments having the same value as the  
 20 payment or series of payments replaced, computed on the basis of interest rate and mortality as-  
 21 sumptions adopted by the board.

22 (3) "Board" means the Public Employees Retirement Board.

23 (4) "Eligible employee" means a person who performs services for a participating public em-  
 24 ployer, including elected officials other than judges. "Eligible employee" does not include:

25 (a) Persons engaged as independent contractors;

26 (b) Aliens working under a training or educational visa;

27 (c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190,  
 28 provided sheltered employment or make-work by a public employer;

29 (d) Persons categorized by a participating public employer as student employees;

30 (e) Any person who is an inmate of a state institution;

31 (f) Employees of foreign trade offices of the Economic and Community Development Department  
 32 who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

33 (g) An employee actively participating in an alternative retirement program established under  
 34 ORS 353.250 or an optional retirement plan established under ORS 341.551;

35 (h) Employees of the Oregon University System who are actively participating in an optional  
 36 retirement plan offered under ORS 243.800;

37 (i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003,  
 38 for membership in the system under the provisions of ORS chapter 238 or other law;

39 (j) Any person who belongs to a class of employees who are not eligible to become members of  
 40 the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

41 (k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who  
 42 continues to receive retirement benefits while employed; and

43 (L) Judges.

44 (5) "Firefighter" means:

45 (a) A person employed by a local government, as defined in ORS 174.116, whose primary job

1 duties include the fighting of fires;

2 (b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals;  
3 and

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

7 (6) "Fund" means the Public Employees Retirement Fund.

8 (7)(a) "Hour of service" means:

9 (A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment  
10 by a participating public employer for performance of duties in a qualifying position; and

11 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave  
12 during which an employee does not perform duties but for which the employee is directly or indi-  
13 rectly paid or entitled to payment by a participating public employer for services in a qualifying  
14 position, as long as the hour is within the number of hours regularly scheduled for the performance  
15 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-  
16 thorized leave.

17 (b) "Hour of service" does not include any hour for which payment is made or due under a plan  
18 maintained solely for the purpose of complying with applicable workers' compensation laws or un-  
19 employment compensation laws.

20 (8) "Inactive member" means a member of the pension program or the individual account pro-  
21 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who  
22 is not a retired member and who is not employed in a qualifying position.

23 (9) "Individual account program" means the defined contribution individual account program of  
24 the Oregon Public Service Retirement Plan established under ORS 238A.025.

25 (10) "Member" means an eligible employee who has established membership in the pension pro-  
26 gram or the individual account program of the Oregon Public Service Retirement Plan and whose  
27 membership has not been terminated under ORS 238A.110 or 238A.310.

28 (11) "Participating public employer" means a public employer as defined in ORS 238.005 that  
29 provides retirement benefits for employees of the public employer under the system.

30 (12) "Pension program" means the defined benefit pension program of the Oregon Public Service  
31 Retirement Plan established under ORS 238A.025.

32 (13) "Police officer" means a police officer as described in ORS 238.005.

33 (14) "Qualifying position" means one or more jobs with one or more participating public em-  
34 ployers in which an eligible employee performs 600 or more hours of service in a calendar year,  
35 excluding any service in a job for which benefits are not provided under the Oregon Public Service  
36 Retirement Plan pursuant to ORS 238A.070 (2).

37 (15) "Retired member" means a pension program member who is receiving a pension as provided  
38 in ORS 238A.180 to 238A.195.

39 (16)(a) "Salary" means the remuneration paid to an active member in return for services to the  
40 participating public employer, including remuneration in the form of living quarters, board or other  
41 items of value, to the extent the remuneration is includable in the employee's taxable income under  
42 Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection,  
43 but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether  
44 those amounts are includable in taxable income.

45 (b) "Salary" includes the following amounts:

1 (A) Payments of employee and employer money into a deferred compensation plan that are made  
2 at the election of the employee.

3 (B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the  
4 employee.

5 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit  
6 plan by the employer at the election of the employee and that is not includable in the taxable in-  
7 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on August 29, 2003.

8 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the  
9 election of the employee and that is not included in the taxable income of the employee by reason  
10 of 26 U.S.C. 402(e)(3), as in effect on August 29, 2003.

11 (E) Retroactive payments [*made to an employee to correct a clerical error, pursuant to an award*  
12 *by a court or by order of or pursuant to a conciliation agreement with an administration agency*  
13 *charged with enforcing federal or state law protecting the employee's rights to employment or wages,*  
14 *which shall be allocated to and deemed paid in the periods in which the work was done or in which*  
15 *the work would have been done]* **described in section 10 of this 2009 Act.**

16 (F) The amount of an employee contribution to the individual account program that is paid by  
17 the employer and deducted from the compensation of the employee, as provided under ORS 238A.335  
18 (1) and (2)(a).

19 (G) The amount of an employee contribution to the individual account program that is not paid  
20 by the employer under ORS 238A.335.

21 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
22 652.190.

23 (c) "Salary" does not include the following amounts:

24 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the  
25 employer.

26 (B) Payments made on account of an employee's death.

27 (C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid  
28 leave.

29 (D) Any severance payment, accelerated payment of an employment contract for a future period  
30 or advance against future wages.

31 (E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

32 (F) Payment for a leave of absence after the date the employer and employee have agreed that  
33 no future services in a qualifying position will be performed.

34 (G) Payments for instructional services rendered to institutions of the Department of Higher  
35 Education or the Oregon Health and Science University when those services are in excess of full-  
36 time employment subject to this chapter. A person employed under a contract for less than 12  
37 months is subject to this subparagraph only for the months covered by the contract.

38 (H) The amount of an employee contribution to the individual account program that is paid by  
39 the employer and is not deducted from the compensation of the employee, as provided under ORS  
40 238A.335 (1) and (2)(b).

41 (I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is  
42 determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a  
43 fraction, the numerator of which is the number of months in the determination period and the de-  
44 nominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate  
45 cost-of-living adjustments authorized by the Internal Revenue Service.

1 (17) "System" means the Public Employees Retirement System.

2 **SECTION 13. The unit captions used in this 2009 Act are provided only for the conven-**  
3 **ience of the reader and do not become part of the statutory law of this state or express any**  
4 **legislative intent in the enactment of this 2009 Act.**

5 **SECTION 14. This 2009 Act being necessary for the immediate preservation of the public**  
6 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
7 **on its passage.**

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