

House Bill 2986

Sponsored by Representative RICHARDSON (Presession filed.)

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**.

Eliminates Oregon Public Service Retirement Plan and substitutes Tier 3 level of benefits under Public Employees Retirement System.

Specifies benefits payable to Tier 1 PERS members, Tier 2 PERS members and Tier 3 PERS members.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; amending ORS 237.620, 237.650,
3 238.005, 238.255, 238.258, 238.660, 238A.005, 238A.025, 238A.030, 238A.050, 238A.070, 238A.245,
4 238A.305, 238A.340, 238A.465, 238A.470, 238A.475, 243.800 and 341.551; and repealing ORS
5 238.430 and 238.435.

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

7 **SECTION 1. Sections 2 to 8 of this 2011 Act are added to and made a part of ORS chapter**
8 **238.**

9 **SECTION 2. Tier 1 PERS members. A Tier 1 PERS member is a person who establishes**
10 **membership in the Public Employees Retirement System before January 1, 1996. A person**
11 **establishes membership in the system before January 1, 1996, for the purposes of this section**
12 **if:**

13 (1) **The person is a member of the system, or a judge member of the system, on January**
14 **1, 1996;**

15 (2) **The person was a member of the system before January 1, 1996, ceased to be a**
16 **member of the system under the provisions of ORS 238.095, 238.265 or 238.545 before January**
17 **1, 1996, but restored part or all of the forfeited creditable service from before January 1,**
18 **1996, under the provisions of ORS 238.105 or 238.115 after January 1, 1996;**

19 (3) **The person performed any period of service for a participating public employer before**
20 **January 1, 1996, that is credited to the six-month period of employment required of an em-**
21 **ployee under ORS 238.015 before an employee may become a member of the system; or**

22 (4) **The person becomes a member of the system under the terms of an integration con-**
23 **tract pursuant to the terms of ORS 238.680, and under the terms of the contract the person**
24 **receives retirement credit in the system for periods of employment performed for the public**
25 **employer before January 1, 1996.**

26 **SECTION 3. Tier 1 benefits. (1) A Tier 1 PERS member is entitled to all benefits provided**
27 **by ORS chapter 238, subject to the requirements and limitations provided by law for those**
28 **benefits.**

29 (2) **A Tier 1 PERS member is a member of the individual account program and is entitled**
30 **to all benefits provided by that program, subject to the requirements and limitations pro-**

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 vided by law for that program.

2 **SECTION 4. Tier 2 PERS members.** A Tier 2 PERS member is a person who is not a Tier
 3 1 PERS member and who establishes membership in the Public Employees Retirement Sys-
 4 tem before August 29, 2003. A person establishes membership in the system before August
 5 29, 2003, for the purposes of this section if:

6 (1) The person is a member of the system, or a judge member of the system, on August
 7 28, 2003; or

8 (2) The person performed any period of service for a participating public employer before
 9 August 29, 2003, that is credited to the six-month period of employment required of an em-
 10 ployee under ORS 238.015 before an employee may become a member of the system.

11 **SECTION 5. Tier 2 benefits.** (1) Except as provided in this section, a Tier 2 PERS member
 12 is entitled to all benefits provided by ORS chapter 238, subject to the requirements and lim-
 13 itations provided by law for those benefits.

14 (2) Notwithstanding the definition of “salary” or “other advantages” provided by ORS
 15 238.005, for the purpose of calculating the retirement allowance of a Tier 2 PERS member,
 16 the Public Employees Retirement Board shall not include any lump sum payment for accrued
 17 vacation pay made to the member during the last 36 calendar months of membership before
 18 the effective date of retirement of the member, or during any period of time taken into ac-
 19 count for purposes of determining the three years in which the member was paid the highest
 20 salary for the purposes of determining the member’s final average salary.

21 (3) Notwithstanding the definition of “final average salary” provided by ORS 238.005, for
 22 the purpose of calculating the retirement allowance of a Tier 2 PERS member who is not
 23 employed by a local government as defined in ORS 174.116, the term “final average salary”
 24 means whichever of the following is greater:

25 (a) The average salary per calendar year paid to a public employee who is an active
 26 member of the system in three of the calendar years of membership before the effective date
 27 of retirement of the employee, in which three years the employee was paid the highest sal-
 28 ary. The three calendar years in which the employee was paid the largest total salary may
 29 include calendar years in which the employee was employed for less than a full calendar year.
 30 If the number of calendar years of active membership before the effective date of retirement
 31 of the employee is three or less, the final average salary for the employee is the average
 32 salary per calendar year paid to the public employee in all of those years, without regard to
 33 whether the employee was employed for full calendar years.

34 (b) One-third of the total salary paid to a public employee who is an active member of
 35 the system in the last 36 calendar months of membership before the effective date of re-
 36 tirement of the employee.

37 (4) For the purposes of calculating the final average salary of a member under subsection
 38 (3) of this section, the Public Employees Retirement Board shall:

39 (a) Include any salary paid in or for the calendar month of separation from employment;

40 (b) Exclude any salary for any pay period before the first full pay period that is included
 41 in the three calendar years of membership under subsection (3)(a) of this section if the three
 42 calendar years were consecutive; and

43 (c) Exclude any salary for any pay period before the first full pay period that is included
 44 in the last 36 calendar months of membership under subsection (3)(b) of this section.

45 (5) Notwithstanding the definition of “final average salary” provided by ORS 238.005, for

1 the purpose of calculating the retirement allowance of a Tier 2 PERS member who is em-
 2 ployed by a local government as defined in ORS 174.116, the term “final average salary”
 3 means whichever of the following is greater:

4 (a) The average salary per calendar year earned by a public employee who is an active
 5 member of the system in three of the calendar years of membership before the effective date
 6 of retirement of the employee, in which three years the employee earned the highest salary.
 7 The three calendar years in which the employee earned the largest total salary may include
 8 calendar years in which the employee was employed for less than a full calendar year. If the
 9 number of calendar years of active membership before the effective date of retirement of the
 10 employee is three or less, the final average salary for the employee is the average salary per
 11 calendar year earned by the public employee in all of those years, without regard to whether
 12 the employee was employed for full calendar years.

13 (b) One-third of the total salary earned by a public employee who is an active member
 14 of the system in the last 36 calendar months of membership before the effective date of re-
 15 tirement of the employee.

16 (6) The normal retirement age is 60 years of age for a Tier 2 PERS member who retires
 17 as other than a police officer or firefighter.

18 (7) ORS 238.255 does not apply to a Tier 2 PERS member.

19 (8) A Tier 2 PERS member is a member of the individual account program and is entitled
 20 to all benefits provided by that program, subject to the requirements and limitations pro-
 21 vided by law for that program.

22 **SECTION 6. Tier 3 PERS members.** A Tier 3 PERS member is a person who establishes
 23 membership in the Public Employees Retirement System on or after August 29, 2003.

24 **SECTION 7. Tier 3 benefits.** A Tier 3 PERS member is entitled to all benefits provided
 25 by ORS chapter 238A, subject to the requirements and limitations provided by law for those
 26 benefits.

27 **SECTION 8. Judges.** A person who is elected or appointed as a judge as defined in ORS
 28 238.500 is not a Tier 1 PERS member, Tier 2 PERS member or Tier 3 PERS member for the
 29 purposes of service as a judge. The benefits for service as a judge are as provided by ORS
 30 238.500 to 238.585.

31 **SECTION 9.** ORS 237.620 is amended to read:

32 237.620. (1) Except as provided in this section, all public employers of police officers or fire-
 33 fighters shall provide retirement benefits to those employees under the Public Employees Retirement
 34 System.

35 (2) Notwithstanding subsection (1) of this section, a public employer of police officers or fire-
 36 fighters need not provide retirement benefits to those employees under the Public Employees Re-
 37 tirement System if the Public Employees Retirement Board determines that the public employer
 38 provides retirement benefits to each of the following classes of employees that are equal to or better
 39 than the retirement benefits that would be provided to the equivalent classes of employees under the
 40 Public Employees Retirement System:

41 (a) Police officers or firefighters who are *[entitled to receive benefits only under ORS chapter 238*
 42 *and who established membership in the system before January 1, 1996, as described in ORS 238.430*
 43 *(2)] Tier 1 PERS members;*

44 (b) Police officers or firefighters who are *[entitled to receive benefits only under ORS chapter 238*
 45 *and who established membership in the system on or after January 1, 1996, and before August 29, 2003,*

1 *as described in ORS 238A.025 (4)]* **Tier 2 PERS members**; and

2 (c) Police officers or firefighters who [*establish membership in the system on or after August 29,*
 3 *2003, and are entitled to benefits only under the Oregon Public Service Retirement Plan]* **are Tier 3**
 4 **PERS members.**

5 (3) At such times as may be established by board rule, the Public Employees Retirement Board
 6 shall review the retirement benefits provided by a public employer of police officers or firefighters
 7 that does not provide retirement benefits for those employees under the Public Employees Retirement
 8 System. The review must be conducted at the expense of the public employer. Based on the
 9 review, the board shall determine whether the public employer complies with the requirements of
 10 subsection (2) of this section. If the board determines that the public employer does not comply with
 11 the requirements of subsection (2) of this section for any class of employees described in subsection
 12 (2) of this section, the public employer must provide that class of employees with retirement benefits
 13 adequate to meet the requirements of subsection (2) of this section. If the public employer fails to
 14 provide those benefits, any employee within the class may bring an action in circuit court to compel
 15 compliance with the requirements of this section.

16 **SECTION 10.** ORS 237.650 is amended to read:

17 237.650. (1) A person appointed or elected as a member of the Legislative Assembly must elect
 18 within 30 days after taking office if the person will:

19 (a) Become a **Tier 3 PERS** member [*of the Oregon Public Service Retirement Plan established*
 20 *under ORS chapter 238A*];

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

22 (c) Decline to become a **Tier 3 PERS** member [*of the Oregon Public Service Retirement Plan*],
 23 or to become a legislator member of the state deferred compensation plan, for service as a member
 24 of the Legislative Assembly.

25 (2) Written notice of a person's election under this section must be given to the Public Em-
 26 ployees Retirement Board. If the board does not receive written notice within 30 days after the
 27 person takes office, the person shall be conclusively deemed to have elected to become a legislator
 28 member of the state deferred compensation plan under ORS 237.655.

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

33 (4) An election under this section does not affect the ability of a person appointed or elected
 34 as a member of the Legislative Assembly to participate in the state deferred compensation plan in
 35 the manner provided by ORS 243.401 to 243.507.

36 **SECTION 11.** ORS 238.005, as amended by section 8, chapter 1, Oregon Laws 2010, is amended
 37 to read:

38 238.005. For purposes of this chapter:

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

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

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

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

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

4 (b) An employee who was in the armed services on January 1, 1945, and returned to the service
 5 of the employer within one year of the date of being otherwise than dishonorably discharged and
 6 remained in that employment until having established membership in the Public Employees Retirement
 7 System.

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

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

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

17 (a) Persons engaged as independent contractors.

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

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

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

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

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

32 (a) The average salary per calendar year paid by one or more participating public employers to
 33 an employee who is an active member of the system in three of the calendar years of membership
 34 before the effective date of retirement of the employee, in which three years the employee was paid
 35 the highest salary. The three calendar years in which the employee was paid the largest total salary
 36 may include calendar years in which the employee was employed for less than a full calendar year.
 37 If the number of calendar years of active membership before the effective date of retirement of the
 38 employee is three or fewer, the final average salary for the employee is the average salary per cal-
 39 endar year paid by one or more participating public employers to the employee in all of those years,
 40 without regard to whether the employee was employed for the full calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (14) "Normal retirement age" means:

23 (a) For a [*person who establishes membership in the system before January 1, 1996, as described*
 24 *in ORS 238.430*] **Tier 1 PERS member**, 55 years of age if the employee retires at that age as a
 25 police officer or firefighter or 58 years of age if the employee retires at that age as other than a
 26 police officer or firefighter.

27 (b) For a [*person who establishes membership in the system on or after January 1, 1996, as de-*
 28 *scribed in ORS 238.430*] **Tier 2 PERS member**, 55 years of age if the employee retires at that age
 29 as a police officer or firefighter or 60 years of age if the employee retires at that age as other than
 30 a police officer or firefighter.

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

33 (16) "Police officer" includes:

34 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions
 35 whose duties, as assigned by the Director of the Department of Corrections, include the custody of
 36 persons committed to the custody of or transferred to the Department of Corrections and employees
 37 of the Department of Corrections who were classified as police officers on or before July 27, 1989,
 38 whether or not such classification was authorized by law.

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

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

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

45 (e) Police chiefs and police personnel of a city who are classified as police officers by the

1 council or other governing body of the city.

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

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

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

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

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

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

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

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

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

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

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

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

33 (r) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,
34 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who
35 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the
36 Department of Corrections or the Oregon Youth Authority.

37 (s) Employees at youth correction facilities as defined in ORS 420.005 whose primary job de-
38 scription involves the custody, control, treatment, investigation or supervision of juveniles placed
39 in such facilities.

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

42 (17) "Public employer" means the state, one of its agencies, any city, county, or municipal or
43 public corporation, any political subdivision of the state or any instrumentality thereof, or an agency
44 created by one or more such governmental organizations to provide governmental services. For
45 purposes of this chapter, such agency created by one or more governmental organizations is a gov-

1 ernmental instrumentality and a legal entity with power to enter into contracts, hold property and
 2 sue and be sued.

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

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

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

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

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

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

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

20 (C) Retroactive payments described in section 7, chapter 1, Oregon Laws 2010; and

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

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

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

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

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

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

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

32 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement
 33 gratuitous payment;

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

37 (H) Payments for instructional services rendered to institutions of the Oregon University System
 38 or the Oregon Health and Science University when such services are in excess of full-time employ-
 39 ment subject to this chapter. A person employed under a contract for less than 12 months is subject
 40 to this subparagraph only for the months to which the contract pertains; or

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

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

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

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

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

3 **SECTION 12.** ORS 238.255 is amended to read:

4 238.255. (1) The regular account for **Tier 1 PERS** members [*who established membership in the*
5 *system before January 1, 1996, as described in ORS 238.430*], and for alternate payees of those
6 members, shall be examined each year. If the regular account is credited with earnings for the pre-
7 vious year in an amount less than the earnings that would have been credited pursuant to the as-
8 sumed interest rate for that year determined by the Public Employees Retirement Board, the amount
9 of the difference shall be credited to the regular account and charged to a reserve account in the
10 fund established for the purpose. In years following the year for which a charge is made to the re-
11 serve account, all earnings on the regular accounts of **Tier 1 PERS** members [*who established*
12 *membership in the system before January 1, 1996, as described in ORS 238.430*], and of alternate
13 payees of those members, shall first be applied to reduce or eliminate the amount of a deficit. Only
14 earnings on the regular accounts of **Tier 1 PERS** members [*who established membership in the sys-*
15 *tem before January 1, 1996, as described in ORS 238.430*], and of alternate payees of those members,
16 may be used to reduce or eliminate the amount of a deficit.

17 (2) Notwithstanding subsection (1) of this section and except as provided in subsection (5) of this
18 section, the board may not credit any earnings to the regular accounts of **Tier 1 PERS** members
19 [*who established membership in the system before January 1, 1996, as described in ORS 238.430*], or
20 of alternate payees of those members, in any year in which there is a deficit in the reserve account
21 established under subsection (1) of this section, or credit any earnings to the regular accounts of
22 those members, or alternate payees **of those members**, that would result in a deficit in that reserve
23 account. In any year in which the fund experiences a loss, the board shall charge the amount of the
24 loss attributable to the regular accounts of **Tier 1 PERS** members [*who established membership in*
25 *the system before January 1, 1996, as described in ORS 238.430,*] against the reserve account.

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

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

33 (b) The reserve account established under subsection (1) of this section has been fully funded
34 as described in paragraph (a) of this subsection in each of the three immediately preceding calendar
35 years.

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

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

40 **SECTION 13.** ORS 238.258 is amended to read:

41 238.258. (1) Notwithstanding any other provision of this chapter, the regular account balance
42 of a member or alternate payee described in subsection (3) of this section may not be less than the
43 amount provided for under subsection (2) of this section for the purpose of computing retirement
44 allowances, death benefits and amounts to be paid to a withdrawing member under ORS 238.265 and
45 for other computations under the provisions of this chapter that are based on a member's or alter-

1 nate payee's regular account balance. If the regular account balance of a member or alternate payee
 2 described in subsection (3) of this section is less than the amount provided for under subsection (2)
 3 of this section at the time of retirement or withdrawal of the account, the Public Employees Re-
 4 tirement Board shall credit the account with the difference and charge the amount so credited to
 5 the reserve account established under ORS 238.255.

6 (2) The minimum regular account balance for a member or alternate payee described in sub-
 7 section (3) of this section is the amount that the regular account of a member or alternate payee
 8 would have contained if the regular account of the member had been credited with earnings at the
 9 assumed interest rate in every year in which the regular account of the member or alternate payee
 10 was in existence.

11 (3) The provisions of this section apply only to:

12 (a) A **Tier 1 PERS** member [*who establishes membership in the system before January 1, 1996,*
 13 *as described in ORS 238.430, and*] who retires or withdraws the member account of the member on
 14 or after April 1, 2004; and

15 (b) An alternate payee of a member described in paragraph (a) of this subsection.

16 **SECTION 14.** ORS 238.660 is amended to read:

17 238.660. (1) The Public Employees Retirement Fund is declared to be a trust fund, separate and
 18 distinct from the General Fund, for the uses and purposes set forth in this chapter and ORS chapter
 19 238A and ORS 237.950 to 237.980, and for no other use or purpose, except that this provision shall
 20 not be deemed to amend or impair the force or effect of any law of this state specifically authorizing
 21 the investment of moneys from the fund. Interest earned by the fund shall be credited to the fund.
 22 Except as otherwise specifically provided by law, the Public Employees Retirement Board estab-
 23 lished by ORS 238.630 is declared to be the trustee of the fund. Consistent with the legislative intent
 24 expressed in ORS 238.601, and to the extent it is consistent with the board's fiduciary duties, the
 25 board shall give equal consideration to the interests of participating public employers and the in-
 26 terests of members. Nothing in this subsection shall be construed to impose a fiduciary duty on the
 27 board to consider the interests of public employers, and the board shall consider the interests of
 28 public employers only with respect to matters unrelated to the board's fiduciary duties as trustee
 29 of the fund.

30 (2) Until all liabilities to members and their beneficiaries are satisfied, assets of the fund may
 31 not be diverted or otherwise put to any use that is not for the exclusive benefit of members and
 32 their beneficiaries. This subsection does not limit return of employer contributions for health bene-
 33 fits in the manner provided by ORS 238.410, 238.415 and 238.420 upon satisfaction of all liabilities
 34 for health benefits under those sections.

35 (3) The State of Oregon and other public employers that make contributions to the fund have
 36 no proprietary interest in the fund or in the contributions made to the fund by them. The state and
 37 other public employers disclaim any right to reclaim those contributions and waive any right of
 38 reclamation they may have in the fund. This subsection does not prohibit alteration or refund of
 39 employer contributions if the alteration or refund is authorized under this chapter or ORS chapter
 40 238A and is due to erroneous payment or decreased liability for employer contributions under the
 41 system. This subsection does not prohibit the offset of contributions to the individual account pro-
 42 gram under ORS 238.229 (5).

43 (4) The board may accept gifts of money or other property from any source, given for the uses
 44 and purposes of the system. Money so received shall be paid into the fund. Money or other property
 45 so received shall be used for the purposes for which received. Unless otherwise prescribed by the

1 source from which the money or other property is received, the money shall be considered as income
2 of the fund and the other property shall be retained, managed and disposed of as are investments
3 of the fund.

4 (5) All moneys paid into the fund shall be deposited with the State Treasurer, who shall be
5 custodian of the fund and pay all warrants drawn on it in compliance with law. No such warrant
6 shall be paid until the claim for which it is drawn is first approved by the director or designee and
7 otherwise audited and verified as required by law. Monthly, each beneficiary's gross benefit shall
8 be calculated; applicable deductions made for taxes, insurance and other withholdings; and the net
9 amount paid to the beneficiary, by check or by electronic funds transfer (EFT) to the beneficiary's
10 bank. A deduction summary shall be made, by type, and a check issued for the aggregate of each
11 type for transmittal to the appropriate taxing jurisdiction, vendor or institution. A voucher shall be
12 prepared and transmitted to the Oregon Department of Administrative Services for reimbursement
13 of the checking account, and the department shall draw a warrant on the State Treasurer, payable
14 to the Public Employees Retirement System, for the amount thereof.

15 (6) Any warrant, check or order for the payment of benefits or refunds under the system out of
16 the fund issued by the board which is canceled, declared void or otherwise made unpayable pursuant
17 to law because it is outstanding and unpaid for a period of more than two years, may be reissued
18 by the board without bond if the payee is located after such warrant, check or order is canceled,
19 declared void or otherwise made unpayable pursuant to law.

20 (7) All references in this chapter to checks or warrants are subject to the provisions of ORS
21 291.001.

22 (8) The board shall provide for an annual audit of the retirement fund and for an annual report
23 to the Legislative Assembly and to all members of, retirees of, and all employers participating in,
24 the system. The annual report must contain financial statements prepared in accordance with gen-
25 erally accepted accounting principles. The financial statements must include the report of any in-
26 dependent auditor.

27 (9) The board may review legislative proposals for changes in the benefits provided under this
28 chapter and ORS chapter 238A and may make recommendations to committees of the Legislative
29 Assembly on those proposed changes. In making recommendations under this subsection, the board
30 acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommen-
31 dations under this subsection [*on the Oregon Public Service Retirement Plan established by*] **for**
32 **benefits under** ORS chapter 238A, the board shall seek to maintain the balance between benefits
33 and costs, and the relative risk borne by employers and employees with respect to investment per-
34 formance, reflected in ORS chapter 238A as in effect on January 1, 2004.

35 (10) The board shall appoint a committee to advise the board on legislative proposals for
36 changes in the benefits provided under this chapter and ORS chapter 238A. The committee must
37 have an equal number of members representing labor and management. No costs of reviewing leg-
38 islative proposals and making recommendations under this subsection may be charged to the fund.
39 Any member of the committee who is an active member of the system shall be released by the par-
40 ticipating public employer who employs the member for the purpose of conducting the official busi-
41 ness of the committee, and the wages or salary of the member may not be reduced by the employer
42 during periods that the member is released from duty for the purpose of conducting the official
43 business of the committee.

44 **SECTION 15.** ORS 238A.005, as amended by section 9, chapter 1, Oregon Laws 2010, and section
45 1, chapter 82, Oregon Laws 2010, is amended to read:

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

(1) “Active member” means a member of the pension program or the individual account program [of the Oregon Public Service Retirement Plan] who is actively employed in a qualifying position.

(2) “Actuarial equivalent” means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.

(3) “Board” means the Public Employees Retirement Board.

(4) “Eligible employee” means a person who performs services for a participating public employer, including elected officials other than judges. “Eligible employee” does not include:

(a) Persons engaged as independent contractors;

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

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

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

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

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

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

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

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

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

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

(L) Judges.

(5) “Firefighter” means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

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

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

(6) “Fund” means the Public Employees Retirement Fund.

(7)(a) “Hour of service” means:

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

(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance

1 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-
2 thorized leave.

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

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

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

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

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

16 (12) "Pension program" means the defined benefit pension program [*of the Oregon Public Service*
17 *Retirement Plan*] established under ORS 238A.025.

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

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

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

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

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

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

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

36 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit
37 plan by the employer at the election of the employee and that is not includable in the taxable in-
38 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2009.

39 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
40 election of the employee and that is not included in the taxable income of the employee by reason
41 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2009.

42 (E) Retroactive payments described in section 7, chapter 1, Oregon Laws 2010.

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

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

3 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
4 652.190.

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

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

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

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

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

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

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

16 (G) Payments for instructional services rendered to institutions of the Oregon University System
17 or the Oregon Health and Science University when those services are in excess of full-time em-
18 ployment subject to this chapter. A person employed under a contract for less than 12 months is
19 subject to this subparagraph only for the months covered by the contract.

20 (H) The amount of an employee contribution to the individual account program that is paid by
21 the employer and is not deducted from the compensation of the employee, as provided under ORS
22 238A.335 (1) and (2)(b).

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

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

29 **SECTION 16.** ORS 238A.025 is amended to read:

30 238A.025. (1) [*The Oregon Public Service Retirement Plan is established.*] The purpose of [*the*
31 *Oregon Public Service Retirement Plan*] **this chapter** is to provide career public employees with a
32 secure and fair retirement income at an affordable, stable and predictable cost to the taxpayers. The
33 [*Oregon Public Service Retirement Plan is composed*] **benefits provided by this chapter consist** of
34 a pension program and an individual account program. The pension program and the individual
35 account program are separate accounts for purposes of federal income tax qualification, and the
36 assets of each program must be held as part of the trust established by ORS 238.660 for the exclu-
37 sive benefit of the participants and beneficiaries. It is the intent of the Legislative Assembly that
38 pursuant to section 414(k) of the Internal Revenue Code the individual account program be estab-
39 lished and maintained as a tax-qualified defined contribution governmental plan for the purposes of
40 sections 72(d) and 415 of the Internal Revenue Code. The Public Employees Retirement Board may
41 create separate accounts within the Public Employees Retirement Fund for the pension program and
42 the individual account program.

43 (2) Notwithstanding any provision of ORS chapter 238, [*any person who is employed by a par-*
44 *ticipating public employer on or after August 29, 2003, and who has not established membership in the*
45 *Public Employees Retirement System before August 29, 2003,*] **a Tier 3 PERS member** is entitled to

1 receive only the benefits provided under *[the Oregon Public Service Retirement Plan]* **this chapter**
 2 for periods of service with participating public employers on and after August 29, 2003, and has no
 3 right or claim to any benefit under ORS chapter 238 except as specifically provided by this chapter.

4 (3) *[Any person who is a member of the Public Employees Retirement System on August 28,*
 5 *2003,]* **A person who is a Tier 1 PERS member or Tier 2 PERS member** is entitled to receive
 6 the benefits provided by ORS chapter 238 for all service performed before, on and after August 29,
 7 2003, unless the person's membership in the system is subsequently terminated under ORS 238.095.
 8 If the person's membership in the system is terminated under ORS 238.095 on or after August 29,
 9 2003, the person is entitled to receive the benefits provided under *[the Oregon Public Service Re-*
 10 *tirement Plan]* **this chapter** for periods of service with participating public employers after the ter-
 11 mination of membership.

12 *[(4) A person establishes membership in the system before August 29, 2003, for the purposes of this*
 13 *section if:]*

14 *[(a) The person is a member of the system, or a judge member of the system, on August 28, 2003;*
 15 *or]*

16 *[(b) The person performed any period of service for a participating public employer before August*
 17 *29, 2003, that is credited to the six-month period of employment required of an employee under ORS*
 18 *238.015 before an employee may become a member of the system.]*

19 [(5)] **(4)** Except as provided in this chapter, ORS chapter 238 does not apply to *[the Oregon*
 20 *Public Service Retirement Plan]* **Tier 3 PERS members.**

21 [(6) *The provisions of this section do not apply to a person elected or appointed as a judge as de-*
 22 *finied in ORS 238.500.]*

23 **SECTION 17.** ORS 238A.030 is amended to read:

24 238A.030. Subject to such direction and oversight as may be provided by the Legislative As-
 25 sembly, the Public Employees Retirement Board shall take all steps necessary to develop and im-
 26 plement a dedicated information technology system to manage the *[Oregon Public Service Retirement*
 27 *Plan established by ORS chapter 238A]* **implementation of this chapter.** The board shall ensure
 28 that the essential record keeping components of the information technology system are in operation
 29 as soon as practicable. The board shall ensure that the information technology system is designed
 30 to support the current and future business and technology needs of the Public Employees Retirement
 31 System arising out of the implementation of ORS chapter 238A.

32 **SECTION 18.** ORS 238A.050, as amended by section 5, chapter 1, Oregon Laws 2010, is amended
 33 to read:

34 238A.050. [(1) *The Oregon Public Service Retirement Plan is part of the Public Employees Retire-*
 35 *ment System and is administered by the Public Employees Retirement Board.]*

36 [(2)] **(1)** Sections 3 and 7, chapter 1, Oregon Laws 2010, and ORS 238.225, 238.229, 238.231,
 37 238.410, 238.445, 238.450, 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610,
 38 238.615, 238.618, 238.630, 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692,
 39 238.694, 238.695, 238.696, 238.698, 238.700, 238.705, 238.710 and 238.715 apply to *[the Oregon Public*
 40 *Service Retirement Plan]* **Tier 3 PERS members.**

41 [(3) *The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement*
 42 *Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4) of this*
 43 *section, the investment of Oregon Public Service Retirement Plan assets is subject to the provisions of*
 44 *ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the individual account*
 45 *program and pension program differently than the other assets of the Public Employees Retirement*

1 *System.]*

2 [(4) *Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the*
3 *limitations imposed by ORS 293.726 (6).]*

4 [(5)] (2) The **Public Employees Retirement** Board may contract with a private provider for the
5 administration of the individual account program. The board is not subject to the provisions of ORS
6 chapter 279A or 279B in awarding a contract under the provisions of this subsection. The board
7 shall establish procedures for inviting proposals and awarding contracts under this subsection.

8 **SECTION 19.** ORS 238A.070 is amended to read:

9 238A.070. (1) All public employers participating in the Public Employees Retirement System on
10 August 29, 2003:

11 (a) Shall continue to be participating public employers for the purpose of [*the Oregon Public*
12 *Service Retirement Plan*] **this chapter**;

13 (b) Shall provide benefits under the pension program established under ORS 238A.100 to
14 238A.245 for eligible employees who are members of the pension program; and

15 (c) Shall participate in the individual account program.

16 (2) Any participating public employer that provided retirement benefits under ORS chapter 238
17 for some but not all of the employees of the participating public employer on August 28, 2003, need
18 not provide benefits under [*the Oregon Public Service Retirement Plan*] **this chapter** for any class
19 of employees who were not members of the system on August 28, 2003.

20 (3) Any public employer that is not a participating public employer on August 28, 2003, may
21 become a participating public employer under the pension program or the individual account pro-
22 gram, or both. A public employer may become a participating public employer under this subsection
23 only for the purposes of service performed by eligible employees of the public employer on or after
24 the date the public employer elects to participate in the program.

25 **SECTION 20.** ORS 238A.245 is amended to read:

26 238A.245. (1) Except as provided in subsection (3) of this section, the Public Employees Retire-
27 ment Board shall cease making pension payments to a retired member of the pension program who
28 is reemployed by a participating public employer in a qualifying position. A retired member of the
29 pension program who is employed in a qualifying position becomes an active member of the pension
30 program without serving the probationary period provided for in ORS 238A.100.

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

35 (3) A retired member of the pension program who becomes a member of the Legislative Assem-
36 bly shall continue to receive the pension elected by the member. A retired member of the pension
37 program who becomes a member of the Legislative Assembly may not elect under ORS 237.650 to
38 become an active member of the [*Oregon Public Service Retirement Plan*] **Public Employees Re-**
39 **irement System** or a legislator member of the state deferred compensation plan.

40 **SECTION 21.** ORS 238A.305 is amended to read:

41 238A.305. (1) Except as provided in subsection (2) of this section, all [*members of the Public*
42 *Employees Retirement System who established membership in the Public Employees Retirement System*
43 *before August 29, 2003, as described in ORS 238A.025*] **Tier 1 PERS members and Tier 2 PERS**
44 **members** become members of the individual account program on January 1, 2004.

45 (2) A member of the Public Employees Retirement System may not be a member of the individual

1 account program during any period of time during which the member is required to make contribu-
2 tions to the system under ORS 238.200.

3 (3) Solely for the purpose of determining the amount of the employee contribution for persons
4 who become members of the individual account program under this section, whether paid by the
5 employee or by the employer, the Public Employees Retirement Board shall use the definition of
6 “salary” provided by ORS 238.005.

7 **SECTION 22.** ORS 238A.340 is amended to read:

8 238A.340. (1) A participating public employer may agree, by a written employment policy or
9 agreement, to make employer contributions for members of the individual account program employed
10 by the employer. The percentage of salary paid as employer contributions may not be less than one
11 percent of salary or more than six percent of salary, and must be a whole number. A participating
12 public employer may make an agreement under this section for specific groups of employees em-
13 ployed by the public employer.

14 (2) If a participating public employer makes employer contributions under this section and the
15 member for which the contributions are made fails to vest in the employer account under the pro-
16 visions of ORS 238A.320, the Public Employees Retirement Board shall apply the contributions in
17 the employer account against other obligations of the employer under [*the Oregon Public Service*
18 *Retirement Plan*] **this chapter**.

19 **SECTION 23.** ORS 238A.465 is amended to read:

20 238A.465. It is the intent of the Legislative Assembly that any increase in benefits under [*the*
21 *Oregon Public Service Retirement Plan*] **this chapter** be provided through changes in the individual
22 account program and not through changes in the pension program.

23 **SECTION 24.** ORS 238A.470 is amended to read:

24 238A.470. The Legislative Assembly may change the benefits payable to [*persons who become*
25 *members of the Public Employees Retirement System on or after August 29, 2003, as described in ORS*
26 *238A.025*] **Tier 3 PERS members**, as long as the change applies only to benefits attributable to
27 service performed and salary earned on or after the date the change is made.

28 **SECTION 25.** ORS 238A.475 is amended to read:

29 238A.475. Any law enacted after January 1, 2004, that has the effect of increasing the total li-
30 ability for benefits under this chapter that is in excess of one-tenth of one percent does not apply
31 to service by members of the Legislative Assembly that entitles those members to benefits under
32 [*the Oregon Public Service Retirement Plan*] **this chapter**.

33 **SECTION 26.** ORS 243.800 is amended to read:

34 243.800. (1) Notwithstanding any provision of ORS chapter 238 or 238A or ORS 243.910 to
35 243.945, the State Board of Higher Education shall establish and administer an Optional Retirement
36 Plan for administrative and academic employees of the Oregon University System who are eligible
37 for membership in the Public Employees Retirement System. The Optional Retirement Plan must be
38 a qualified plan under the Internal Revenue Code, capable of accepting funds transferred under
39 subsection (7) of this section without the transfer being treated as a taxable event under the Inter-
40 nal Revenue Code, and willing to accept those funds. Retirement and death benefits shall be pro-
41 vided under the plan by the purchase of annuity contracts, fixed or variable or a combination
42 thereof, or by contracts for investments in mutual funds.

43 (2) The State Board of Higher Education shall select at least two life insurance companies pro-
44 viding fixed and variable annuities and at least two investment companies providing mutual funds,
45 but not more than five companies in total, for the purpose of providing benefits under the Optional

1 Retirement Plan. The State Board of Higher Education shall establish selection criteria for the
2 purpose of this subsection.

3 (3) An administrative or academic employee may make an irrevocable election to participate in
4 the Optional Retirement Plan within six months after being employed. An election under this sub-
5 section is effective on the first day of the month following six full months of employment.

6 (4) An administrative or academic employee who does not elect to participate in the Optional
7 Retirement Plan:

8 (a) Remains or becomes a member of the Public Employees Retirement System in accordance
9 with ORS chapters 238 and 238A; or

10 (b) Continues to be assisted by the State Board of Higher Education under ORS 243.920 if the
11 employee is being so assisted.

12 (5) Except as provided in subsection (6) of this section, employees who elect to participate in the
13 Optional Retirement Plan are ineligible for active membership in the Public Employees Retirement
14 System or for any assistance by the State Board of Higher Education under ORS 243.920 as long as
15 those employees are employed in the Oregon University System and the plan is in effect.

16 (6)(a) An administrative or academic employee who elects to participate in the Optional Retirement
17 Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who
18 is not vested shall be considered by the Public Employees Retirement Board to be a terminated
19 member under the provisions of ORS 238.095 as of the effective date of the election, and the amount
20 credited to the member account of the member shall be transferred directly to the Optional Retirement
21 Plan by the Public Employees Retirement Board in the manner provided by subsection (7) of
22 this section.

23 (b) An administrative or academic employee who elects to participate in the Optional Retirement
24 Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is
25 vested shall be considered to be an inactive member by the Public Employees Retirement Board and
26 shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes
27 a written request to the Public Employees Retirement Board for a transfer of the amounts credited
28 to the member account of the member to the Optional Retirement Plan. A request for a transfer
29 must be made at the time the member elects to participate in the Optional Retirement Plan. Upon
30 receiving the request, the Public Employees Retirement Board shall transfer all amounts credited
31 to the member account of the member directly to the Optional Retirement Plan, and shall terminate
32 all rights, privileges and options of the employee under ORS chapter 238.

33 (c) An administrative or academic employee who elects to participate in the Optional Retirement
34 Plan, and who is not a vested member of the pension program [*of the Oregon Public Service Retirement*
35 *Plan as described in ORS 238A.115*] **established under ORS chapter 238A** on the date that
36 the election becomes effective, shall be considered to be a terminated member of the pension pro-
37 gram by the Public Employees Retirement Board as of the effective date of the election.

38 (d) An administrative or academic employee who elects to participate in the Optional Retirement
39 Plan, and who is a vested member of the pension program [*of the Oregon Public Service Retirement*
40 *Plan as described in ORS 238A.115*] **established under ORS chapter 238A** on the date that the
41 election becomes effective, shall be considered an inactive member of the pension program by the
42 Public Employees Retirement Board as of the effective date of the election. An employee who is
43 subject to the provisions of this paragraph retains all the rights, privileges and options of an inac-
44 tive member of the pension program. If the actuarial equivalent of the employee's benefit under the
45 pension program at the time that the election becomes effective is \$5,000 or less, the employee may

1 make a written request to the Public Employees Retirement Board for a transfer of the employee's
2 interest under the pension program to the Optional Retirement Plan. The request must be made at
3 the time the member elects to participate in the Optional Retirement Plan. Upon receiving the re-
4 quest, the Public Employees Retirement Board shall transfer the amount determined to be the
5 actuarial equivalent of the employee's benefit under the pension program directly to the Optional
6 Retirement Plan, and shall terminate the membership of the employee in the pension program.

7 (e) An administrative or academic employee who elects to participate in the Optional Retirement
8 Plan, and who is a vested member of the individual account program [*of the Oregon Public Service*
9 *Retirement Plan as described in ORS 238A.320*] **established under ORS chapter 238A** on the date
10 that the election becomes effective, shall be considered an inactive member of the individual account
11 program by the Public Employees Retirement Board as of the effective date of the election. An em-
12 ployee who is subject to the provisions of this paragraph retains all the rights, privileges and
13 options of an inactive member of the individual account program. An administrative or academic
14 employee who elects to participate in the Optional Retirement Plan, and who is a member of the
15 individual account program [*of the Oregon Public Service Retirement Plan*] **established under ORS**
16 **chapter 238A**, may make a written request to the Public Employees Retirement Board that all
17 amounts in the member's employee account, rollover account and employer account, to the extent
18 the member is vested in those accounts under ORS 238A.320, be transferred to the Optional Retire-
19 ment Plan. The request must be made at the time the member elects to participate in the Optional
20 Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer
21 the amounts directly to the Optional Retirement Plan, and shall terminate the membership of the
22 employee in the individual account program upon making the transfer.

23 (f) Notwithstanding paragraphs (b), (d) and (e) of this subsection, the Public Employees Retire-
24 ment Board may not treat any employee as an inactive member under the provisions of this sub-
25 section for the purpose of receiving any benefit under ORS chapter 238 or 238A that requires that
26 the employee be separated from all service with participating public employers and with employers
27 who are treated as part of a participating public employer's controlled group under the federal laws
28 and rules governing the status of the system and the Public Employees Retirement Fund as a qual-
29 ified governmental retirement plan and trust.

30 (7) Any amounts transferred from the Public Employees Retirement Fund under subsection (6)
31 of this section shall be transferred directly to the Optional Retirement Plan by the Public Employees
32 Retirement Board and may not be made available to the employee.

33 (8) An employee participating in the Optional Retirement Plan shall contribute monthly an
34 amount equal to the percentage of the employee's salary that the employee would otherwise have
35 contributed as an employee contribution to the Public Employees Retirement System if the employee
36 had not elected to participate in the Optional Retirement Plan.

37 (9) The State Board of Higher Education shall contribute monthly to the Optional Retirement
38 Plan the percentage of salary of each employee participating in the plan equal to the percentage
39 of salary that would otherwise have been contributed as an employer contribution on behalf of the
40 employee to the Public Employees Retirement System, before any offset under ORS 238.229 (2), if the
41 employee had not elected to participate in the Optional Retirement Plan.

42 (10) Both employee and employer contributions to an Optional Retirement Plan shall be remitted
43 directly to the companies that have issued annuity contracts to the participating employees or di-
44 rectly to the mutual funds.

45 (11) Benefits under the Optional Retirement Plan are payable to employees who elect to partic-

1 ipate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accord-
2 ance with the terms of the annuity contracts or the terms of the contract with the mutual fund.
3 Employees electing to participate in the plan agree that benefits payable under the plan are not
4 obligations of the State of Oregon or of the Public Employees Retirement System.

5 **SECTION 27.** ORS 341.551 is amended to read:

6 341.551. (1) Notwithstanding any provision of ORS chapter 238 or 238A, the Department of
7 Community Colleges and Workforce Development may establish and administer an optional retire-
8 ment plan for administrative employees of community college districts who are eligible for member-
9 ship in the Public Employees Retirement System. Any community college district may participate in
10 the plan by giving written notice to the department.

11 (2) An administrative employee may make an election to participate in the optional retirement
12 plan if the community college district that employs the employee is participating in the plan. The
13 election must be made in the following manner:

14 (a) An administrative employee who is an active member of the Public Employees Retirement
15 System may make an election to participate in the plan within 180 days after the community college
16 district commences participation in the plan, effective on the first day of the month following the
17 election.

18 (b) An administrative employee who is hired after the community college district commences
19 participation in the plan may make an election to participate in the plan within the first six months
20 of employment, effective on the first day of the month following six full months of employment.

21 (3) An administrative employee who does not elect to participate in the optional retirement plan
22 remains or becomes a member of the Public Employees Retirement System in accordance with ORS
23 chapters 238 and 238A.

24 (4) An administrative employee may elect to participate in the optional retirement plan only if
25 at the time the election becomes effective the employee is not concurrently employed in a position
26 with any participating public employer other than the community college district in a position that
27 entitles the employee to membership in the Public Employees Retirement System. Except as pro-
28 vided in subsection (9) of this section, employees who elect to participate in the optional retirement
29 plan are ineligible for active membership in the Public Employees Retirement System for as long as
30 those employees are employed by a community college district that participates in the plan, whether
31 by reason of employment by the district or any other participating public employer.

32 (5)(a) An administrative employee who elects to participate in the optional retirement plan, who
33 has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is not vested shall
34 be considered by the Public Employees Retirement Board to be a terminated member under the
35 provisions of ORS 238.095 as of the effective date of the election, and the amount credited to the
36 member account of the member shall be transferred directly to the optional retirement plan by the
37 Public Employees Retirement Board in the manner provided by subsection (6) of this section.

38 (b) An administrative employee who elects to participate in the optional retirement plan, who
39 has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is vested shall
40 be considered to be an inactive member by the Public Employees Retirement Board and shall retain
41 all the rights, privileges and options under ORS chapter 238 unless the employee makes a written
42 request to the Public Employees Retirement Board for a transfer of the amounts credited to the
43 member account of the member to the optional retirement plan. A request for a transfer must be
44 made at the time the member elects to participate in the optional retirement plan. Upon receiving
45 the request, the Public Employees Retirement Board shall transfer all amounts credited to the

1 member account of the member directly to the optional retirement plan and shall terminate all
2 rights, privileges and options of the employee under ORS chapter 238.

3 (c) An administrative employee who elects to participate in the optional retirement plan and
4 who is not a vested member of the pension program [*of the Oregon Public Service Retirement Plan*
5 *as described in ORS 238A.115*] **established under ORS chapter 238A** on the date that the election
6 becomes effective shall be considered to be a terminated member of the pension program by the
7 Public Employees Retirement Board as of the effective date of the election.

8 (d) An administrative employee who elects to participate in the optional retirement plan and
9 who is a vested member of the pension program [*of the Oregon Public Service Retirement Plan as*
10 *described in ORS 238A.115*] **established under ORS chapter 238A** on the date that the election
11 becomes effective shall be considered an inactive member of the pension program by the Public
12 Employees Retirement Board as of the effective date of the election. An employee who is subject to
13 the provisions of this paragraph retains all the rights, privileges and options of an inactive member
14 of the pension program. If the actuarial equivalent of the employee's benefit under the pension pro-
15 gram at the time that the election becomes effective is \$5,000 or less, the employee may make a
16 written request to the Public Employees Retirement Board for a transfer of the employee's interest
17 under the pension program to the optional retirement plan. The request must be made at the time
18 the member elects to participate in the optional retirement plan. Upon receiving the request, the
19 Public Employees Retirement Board shall transfer the amount determined to be the actuarial
20 equivalent of the employee's benefit under the pension program directly to the optional retirement
21 plan and shall terminate the membership of the employee in the pension program.

22 (e) An administrative employee who elects to participate in the optional retirement plan and
23 who is a vested member of the individual account program [*of the Oregon Public Service Retirement*
24 *Plan as described in ORS 238A.320*] **established under ORS chapter 238A** on the date that the
25 election becomes effective shall be considered an inactive member of the individual account program
26 by the Public Employees Retirement Board as of the effective date of the election. An employee who
27 is subject to the provisions of this paragraph retains all the rights, privileges and options of an in-
28 active member of the individual account program. An administrative employee who elects to par-
29 ticipate in the optional retirement plan and who is a member of the individual account program [*of*
30 *the Oregon Public Service Retirement Plan*] **established under ORS chapter 238A** may make a
31 written request to the Public Employees Retirement Board that all amounts in the member's em-
32 ployee account, rollover account and employer account, to the extent the member is vested in those
33 accounts under ORS 238A.320, be transferred to the optional retirement plan. The request must be
34 made at the time the member elects to participate in the optional retirement plan. Upon receiving
35 the request, the Public Employees Retirement Board shall transfer the amounts directly to the op-
36 tional retirement plan and shall terminate the membership of the employee in the individual account
37 program.

38 (f) Notwithstanding paragraphs (b), (d) and (e) of this subsection, the Public Employees Retire-
39 ment Board shall not treat any employee as an inactive member under the provisions of this sub-
40 section for the purpose of receiving any benefit under ORS chapter 238 or 238A that requires that
41 the employee be separated from all service with participating public employers and with employers
42 who are treated as part of a participating public employer's controlled group under the federal laws
43 and rules governing the status of the Public Employees Retirement System and the Public Employees
44 Retirement Fund as a qualified governmental retirement plan and trust.

45 (6) Any amounts transferred from the Public Employees Retirement Fund under subsection (5)

1 of this section shall be transferred directly to the optional retirement plan by the Public Employees
 2 Retirement Board and shall not be made available to the employee.

3 (7) An employee participating in the optional retirement plan shall contribute monthly an
 4 amount equal to the percentage of the employee’s salary that the employee would otherwise have
 5 contributed as an employee contribution to the Public Employees Retirement System if the employee
 6 had not elected to participate in the optional retirement plan.

7 (8) A participating community college district shall contribute monthly to the optional retire-
 8 ment plan the percentage of salary for each employee participating in the plan that is equal to the
 9 percentage of salary that is required to be made as the employer contribution under ORS 238A.220,
 10 less any contributions made by reason of unfunded liabilities. The district may make contributions
 11 under this subsection only during periods of time in which the employee would be eligible for
 12 membership in the Public Employees Retirement System if the employee had not elected to partic-
 13 ipate in the optional retirement plan.

14 (9) An administrative employee who elects to participate in the optional retirement plan may
 15 make an election to withdraw from the plan. An employee may make an election under this sub-
 16 section only once. Upon withdrawing from the plan:

17 (a) All contributions made to the plan before the effective date of the withdrawal remain cred-
 18 ited to the employee;

19 (b) The employee becomes a member of the Public Employees Retirement System under ORS
 20 chapter 238A if the member meets all requirements for membership under ORS chapter 238A; and

21 (c) The employee is barred from ever again electing to participate in the optional retirement
 22 plan.

23 (10) For the purposes of this section, “administrative employee” means a president, vice presi-
 24 dent or dean, or a person holding a position that is the equivalent of a president, vice president or
 25 dean.

26 **SECTION 28. ORS 238.430 and 238.435 are repealed.**

27 **SECTION 29. The section captions used in this 2011 Act are provided only for the con-
 28 venience of the reader and do not become part of the statutory law of this state or express
 29 any legislative intent in the enactment of this 2011 Act.**

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