

B-Engrossed
House Bill 2113

Ordered by the House June 24
Including House Amendments dated April 12 and June 24

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.

Specifies that inactive member of pension program who terminated membership in individual account program becomes member of individual account program upon reemployment in qualifying position.

Increases, for biennium beginning July 1, 2011, limitation on expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by Public Employees Retirement System.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; amending ORS 169.810, 237.650,
3 237.655, 238.092, 238.222, 238.255, 238A.115, 238A.245, 238A.300, 238A.320 and 243.460 and section
4 2, chapter 971, Oregon Laws 1999; repealing ORS 237.660 and 238.258 and section 46b, chapter
5 733, Oregon Laws 2003; limiting expenditures; 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

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 *Retirement Board. If the board does not receive written notice within 30 days after the person takes*
2 *office, the person shall be conclusively deemed to have elected to become a legislator member of the state*
3 *deferred compensation plan under ORS 237.655.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 [(2) Any member of the Legislative Assembly who elects to become a legislator member of the state
45 deferred compensation plan may request that the Public Employees Retirement Board roll over the

1 amount in the regular account maintained for the member under ORS 238.250 into the state deferred
2 compensation plan.]

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

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

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

14 238.092. (1) Notwithstanding any other provision of this chapter:

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

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

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

1 service based on the number of years of nonlegislative service, and shall determine any additional
2 benefit to be received after the member [*ceases to hold office as a member of the Legislative*
3 *Assembly*] **subsequently retires** based on the number of years of service in the Legislative Assem-
4 bly.

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

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

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

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

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

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

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

27 **SECTION 6.** (1) The amendments to ORS 237.650, 237.655, 238.092 and 238A.245 by sections
28 1 to 4 of this 2011 Act and the repeal of ORS 237.660 and section 46b, chapter 733, Oregon
29 Laws 2003, by section 5 of this 2011 Act apply to persons appointed or elected as members
30 of the Legislative Assembly who take office on or after August 29, 2003.

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

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

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

RETIREMENT CREDIT PURCHASES

SECTION 7. ORS 238.222 is amended to read:

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

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

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

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

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

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

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

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

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

(3) Any employee who is employed by the State Forestry Department in a position described in ORS 238.005 [(16)(b) on the effective date of this 1999 Act] **(9)(b) on October 23, 1999**, may acquire creditable service in the Public Employees Retirement System as a firefighter for service performed by the employee in a position described in ORS 238.005 [(16)(b) before the effective date of this 1999 Act] **(9)(b) before October 23, 1999**, by paying to the Public Employees Retirement Board an amount determined by the board to represent the full cost to the system of providing credit as a firefighter to the member. The member may acquire credit as a firefighter for all or part of the service in a position described in ORS 238.005 [(16)(b) performed before the effective date of this 1999

1 *Act*] **(9)(b) performed before October 23, 1999.** All amounts required for acquisition of credit as
2 a firefighter under this subsection must be paid at least 90 days before a member's effective date
3 of retirement. The board may by rule allow members to pay amounts required under this subsection
4 in installments in lieu of requiring a single lump sum payment. **Amounts required under this**
5 **subsection may be paid using moneys transferred by way of a trustee-to-trustee transfer as**
6 **described in ORS 238.222.**

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

9
10 **OPSRP VESTING**

11
12 **SECTION 10.** ORS 238A.115 is amended to read:

13 238A.115. (1) **Except as provided in subsection (2) of this section,** a member of the pension
14 program becomes vested in the pension program on the earliest of the following dates:

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

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

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

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

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

30 [(3)] **(4)** Solely for purposes of determining whether a member is vested under this section, hours
31 of service include creditable service, as defined in ORS 238.005, performed by the person before the
32 person became an eligible employee, as long as the membership of the person under ORS chapter
33 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes
34 an eligible employee.

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

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

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

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

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

1 **visions of subsection (5) of this section.**

2 (b) The date on which an active member reaches the normal retirement age for the member
3 under ORS 238A.160[;].

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

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

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

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

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

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

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

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

29
30 **CREDITING OF TIER I ACCOUNTS**

31
32 **SECTION 13.** ORS 238.255 is amended to read:

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

45 [(2) *Notwithstanding subsection (1) of this section and except as provided in subsection (5) of this*

1 section, the board may not credit any earnings to the regular accounts of members who established
2 membership in the system before January 1, 1996, as described in ORS 238.430, or of alternate payees
3 of those members, in any year in which there is a deficit in the reserve account established under
4 subsection (1) of this section, or credit any earnings to the regular accounts of those members, or al-
5 ternate payees, that would result in a deficit in that reserve account. In any year in which the fund
6 experiences a loss, the board shall charge the amount of the loss attributable to the regular accounts
7 of members who established membership in the system before January 1, 1996, as described in ORS
8 238.430, against the reserve account.]

9 [(3) The regular account for members who established membership in the system before January
10 1, 1996, as described in ORS 238.430, and for alternate payees of those members, may not be credited
11 with earnings in excess of the assumed interest rate until:]

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

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

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

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

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

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

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

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

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

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

3 **SECTION 15.** ORS 238.258 is repealed.

4
5 **ROTH CONTRIBUTIONS TO DEFERRED COMPENSATION PLAN**

6
7 **SECTION 16.** Section 17 of this 2011 Act is added to and made a part of ORS 243.401 to
8 243.507.

9 **SECTION 17.** (1) The Public Employees Retirement Board may allow an eligible state
10 employee who is participating in the state deferred compensation plan to defer compensation
11 on an after-tax basis. The board shall establish a separate account for each employee that
12 defers compensation on an after-tax basis, and maintain separate records for those accounts.

13 (2) The Public Employees Retirement Board may allow an eligible state employee who is
14 participating in the state deferred compensation plan to convert compensation that was de-
15 ferred on a pretax basis to compensation that is deferred on an after-tax basis to the extent
16 allowed by federal law and subject to any requirements of federal law for the conversion.

17 **SECTION 18.** ORS 243.460 is amended to read:

18 243.460. (1) The amount by which an eligible state employee's salary is reduced under ORS
19 243.440 shall continue to be included as regular compensation for the purpose of computing the re-
20 tirement, pension and Social Security benefits earned by the employee[, *but that*]. **If the amount is**
21 **deferred on a pretax basis, the** amount shall not be considered current taxable income for the
22 purpose of computing federal and state income taxes withheld on behalf of the employee.

23 (2) The state deferred compensation plan established by ORS 243.401 to 243.507 supplements all
24 other retirement and pension systems established by the State of Oregon, and participation by an
25 eligible state employee in the state deferred compensation plan shall not cause a reduction of any
26 retirement or pension benefits provided to the employee by law.

27
28 **REEMPLOYMENT OF INACTIVE MEMBER OF PENSION PROGRAM**

29
30 **SECTION 19.** ORS 238A.300 is amended to read:

31 238A.300. (1) Except as provided in ORS 238A.100 (2) **and subsection (2) of this section**, an
32 eligible employee who is employed in a qualifying position on or after August 29, 2003, by a public
33 employer that is participating in the individual account program and who will not receive benefits
34 under ORS chapter 238 for service with the participating public employer pursuant to the provisions
35 of ORS 238A.025 becomes a member of the individual account program on the first day of the month
36 after the employee completes six full calendar months of employment. The six-month probationary
37 period may not be interrupted by more than 30 consecutive working days.

38 (2) **An inactive member of the pension program who terminated membership in the indi-**
39 **vidual account program pursuant to ORS 238A.310 (2) becomes a member of the individual**
40 **account program immediately upon reemployment in a qualifying position.**

41 **SECTION 20.** ORS 169.810 is amended to read:

42 169.810. (1) Assumption by the regional correctional facility of those custodial duties formerly
43 performed by a county or city jail constitutes an assumption of duties by a public employer subject
44 to ORS 236.610 to 236.640.

45 (2) An employee who transfers from employment at a county or city jail to employment at a

1 regional correctional facility operated by the county or city by which the employee has been em-
2 ployed shall be accorded the following rights:

3 (a) If a trial or probationary service period is required for employment at the county or city jail,
4 the period of county or city employment of the employee shall apply to that requirement.

5 (b) An employee who transfers from employment at a county or city jail to employment at the
6 regional correctional facility shall retain accumulated unused sick leave with pay and the accumu-
7 lated unused vacation with pay to which the employee was entitled under county or city employment
8 on the day before the transfer that are supported by written records of accumulation and use pur-
9 suant to a plan formally adopted and applicable to the employee under county or city employment.

10 (c) Notwithstanding any other provision of law applicable to a retirement system for county
11 employees or city employees, an employee who transfers from employment at a county or city jail
12 to employment at the regional correctional facility who was participating in a retirement system
13 under county or city employment may elect, not later than the first day of the month following the
14 month in which the employee transfers, to continue under the retirement system in which partic-
15 ipating and not to become, if eligible, a member of another retirement system. The election shall be
16 made in writing and shall be submitted to the regional correctional facility administrator, the Public
17 Employees Retirement Board and the governing body of the counties and cities that operate the
18 regional correctional facility.

19 (d) If an employee elects to continue under the retirement system in which participating under
20 county or city employment, the employee shall continue to make required contributions to that
21 system and the administration of the regional correctional facility shall make contributions on be-
22 half of the employee required of an employer participating in that system.

23 (e) If an employee fails to elect to continue under the retirement system in which participating
24 under county or city employment as provided in paragraph (c) of this subsection or was not partic-
25 ipating in a retirement system under county or city employment, the employee shall become, if eli-
26 gible, a member of the Public Employees Retirement System. If the employee is eligible to become
27 a member of the Public Employees Retirement System, the period of continuous service of the em-
28 ployee under county or city employment immediately before the transfer of the employee shall apply
29 to the six months' service requirement of ORS 238.015, 238A.100 or 238A.300 (1).

30 (3) The county or city employment records, or a copy thereof, applicable to an employee trans-
31 ferred under subsection (2) of this section shall be provided by the person having custody of the
32 records to the regional correctional facility administrator.

33 **SECTION 21. The amendments to ORS 238A.300 by section 19 of this 2011 Act apply only**
34 **to persons who are reemployed in qualifying positions on or after the effective date of this**
35 **2011 Act.**

36
37 **EXPENDITURE LIMITATION**

38
39 **SECTION 22. Notwithstanding any other law limiting expenditures, the limitation on**
40 **expenditures established by section 1 (1), chapter _____, Oregon Laws 2011 (Enrolled House**
41 **Bill 5039), for the biennium beginning July 1, 2011, as the maximum limits for payment of**
42 **expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but ex-**
43 **cluding lottery funds and federal funds, collected or received by the Public Employees Re-**
44 **irement System, is increased by \$475,600.**

MISCELLANEOUS

SECTION 23. The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

EMERGENCY CLAUSE

SECTION 24. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.
