

**A-Engrossed**  
**House Bill 2113**

Ordered by the House April 12  
Including House Amendments dated April 12

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber 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.

Modifies retirement plan options of persons elected or appointed as members of Legislative Assembly.

Authorizes use of trustee-to-trustee transfers to fund specified retirement credit purchases under Public Employees Retirement System.

Modifies vesting dates for pension program and individual account program of Oregon Public Service Retirement Plan.

Amends law relating to crediting of earnings on PERS member accounts for purpose of conforming law to Supreme Court decision.

**Authorizes Public Employees Retirement Board to allow eligible state employee who is participating in state deferred compensation plan to defer compensation on after-tax basis.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to public employee retirement; creating new provisions; amending ORS 237.650, 237.655,  
3 238.092, 238.222, 238.255, 238A.115, 238A.245, 238A.320 and 243.460 and section 2, chapter 971,  
4 Oregon Laws 1999; repealing ORS 237.660 and 238.258 and section 46b, chapter 733, Oregon  
5 Laws 2003; and declaring an emergency.

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

7  
8 **LEGISLATOR RETIREMENT**

9  
10 **SECTION 1.** ORS 237.650 is amended to read:

11 237.650. [(1) A person appointed or elected as a member of the Legislative Assembly must elect  
12 within 30 days after taking office if the person will:]

13 [(a) Become a member of the Oregon Public Service Retirement Plan established under ORS  
14 chapter 238A;]

15 [(b) Become a legislator member of the state deferred compensation plan under ORS 237.655; or]

16 [(c) Decline to become a member of the Oregon Public Service Retirement Plan, or to become a  
17 legislator member of the state deferred compensation plan, for service as a member of the Legislative  
18 Assembly.]

19 [(2) Written notice of a person's election under this section must be given to the Public Employees  
20 Retirement Board. If the board does not receive written notice within 30 days after the person takes  
21 office, the person shall be conclusively deemed to have elected to become a legislator member of the state  
22 deferred compensation plan under ORS 237.655.]

**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        *[(3) Any member of the Legislative Assembly who elects to become a member of the Oregon Public*  
2 *Service Retirement Plan may request that the Public Employees Retirement Board roll over the amount*  
3 *in the regular account maintained for the member under ORS 238.250 into the individual account*  
4 *maintained for the member under the individual account program.]*

5        *[(4) An election under this section does not affect the ability of a person appointed or elected as a*  
6 *member of the Legislative Assembly to participate in the state deferred compensation plan in the man-*  
7 *ner provided by ORS 243.401 to 243.507.]*

8        **(1) Except as provided in this section, a person appointed or elected as a member of the**  
9 **Legislative Assembly may make a retirement plan election in the manner provided by this**  
10 **section. If a person appointed or elected as a member of the Legislative Assembly does not**  
11 **make a retirement plan election under subsection (2), (3) or (4) of this section, the person**  
12 **is deemed to have elected a retirement plan as provided in subsection (7) of this section.**

13        **(2) An active or inactive member of the Public Employees Retirement System who is**  
14 **appointed or elected as a member of the Legislative Assembly, and who established mem-**  
15 **bership in the system before August 29, 2003, as described in ORS 238A.025, may:**

16        **(a) Elect to remain a member of the system under ORS chapter 238 for the purpose of**  
17 **service in the Legislative Assembly;**

18        **(b) Decline to remain a member of the system under ORS chapter 238 and elect to be-**  
19 **come a legislator member of the state deferred compensation plan under ORS 237.655 for the**  
20 **purpose of service in the Legislative Assembly; or**

21        **(c) Decline to remain a member of the system under ORS chapter 238 or to become a**  
22 **legislator member of the state deferred compensation plan under ORS 237.655 for the purpose**  
23 **of service in the Legislative Assembly.**

24        **(3) A retired member of the Public Employees Retirement System who is appointed or**  
25 **elected as a member of the Legislative Assembly, and who established membership in the**  
26 **system before August 29, 2003, as described in ORS 238A.025, may:**

27        **(a) Elect to become an active member of the system under ORS chapter 238 for the**  
28 **purpose of service in the Legislative Assembly;**

29        **(b) Decline to become an active member of the system under ORS chapter 238 and elect**  
30 **to become a legislator member of the state deferred compensation plan under ORS 237.655**  
31 **for the purpose of service in the Legislative Assembly; or**

32        **(c) Decline to become an active member of the system under ORS chapter 238 or to be-**  
33 **come a legislator member of the state deferred compensation plan under ORS 237.655 for the**  
34 **purpose of service in the Legislative Assembly.**

35        **(4) A person who is appointed or elected as a member of the Legislative Assembly and**  
36 **who is not a member of the Public Employees Retirement System at the time the person**  
37 **takes office may:**

38        **(a) Elect to become a member of the Oregon Public Service Retirement Plan established**  
39 **under ORS chapter 238A for the purpose of service in the Legislative Assembly;**

40        **(b) Decline to become a member of the Oregon Public Service Retirement Plan and elect**  
41 **to become a legislator member of the state deferred compensation plan under ORS 237.655**  
42 **for the purpose of service in the Legislative Assembly; or**

43        **(c) Decline to become a member of the Oregon Public Service Retirement Plan or to be-**  
44 **come a legislator member of the state deferred compensation plan under ORS 237.655 for the**  
45 **purpose of service in the Legislative Assembly.**

1       (5) An active or inactive member of the Public Employees Retirement System who is  
2 appointed or elected as a member of the Legislative Assembly, and who established mem-  
3 bership in the system on or after August 29, 2003, as described in ORS 238A.025, may not  
4 make an election under this section and is an active member of the system under ORS  
5 chapter 238A for the purpose of service in the Legislative Assembly.

6       (6) A retired member of the Public Employees Retirement System who is appointed or  
7 elected as a member of the Legislative Assembly, and who established membership in the  
8 system on or after August 29, 2003, as described in ORS 238A.025, may not make an election  
9 under this section and remains a retired member of the system under ORS chapter 238A  
10 during the person's service in the Legislative Assembly.

11       (7) Written notice of an election under subsection (2), (3) or (4) of this section must be  
12 given to the Public Employees Retirement Board not more than 30 days after the person  
13 takes office. If the board does not receive written notice of the election within 30 days after  
14 the person takes office:

15       (a) A person described in subsection (2) of this section is deemed to have elected to re-  
16 main a member of the Public Employees Retirement System under ORS chapter 238 for the  
17 purpose of service in the Legislative Assembly.

18       (b) A person described in subsection (3) of this section is deemed to have declined to be-  
19 come an active member of the system under ORS chapter 238, or to become a legislator  
20 member of the state deferred compensation plan under ORS 237.655, and remains a retired  
21 member of the system under ORS chapter 238 for the purpose of service in the Legislative  
22 Assembly.

23       (c) A person described in subsection (4) of this section is deemed to have elected to be-  
24 come a member of the system under ORS chapter 238A for the purpose of service in the  
25 Legislative Assembly.

26       (8) An election under subsection (3)(b) or (c) of this section does not affect the status  
27 of a person as a retired member of the system and a recipient of retirement benefits under  
28 ORS chapter 238.

29       (9) An election under this section does not affect the ability of a person appointed or  
30 elected as a member of the Legislative Assembly to participate in the state deferred com-  
31 pensation plan in the manner provided by ORS 243.401 to 243.507 as other than a legislator  
32 member under ORS 237.655.

33       **SECTION 2.** ORS 237.655 is amended to read:

34       237.655. (1) If a person appointed or elected as a member of the Legislative Assembly elects  
35 under ORS 237.650 to *[participate in]* **become a legislator member of** the state deferred compen-  
36 sation plan *[as a legislator member]* **for the purpose of service in the Legislative Assembly**, the  
37 Legislative Assembly shall make employer contributions to the plan in an amount that is equal to  
38 six percent of the member's salary. *[A legislator member may make contributions to the plan in any*  
39 *amount that does not exceed the maximum allowed by federal law governing the plan's tax qualifica-*  
40 *tion.]*

41       *[(2) Any member of the Legislative Assembly who elects to become a legislator member of the state*  
42 *deferred compensation plan may request that the Public Employees Retirement Board roll over the*  
43 *amount in the regular account maintained for the member under ORS 238.250 into the state deferred*  
44 *compensation plan.]*

45       **(2) If a person appointed or elected as a member of the Legislative Assembly elects under**

1 **ORS 237.650 to become a legislator member of the state deferred compensation plan for the**  
 2 **purpose of service in the Legislative Assembly, and the person also participates in the state**  
 3 **deferred compensation plan in the manner provided by ORS 243.401 to 243.507 as other than**  
 4 **a legislator member, the total contributions made to the plan by the person and by the em-**  
 5 **ployer under subsection (1) of this section may not exceed the maximum allowed by federal**  
 6 **law governing the plan's tax qualification.**

7 (3) Except for the contributions required by subsection (1) of this section, the Legislative As-  
 8 sembly may not "pick-up," assume or pay any contributions on behalf of a legislator member of the  
 9 state deferred compensation plan.

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

11 238.092. (1) Notwithstanding any other provision of this chapter:

12 (a) A retired member of the **Public Employees Retirement** System who has retired as other  
 13 than a member of the Legislative Assembly and who [*thereafter becomes*] **is thereafter appointed**  
 14 **or elected as** a member of the Legislative Assembly [*and elects to become an active member of the*  
 15 *system as a member of the Legislative Assembly may also*] **may** elect, by giving the **Public Employ-**  
 16 **ees Retirement** Board written notice [*of desire to do so*], to receive the pension and annuity pro-  
 17 vided by this chapter for service as other than a member of the Legislative Assembly, and be an  
 18 active member of the system as a member of the Legislative Assembly for the [*period the member*  
 19 *holds office as a member of*] **purpose of service in** the Legislative Assembly. [*The notice provided*  
 20 *for in this paragraph shall be given within 30 days after the retired member takes office as a member*  
 21 *of the Legislative Assembly.*] **A person may make an election under this paragraph only if the**  
 22 **person becomes an active member of the system under ORS chapter 238 for the purpose of**  
 23 **service in the Legislative Assembly as provided in ORS 237.650 (3). Notice of an election un-**  
 24 **der this paragraph must be given by the person not more than 30 days after the person takes**  
 25 **office.**

26 (b) A member of the Legislative Assembly who is a member of the system as a member of the  
 27 Legislative Assembly and who becomes eligible to retire by reason of service as other than a mem-  
 28 ber of the Legislative Assembly, without regard to when that service was performed, may elect, by  
 29 giving the board written notice [*of desire to do so*], to retire and receive the pension and annuity  
 30 provided by this chapter for service as other than a member of the Legislative Assembly, and to  
 31 continue, for the [*period the member holds office as a member of*] **purpose of service in** the Legis-  
 32 lative Assembly, as an active member of the system as a member of the Legislative Assembly.

33 (c) Upon receipt of the notice provided for in paragraphs (a) and (b) of this subsection, the board  
 34 shall determine that portion of the accumulated contributions, if any, of the member and interest  
 35 thereon attributable to service as other than a member of the Legislative Assembly, which shall be  
 36 used in determining the amount of the annuity the member shall receive for that service. The por-  
 37 tion of the accumulated contributions, if any, of the member and interest thereon attributable to  
 38 service as a member of the Legislative Assembly shall remain in the member account of the member  
 39 and, together with any subsequent contributions and interest thereon, be used in determining the  
 40 amount of the additional annuity the member shall receive for that service upon [*ceasing to hold*  
 41 *office as a member of the Legislative Assembly*] **subsequent retirement.** If the member does not have  
 42 a member account, the board shall determine the member's retirement allowance for nonlegislative  
 43 service based on the number of years of nonlegislative service, and shall determine any additional  
 44 benefit to be received after the member [*ceases to hold office as a member of the Legislative*  
 45 *Assembly*] **subsequently retires** based on the number of years of service in the Legislative Assem-

1 bly.

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

6 **SECTION 4.** ORS 238A.245 is amended to read:

7 238A.245. (1) Except as provided in subsection (3) of this section, the Public Employees Retirement  
8 Board shall cease making pension payments to a retired member of the pension program who  
9 is reemployed by a participating public employer in a qualifying position. A retired member of the  
10 pension program who is employed in a qualifying position becomes an active member of the pension  
11 program without serving the probationary period provided for in ORS 238A.100.

12 (2) If a retired member of the pension program is reemployed under the provisions of this sec-  
13 tion, any option chosen by the member under ORS 238A.190 is canceled, and upon retiring thereafter  
14 the member may elect any option provided for in ORS 238A.180 and 238A.190. The board shall re-  
15 calculate the pension of the member upon subsequent retirement.

16 (3) A retired member of the pension program who becomes a member of the Legislative Assem-  
17 bly shall continue to receive the pension elected by the member. A retired member of the pension  
18 program who becomes a member of the Legislative Assembly may not [*elect*] **make an election** un-  
19 der ORS 237.650 [*to become an active member of the Oregon Public Service Retirement Plan or a leg-*  
20 *islator member of the state deferred compensation plan*].

21 **SECTION 5.** (1) ORS 237.660 is repealed.

22 (2) **Section 46b, chapter 733, Oregon Laws 2003, as amended by section 4, chapter 769,**  
23 **Oregon Laws 2007, is repealed.**

24 **SECTION 6.** (1) **The amendments to ORS 237.650, 237.655, 238.092 and 238A.245 by sections**  
25 **1 to 4 of this 2011 Act and the repeal of ORS 237.660 and section 46b, chapter 733, Oregon**  
26 **Laws 2003, by section 5 of this 2011 Act apply to persons appointed or elected as members**  
27 **of the Legislative Assembly who take office on or after August 29, 2003.**

28 (2) **An election made under ORS 237.650 on or after August 29, 2003, and before the ef-**  
29 **fective date of this 2011 Act that is inconsistent with the provisions of ORS 237.650 as**  
30 **amended by section 1 of this 2011 Act is void.**

31 (3) **As soon as possible after the effective date of this 2011 Act, the Public Employees**  
32 **Retirement Board shall provide notice of the provisions of subsection (4) of this section to**  
33 **any person who made an election under ORS 237.650 that is void under subsection (2) of this**  
34 **section.**

35 (4) **Any person who made an election under ORS 237.650 that is void under subsection (2)**  
36 **of this section may make any election allowed under ORS 237.650 as amended by section 1**  
37 **of this 2011 Act. An election under this subsection must be received by the board not more**  
38 **than 90 days after the date notice is provided under subsection (3) of this section. If the**  
39 **person is eligible to make an election under this subsection, but fails to make the election**  
40 **within the time allowed, the person is deemed to have elected a retirement plan as provided**  
41 **in ORS 237.650 (7), as amended by section 1 of this 2011 Act, for the purpose of the service**  
42 **by the person in the Legislative Assembly for which the first election was made.**

43  
44 **RETIREMENT CREDIT PURCHASES**  
45

1       **SECTION 7.** ORS 238.222 is amended to read:

2       238.222. (1) Notwithstanding ORS 238.220, a member of the Public Employees Retirement System  
3 who is eligible to obtain restoration of forfeited creditable service under ORS 238.115, or to pur-  
4 chase retirement credit under ORS 238.125, 238.135, 238.145, **238.148**, 238.156, 238.157, **238.160**,  
5 238.162, 238.165, 238.175 or 526.052, and who participates in an eligible retirement plan described in  
6 subsection (3) of this section, may use moneys transferred by way of a trustee-to-trustee transfer  
7 from the eligible retirement plan to the Public Employees Retirement Board for the purpose of ob-  
8 taining restoration of the forfeited creditable service or to purchase the retirement credit. The board  
9 may not make any amount transferred under this section available to the member, and may use the  
10 amount only for the purposes described in this section. The amount transferred under this section  
11 may not exceed the amount needed to obtain restoration of the forfeited creditable service or to  
12 purchase the retirement credit.

13       (2) If amounts transferred under this section are not sufficient to pay the full amount necessary  
14 to obtain restoration of the forfeited creditable service or to purchase the retirement credit, the  
15 member must pay the remaining amount that is needed to obtain restoration of the forfeited credit-  
16 able service or to purchase the retirement credit.

17       (3) The following are eligible retirement plans for the purposes of this section:

18       (a) A governmental deferred compensation plan described in section 457 of the Internal Revenue  
19 Code; and

20       (b) A tax sheltered annuity described in section 403(b) of the Internal Revenue Code.

21       (4) The board shall adopt rules and establish procedures for determining whether a member is  
22 allowed to obtain restoration of the forfeited creditable service or to purchase the retirement credit  
23 by means of a trustee-to-trustee transfer under this section. The rules and procedures must ensure  
24 that transfers under this section do not adversely affect the status of the system and the Public  
25 Employees Retirement Fund as a qualified governmental plan and trust under federal income tax  
26 law.

27       **SECTION 8.** Section 2, chapter 971, Oregon Laws 1999, is amended to read:

28       **Sec. 2.** (1) The amendments to ORS 238.005 by section 1, **chapter 971, Oregon Laws 1999**, [*of*  
29 *this 1999 Act*] apply only to persons specified in ORS 238.005 [(16)(b)] **(9)(b)** who are employed by  
30 the State Forestry Department on [*the effective date of this 1999 Act*] **October 23, 1999**, or who be-  
31 come employed by the State Forestry Department after [*the effective date of this 1999 Act*] **October**  
32 **23, 1999**.

33       (2) Except as provided in subsection (3) of this section, the amendments to ORS 238.005 by sec-  
34 tion 1, **chapter 971, Oregon Laws 1999**, [*of this 1999 Act*] apply only to service rendered to a par-  
35 ticipating public employer on or after [*the effective date of this 1999 Act*] **October 23, 1999**.

36       (3) Any employee who is employed by the State Forestry Department in a position described in  
37 ORS 238.005 [(16)(b) on the effective date of this 1999 Act] **(9)(b) on October 23, 1999**, may acquire  
38 creditable service in the Public Employees Retirement System as a firefighter for service performed  
39 by the employee in a position described in ORS 238.005 [(16)(b) before the effective date of this 1999  
40 Act] **(9)(b) before October 23, 1999**, by paying to the Public Employees Retirement Board an  
41 amount determined by the board to represent the full cost to the system of providing credit as a  
42 firefighter to the member. The member may acquire credit as a firefighter for all or part of the  
43 service in a position described in ORS 238.005 [(16)(b) performed before the effective date of this 1999  
44 Act] **(9)(b) performed before October 23, 1999**. All amounts required for acquisition of credit as  
45 a firefighter under this subsection must be paid at least 90 days before a member's effective date

1 of retirement. The board may by rule allow members to pay amounts required under this subsection  
2 in installments in lieu of requiring a single lump sum payment. **Amounts required under this**  
3 **subsection may be paid using moneys transferred by way of a trustee-to-trustee transfer as**  
4 **described in ORS 238.222.**

5 **SECTION 9. The amendments to section 2, chapter 971, Oregon Laws 1999, by section 8**  
6 **of this 2011 Act become operative September 1, 2011.**

7  
8 **OPSRP VESTING**

9  
10 **SECTION 10.** ORS 238A.115 is amended to read:

11 238A.115. (1) **Except as provided in subsection (2) of this section,** a member of the pension  
12 program becomes vested in the pension program on the earliest of the following dates:

13 (a) The date on which the member completes at least 600 hours of service in each of five cal-  
14 endar years. The five calendar years need not be consecutive, but are subject to the provisions of  
15 subsection [(2)] (3) of this section.

16 (b) The date on which an active member reaches the normal retirement age for the member  
17 under ORS 238A.160.

18 (c) If the pension program is terminated, the date on which termination becomes effective, but  
19 only to the extent the pension program is then funded.

20 (2) **If on the date that a person becomes an active member the person has already**  
21 **reached the normal retirement age for the person under ORS 238A.160, the person is vested**  
22 **in the pension program on that date.**

23 [(2)] (3) If a member of the pension program who is not vested in the pension program performs  
24 fewer than 600 hours of service in each of five consecutive calendar years, hours of service per-  
25 formed before the first calendar year of the period of five consecutive calendar years shall be dis-  
26 regarded for purposes of determining whether the member is vested under subsection (1)(a) of this  
27 section.

28 [(3)] (4) Solely for purposes of determining whether a member is vested under this section, hours  
29 of service include creditable service, as defined in ORS 238.005, performed by the person before the  
30 person became an eligible employee, as long as the membership of the person under ORS chapter  
31 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes  
32 an eligible employee.

33 **SECTION 11.** ORS 238A.320 is amended to read:

34 238A.320. (1) A member of the individual account program becomes vested in the employee ac-  
35 count established for the member under ORS 238A.350 (2) on the date the employee account is es-  
36 tablished.

37 (2) A member who makes rollover contributions becomes vested in the rollover account estab-  
38 lished for the member under ORS 238A.350 (4) on the date the rollover account is established.

39 (3) **Except as provided in subsection (4) of this section,** if an employer makes employer  
40 contributions for a member under ORS 238A.340[,] the member becomes vested in the employer ac-  
41 count established under ORS 238A.350 (3) on the earliest of the following dates:

42 (a) The date on which the member completes at least 600 hours of service in each of five cal-  
43 endar years[;]. **The five calendar years need not be consecutive, but are subject to the pro-**  
44 **visions of subsection (5) of this section.**

45 (b) The date on which an active member reaches the normal retirement age for the member

1 under ORS 238A.160[;].

2 (c) If the individual account program is terminated, the date on which termination becomes ef-  
3 fective, but only to the extent the account is then funded[;].

4 (d) The date on which an active member becomes disabled, as described in ORS 238A.155 [(4);  
5 or] (5).

6 (e) The date on which an active member dies.

7 **(4) If on the date that a person becomes an active member the person has already**  
8 **reached the normal retirement age for the person under ORS 238A.160, and the employer**  
9 **makes employer contributions for the member under ORS 238A.340, the person is vested in**  
10 **the employer account established under ORS 238A.350 (3) on that date.**

11 [(4)] (5) If a member of the individual account program who is not vested in the employer ac-  
12 count performs fewer than 600 hours of service in each of five consecutive calendar years, hours  
13 of service performed before the first calendar year of the period of five consecutive calendar years  
14 shall be disregarded for purposes of determining whether the member is vested under subsection  
15 (3)(a) of this section.

16 [(5)] (6) Solely for purposes of determining whether a member is vested under subsection (3)(a)  
17 of this section, hours of service include creditable service, as defined in ORS 238.005, performed by  
18 the person before the person became an eligible employee, as long as the membership of the person  
19 under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date  
20 the person becomes an eligible employee.

21 **SECTION 12. (1) The amendments to ORS 238A.115 by section 10 of this 2011 Act apply**  
22 **to all members of the pension program of the Oregon Public Service Retirement Plan,**  
23 **whether they become members before, on or after the effective date of this 2011 Act.**

24 **(2) The amendments to ORS 238A.320 by section 11 of this 2011 Act apply to all members**  
25 **of the individual account program of the Oregon Public Service Retirement Plan, whether**  
26 **they become members before, on or after the effective date of this 2011 Act.**

27  
28 **CREDITING OF TIER I ACCOUNTS**

29  
30 **SECTION 13.** ORS 238.255 is amended to read:

31 238.255. [(1) *The regular account for members who established membership in the system before*  
32 *January 1, 1996, as described in ORS 238.430, and for alternate payees of those members, shall be*  
33 *examined each year. If the regular account is credited with earnings for the previous year in an amount*  
34 *less than the earnings that would have been credited pursuant to the assumed interest rate for that year*  
35 *determined by the Public Employees Retirement Board, the amount of the difference shall be credited*  
36 *to the regular account and charged to a reserve account in the fund established for the purpose. In*  
37 *years following the year for which a charge is made to the reserve account, all earnings on the regular*  
38 *accounts of members who established membership in the system before January 1, 1996, as described*  
39 *in ORS 238.430, and of alternate payees of those members, shall first be applied to reduce or eliminate*  
40 *the amount of a deficit. Only earnings on the regular accounts of members who established membership*  
41 *in the system before January 1, 1996, as described in ORS 238.430, and of alternate payees of those*  
42 *members, may be used to reduce or eliminate the amount of a deficit.*]

43 [(2) *Notwithstanding subsection (1) of this section and except as provided in subsection (5) of this*  
44 *section, the board may not credit any earnings to the regular accounts of members who established*  
45 *membership in the system before January 1, 1996, as described in ORS 238.430, or of alternate payees*



1 of those members, in any year in which there is a deficit in the reserve account established under  
 2 subsection (1) of this section, or credit any earnings to the regular accounts of those members, or al-  
 3 ternate payees, that would result in a deficit in that reserve account. In any year in which the fund  
 4 experiences a loss, the board shall charge the amount of the loss attributable to the regular accounts  
 5 of members who established membership in the system before January 1, 1996, as described in ORS  
 6 238.430, against the reserve account.]

7 [(3) The regular account for members who established membership in the system before January  
 8 1, 1996, as described in ORS 238.430, and for alternate payees of those members, may not be credited  
 9 with earnings in excess of the assumed interest rate until:]

10 [(a) The reserve account established under subsection (1) of this section is fully funded with  
 11 amounts determined by the board, after consultation with the actuary employed by the board, to be  
 12 necessary to ensure a zero balance in the account when all members who established membership in  
 13 the system before January 1, 1996, as described in ORS 238.430, have retired; and]

14 [(b) The reserve account established under subsection (1) of this section has been fully funded as  
 15 described in paragraph (a) of this subsection in each of the three immediately preceding calendar  
 16 years.]

17 [(4) The board may divide the reserve account established under subsection (1) of this section into  
 18 one or more subaccounts for the purpose of implementing the provisions of this section.]

19 [(5) Subsection (2) of this section does not apply to a person who is a judge member of the system  
 20 on June 30, 2003.]

21 **(1) The regular account for an active or inactive member of the Public Employees Re-**  
 22 **irement System shall be examined each year. If the regular account is credited with**  
 23 **earnings for the previous year in an amount less than the earnings that would have been**  
 24 **credited pursuant to the assumed interest rate for that year determined by the Public Em-**  
 25 **ployees Retirement Board, the amount of the difference shall be credited to the regular ac-**  
 26 **count and charged to a reserve account in the Public Employees Retirement Fund**  
 27 **established for the purpose. A reserve account so established may not be maintained on a**  
 28 **deficit basis for a period of more than five years. Earnings in excess of the assumed interest**  
 29 **rate for years following the year for which a charge is made to the reserve account shall**  
 30 **first be applied to reduce or eliminate the amount of a deficit.**

31 **(2) The regular account for an active or inactive member who established membership**  
 32 **in the system before January 1, 1996, as described in ORS 238.430, may not be credited with**  
 33 **earnings in excess of the assumed interest rate until:**

34 **(a) The reserve account established under subsection (1) of this section no longer has a**  
 35 **deficit;**

36 **(b) The reserve account established under subsection (1) of this section is fully funded**  
 37 **with amounts determined by the board, after consultation with the actuary employed by the**  
 38 **board, to be necessary to ensure a zero balance in the account when all members who es-**  
 39 **tablished membership in the system before January 1, 1996, as described in ORS 238.430, have**  
 40 **retired; and**

41 **(c) The reserve account established under subsection (1) of this section has been fully**  
 42 **funded as described in paragraph (b) of this subsection in each of the three immediately**  
 43 **preceding calendar years.**

44 **SECTION 14. The amendments to ORS 238.255 by section 13 of this 2011 Act apply to all**  
 45 **crediting of earnings for the calendar year 2003 and all subsequent calendar years.**

