

# House Bill 2990

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**.

Establishes Fair Retirement Plan for persons hired on or after July 1, 2011, who have not established membership in Public Employees Retirement System before July 1, 2011. Specifies that Fair Retirement Plan be part of Public Employees Retirement System administered by Public Employees Retirement Board. Provides that Fair Retirement Plan be defined contribution plan.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to a public employee successor retirement plan; creating new provisions; amending ORS  
3 106.340, 169.810, 173.051, 192.502, 196.165, 237.620, 237.650, 238.105, 238.115, 238.265, 238.445,  
4 238.455, 238.465, 238.630, 238.645, 238.650, 238.700, 238.705, 238.715, 238A.245, 243.800, 243.830,  
5 268.240, 338.135, 341.290, 353.117, 377.836, 396.330, 576.306 and 777.775; repealing ORS 238.750;  
6 appropriating money; and declaring an emergency.

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

## DEFINITIONS

### **SECTION 1. For the purposes of sections 1 to 20 of this 2011 Act:**

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10  
11  
12 (1) **"Board"** means the Public Employees Retirement Board.

13 (2) **"Employee"** means an employee as described in ORS 238.005.

14 (3) **"Fair Plan"** means the Fair Retirement Plan established under sections 1 to 20 of this  
15 2011 Act.

16 (4) **"Fair Plan member"** means a person who has established membership in the Fair Plan  
17 under section 6 or 17 of this 2011 Act.

18 (5) **"Firefighter"** means:

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

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

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

26 (6) **"Participating public employer"** means a public employer as defined in ORS 238.005  
27 that participates in the system.

28 (7) **"Police officer"** means:

29 (a) Employees of the Department of State Police who are classified as police officers by  
30 the Superintendent of State Police.

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

3 (c) Police chiefs and police personnel of a city who are classified as police officers by the  
4 city council or other governing body of the city.

5 (d) Corrections officers as defined in ORS 181.610.

6 (e) Employees at youth correction facilities, as defined in ORS 420.005, whose primary job  
7 description involves the custody, control, treatment, investigation or supervision of juveniles  
8 placed in those facilities.

9 (8) "System" means the Public Employees Retirement System.

10  
11 **FAIR RETIREMENT PLAN**

12  
13 **SECTION 2.** (1) The Fair Retirement Plan is established. Notwithstanding any provision  
14 of ORS chapter 238 or 238A, any person who is employed by a participating public employer  
15 on or after July 1, 2011, and who has not established membership in the Public Employees  
16 Retirement System before July 1, 2011, is entitled to receive only the benefits provided under  
17 the Fair Plan for periods of service with participating public employers on and after July 1,  
18 2011, and has no right or claim to any benefit under ORS chapter 238 or 238A, except as  
19 specifically provided by sections 1 to 20 of this 2011 Act. A person who establishes member-  
20 ship in the system before July 1, 2011, is entitled to receive the benefits provided by ORS  
21 chapter 238 or 238A.

22 (2) A person establishes membership in the system before July 1, 2011, for the purposes  
23 of this section if:

24 (a) The person is a member of the system, or a judge member of the system, on June 30,  
25 2011; or

26 (b) The person performed any period of service for a participating public employer before  
27 July 1, 2011, that is credited to the six-month period of employment required of an employee  
28 under ORS 238A.100 before an employee may become a member of the system.

29 (3) Except as provided in sections 1 to 20 of this 2011 Act, ORS chapters 238 and 238A do  
30 not apply to the Fair Plan.

31 (4) The provisions of this section do not apply to a person elected or appointed as a  
32 member of the Legislative Assembly or as a judge of the Supreme Court, the Court of Ap-  
33 peals, the Oregon Tax Court or a circuit court.

34  
35 **ADMINISTRATION**

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37 **SECTION 3. Fair Retirement Plan administered by Public Employees Retirement Board.**

38 (1) The Fair Retirement Plan is part of the Public Employees Retirement System and is ad-  
39 ministered by the Public Employees Retirement Board.

40 (2) The board shall contract with a private sector firm for the recordkeeping and cus-  
41 tomer service functions of the Fair Plan. The board shall seek a firm that has economical  
42 pricing structures and the experience, knowledge and facilities to properly perform the  
43 functions specified in this subsection.

44 (3) ORS 238.035, 238.156, 238.445, 238.600, 238.601, 238.615, 238.618, 238.630, 238.635, 238.640,  
45 238.645, 238.650, 238.655, 238.700, 238.705, 238.710 and 238.715 apply to the Fair Plan.

1 (4) Amounts contributed by or on behalf of Fair Plan members shall be held separate and  
2 distinct from the General Fund and the Public Employees Retirement Fund, but may be  
3 commingled with the assets of the Public Employees Retirement Fund for investment pur-  
4 poses.

5 **SECTION 4. Administrative costs of Fair Retirement Plan.** (1) The Public Employees  
6 Retirement Board shall implement and administer sections 1 to 20 of this 2011 Act so that:

7 (a) No expense is incurred by participating public employers or by the Public Employees  
8 Retirement Fund for the implementation and administration of the Fair Retirement Plan;  
9 and

10 (b) Participating public employers and the Public Employees Retirement System incur  
11 no liabilities other than those liabilities that are imposed under sections 1 to 20 of this 2011  
12 Act or other law.

13 (2) The system may assess a charge against the member account of a Fair Plan member.  
14 Funds collected pursuant to the charge are continuously appropriated to the board and may  
15 be used only to cover the costs incurred by the system to implement and administer the Fair  
16 Plan.

17  
18 **PARTICIPATION BY PUBLIC EMPLOYERS**  
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20 **SECTION 5. Participation generally.** (1) All public employers participating in the Public  
21 Employees Retirement System on July 1, 2011:

22 (a) Shall continue to be participating public employers for the purposes of the Fair Re-  
23 tirement Plan; and

24 (b) Shall provide benefits under the Fair Plan for Fair Plan employees.

25 (2) Any participating public employer that provided retirement benefits under ORS  
26 chapter 238 or 238A for some, but not all, of the employees of the participating public em-  
27 ployer on June 30, 2011, need not provide benefits under the Fair Plan for any class of em-  
28 ployees who were not members of the system on June 30, 2011.

29 (3) Any public employer that is not a participating public employer on June 30, 2011, may  
30 become a participating public employer under the Fair Plan. A public employer may become  
31 a participating public employer under this subsection only for the purposes of service per-  
32 formed by employees of the public employer on or after the date the public employer elects  
33 to participate in the Fair Plan.

34  
35 **MEMBERSHIP**  
36

37 **SECTION 6. Establishing membership in Fair Retirement Plan; member account.** (1) Any  
38 person who is employed by a participating public employer on or after July 1, 2011, and who  
39 has not established membership in the Public Employees Retirement System before July 1,  
40 2011, as described in section 2 of this 2011 Act, becomes a member of the Fair Retirement  
41 Plan after completing six full calendar months of employment, unless the employee elects  
42 not to become a Fair Plan member. The six-month probationary period may not be inter-  
43 rupted by more than 30 consecutive working days.

44 (2) Unless the employee elects not to become a member, upon completion of the six-  
45 month probationary period required by this section, an employee shall become a member of

1 the Fair Plan on the first day of the next full month following the six-month period.

2 (3) Upon a person's becoming a Fair Plan member under this section, the Public Em-  
 3 ployees Retirement Board shall create a member account for the person. The member ac-  
 4 count shall consist of employee contributions made under section 7 of this 2011 Act and  
 5 employer contributions made under section 8 of this 2011 Act, adjusted to reflect any  
 6 earnings or losses on those contributions.

7  
 8 **CONTRIBUTIONS**  
 9

10 **SECTION 7. Employee contribution.** (1) A Fair Plan member may elect to make an em-  
 11 ployee contribution to the Fair Retirement Plan equal to a specific percentage of the Fair  
 12 Plan member's salary. The percentage may not be more than the amount allowed by the  
 13 federal law governing the Fair Plan's tax qualification and must be a whole number.

14 (2) A participating public employer may not assume or pay the employee contribution  
 15 provided for in this section, except that a participating public employer may structure the  
 16 compensation of the employee in a manner that allows a Fair Plan member who is employed  
 17 by the employer to make the employee contribution on a pretax basis.

18 **SECTION 8. Employer contributions.** (1) A participating public employer must contribute  
 19 to the Fair Retirement Plan a base amount equal to three percent of the salary of each Fair  
 20 Plan member employed by the employer. The base amount must be contributed for all  
 21 members, without regard to whether the employee makes any contributions under section 7  
 22 of this 2011 Act.

23 (2) In addition to the base amount required under subsection (1) of this section, for a Fair  
 24 Plan member who is not a police officer or firefighter, a participating public employer must  
 25 make contributions equal to one percent of a Fair Plan member's salary for every two per-  
 26 cent of salary contributed by the Fair Plan member under section 7 of this 2011 Act. In no  
 27 event may the total contribution by the employer for a Fair Plan member who is not a police  
 28 officer or firefighter exceed an amount equal to six percent of the Fair Plan member's salary.

29 (3) In addition to the base amount required under subsection (1) of this section, for a Fair  
 30 Plan member who is a police officer or firefighter, a participating public employer who em-  
 31 ploys the Fair Plan member as a police officer or firefighter must make contributions equal  
 32 to one and one-third percent of the Fair Plan member's salary for every two percent of sal-  
 33 ary contributed by the Fair Plan member under section 7 of this 2011 Act. However, if a Fair  
 34 Plan member who is a police officer or firefighter contributes six percent of the Fair Plan  
 35 member's salary, the total employer contribution shall be an amount equal to 7.15 percent  
 36 of the Fair Plan member's salary. In no event may the total contribution by the employer  
 37 for a Fair Plan member who is a police officer or firefighter exceed an amount equal to 7.15  
 38 percent of the Fair Plan member's salary.

39 **SECTION 9. Salary defined.** (1) For the purpose of computing employer and employee  
 40 contributions under sections 7 and 8 of this 2011 Act, "salary" means the remuneration paid  
 41 to a Fair Plan member in return for service to the participating public employer, including  
 42 remuneration in the form of living quarters, board or other items of value, to the extent the  
 43 remuneration is includable in the employee's taxable income under Oregon law. "Salary" in-  
 44 cludes the additional amounts specified in subsection (2) of this section, but does not include  
 45 the amounts specified in subsection (3) of this section, regardless of whether those amounts

1 are includable in taxable income.

2 (2) For the purpose of computing employer and employee contributions under sections 7  
3 and 8 of this 2011 Act, "salary" includes the following amounts:

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

6 (b) Contributions to a tax-sheltered or deferred annuity that are made at the election of  
7 the employee.

8 (c) Any amount that is contributed to a cafeteria plan or qualified transportation fringe  
9 benefit plan by the employer at the election of the employee and that is not includable in the  
10 taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on the  
11 effective date of this 2011 Act.

12 (d) Retroactive payments made to an employee to correct a clerical error, pursuant to  
13 an award by a court or by order of or pursuant to a conciliation agreement with an admin-  
14 istrative agency charged with enforcing federal or state law protecting the employee's rights  
15 to employment or wages, which shall be allocated to and deemed paid in the periods in which  
16 the work was done or in which the work would have been done.

17 (3) For the purpose of computing employer and employee contributions under sections 7  
18 and 8 of this 2011 Act, "salary" does not include the following amounts:

19 (a) Money paid for overtime or bonuses.

20 (b) Travel expenses or any other expenses incidental to an employer's business that are  
21 reimbursed by the employer.

22 (c) Payments made on account of an employee's death.

23 (d) Any lump sum payment for accumulated unused sick leave, vacation leave or other  
24 paid leave.

25 (e) Any accelerated payment of an employment contract for a future period or any ad-  
26 vance against future wages.

27 (f) Any retirement incentive, retirement severance pay, retirement bonus or retirement  
28 gratuitous payment.

29 (g) Payment for a leave of absence after the date the employer and employee have agreed  
30 that no future service will be performed.

31 (h) Payments for instructional services rendered to institutions of the Oregon University  
32 System or the Oregon Health and Science University when those services are in excess of  
33 full-time employment subject to sections 1 to 20 of this 2011 Act. A person employed under  
34 a contract for less than 12 months is subject to this paragraph only for the months covered  
35 by the contract.

36 (i) Any amount in excess of \$200,000 for a calendar year. If any period over which salary  
37 is determined is less than 12 months, the \$200,000 limitation for that period shall be multi-  
38 plied by a fraction, the numerator of which is the number of months in the determination  
39 period and the denominator of which is 12. The Public Employees Retirement Board shall  
40 adopt rules adjusting this dollar limit to incorporate adjustments authorized by the Internal  
41 Revenue Service.

42 **SECTION 10. Collective bargaining agreements.** Notwithstanding section 7 of this 2011  
43 Act, if a participating public employer is paying employee contributions for employees of the  
44 employer pursuant to ORS 238.205 or 238A.335 under a collective bargaining agreement in  
45 effect on July 1, 2011, the employer shall continue to make those contributions under the

1 Fair Retirement Plan until such time as the term of the agreement expires. Upon the expi-  
 2 ration of the collective bargaining agreement, the participating public employer may not  
 3 thereafter “pick-up,” assume or pay the employee contributions.

4  
 5 **VESTING**

6  
 7 **SECTION 11. Vesting; loans.** (1) A Fair Plan member vests in employee contributions  
 8 when the contributions are made.

9 (2) A Fair Plan member vests in employer contributions when employer contributions  
 10 have been made on behalf of the member in each of 54 consecutive months.

11 (3) The Public Employees Retirement Board shall establish a mechanism under which a  
 12 Fair Plan member may borrow amounts from the member account established under section  
 13 6 of this 2011 Act. A member may borrow only from amounts in which the member has be-  
 14 come vested under this section. The board shall limit loans to terms and conditions allowed  
 15 under the tax qualification of the Fair Retirement Plan.

16  
 17 **INVESTMENT OF MONEYS IN MEMBER ACCOUNTS**

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 19 **SECTION 12. Investment program.** (1) The Oregon Investment Council shall establish a  
 20 program for investment of moneys in Fair Plan member accounts. The program shall include  
 21 policies and procedures for the investment of moneys in the accounts. The program and all  
 22 investments of moneys under the program are subject to the provisions of ORS 293.701 to  
 23 293.820.

24 (2) The council shall provide to the Public Employees Retirement Board a description, set  
 25 forth in the council’s policies and procedures, of the investment options for moneys in Fair  
 26 Plan member accounts, the applicable benchmark for each option and a description of the  
 27 characteristics of each benchmark. The council shall provide at least nine different invest-  
 28 ment options with a range of investment risks.

29 (3) The provisions of ORS chapter 59 that require registration of securities do not apply  
 30 to any share, participation or other interest under the investment program established under  
 31 this section. The provisions of ORS chapter 59 that require licensing of certain persons as  
 32 broker-dealers or as investment advisers do not apply to any of the following persons or  
 33 entities for the purposes of implementing and administering the investment program estab-  
 34 lished under this section:

- 35 (a) The Oregon Investment Council.
- 36 (b) The Public Employees Retirement Board.
- 37 (c) The Public Employees Retirement System.
- 38 (d) The State Treasurer.
- 39 (e) Any officer or employee of the persons or entities described in paragraphs (a) to (d)  
 40 of this subsection.

41 **SECTION 13. Self-direction of investments.** A Fair Plan member may elect any invest-  
 42 ment option offered under the investment program established under section 12 of this 2011  
 43 Act for all or part of the moneys in a member account. The Public Employees Retirement  
 44 Board by rule shall provide for the manner in which changes in investment options may be  
 45 made by a Fair Plan member.

## WITHDRAWAL OF MEMBER ACCOUNT

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2  
3 **SECTION 14. Account may be withdrawn by inactive member at any time after leaving**  
4 **public employment.** (1) An inactive Fair Plan member may withdraw the member's account  
5 at any time.

6 (2) Withdrawal of a member account under this section cancels all membership rights in  
7 the Fair Retirement Plan.

8 (3) If a Fair Plan member withdraws the member account and is subsequently reem-  
9 ployed by a participating public employer, the person may reestablish membership under the  
10 Fair Plan only for the purposes of service performed after the person is reemployed.

11 (4) A Fair Plan member is inactive for the purposes of this section if the member is  
12 separated from all service with participating public employers and with employers that are  
13 treated as part of a participating public employer's controlled group under the federal laws  
14 and rules governing the status of the Fair Plan as a qualified governmental retirement plan  
15 and trust.

## DEATH BENEFIT

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18  
19 **SECTION 15. Death benefit.** (1) If a Fair Plan member dies before retiring, the Public  
20 Employees Retirement Board shall pay all money credited at the time of death to the mem-  
21 ber account of the member in which the member has become vested under section 11 of this  
22 2011 Act to one or more beneficiaries designated by the member. A Fair Plan member may  
23 designate as a beneficiary any person, including the personal representative for the estate  
24 of the member or a trustee named by the member. The withdrawal of a member's account  
25 under section 14 of this 2011 Act invalidates any designation of a beneficiary under this sec-  
26 tion.

27 (2) If a Fair Plan member dies before retiring and has not designated a beneficiary under  
28 subsection (1) of this section, the board shall pay all money credited at the time of death to  
29 the member account of the member in which the member has become vested under section  
30 11 of this 2011 Act to the personal representative appointed for the estate of the deceased  
31 member. If an affidavit has been filed under ORS 114.505 to 114.560 and the amount of pay-  
32 ment does not exceed the maximum amount of personal property for which an affidavit may  
33 be filed under ORS 114.505 to 114.560, the board shall pay the amount to the person who filed  
34 the affidavit.

35 (3) If a Fair Plan member dies before retiring and has designated a beneficiary under  
36 subsection (1) of this section, but the beneficiary dies before the member or dies before dis-  
37 tribution is made under this section, the board shall pay the amount of money that would  
38 otherwise have been paid to the beneficiary to the personal representative appointed for the  
39 estate of the deceased beneficiary. If an affidavit has been filed under ORS 114.505 to 114.560  
40 and the amount of money that would have been paid to the beneficiary does not exceed the  
41 maximum amount of personal property for which an affidavit may be filed under ORS 114.505  
42 to 114.560, the board shall pay the amount to the person who filed the affidavit on behalf of  
43 the estate of the beneficiary.

44 (4) Payment by the board of a death benefit in the manner provided by this section  
45 completely discharges the board and the Public Employees Retirement System from any li-

1 ability for amounts owing by reason of the death of a Fair Plan member.

2  
3 **BENEFITS UPON RETIREMENT**  
4

5 **SECTION 16. Annuities and other payout options.** The Public Employees Retirement  
6 Board shall by rule provide for annuities and other payout options for retired Fair Plan  
7 members. Annuities offered by the board may be fixed or variable. The board may not offer  
8 any annuity or other payout option that would require that a participating public employer  
9 make any contribution beyond the contributions required by section 8 of this 2011 Act. The  
10 board may not allow a Fair Plan member to receive an annuity or other payout before the  
11 member reaches the minimum retirement age provided for in the Fair Retirement Plan's tax  
12 qualification. The board shall ensure that minimum distribution requirements imposed under  
13 the Fair Plan's tax qualification are met.

14  
15 **CONVERSION TO FAIR RETIREMENT PLAN**  
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17 **SECTION 17.** (1) Any employee who establishes membership in the Public Employees  
18 Retirement System before July 1, 2011, as described in section 2 of this 2011 Act, and who is  
19 an active member, as defined in ORS 238.005 or 238A.005, may elect to convert the employee's  
20 retirement benefit to the Fair Retirement Plan. Upon conversion, the amounts in the regular  
21 account established for the employee under ORS 238.250, along with a matching amount  
22 funded by employer contributions, and any amounts in the variable account established for  
23 the employee under ORS 238.260 shall be transferred to a member account established for  
24 the employee under section 6 of this 2011 Act.

25 (2) If the Public Employees Retirement Board is informed by the Oregon Investment  
26 Council that the number of conversions elected under this section could negatively affect the  
27 Public Employees Retirement Fund, the board may require that amounts be transferred un-  
28 der this section in not more than five annual installments. Interest shall be paid on the  
29 amounts not immediately transferred at a rate established by the board.

30  
31 **BENEFIT INCREASES**  
32

33 **SECTION 18. Local government approval of benefit increases.** (1) Any benefit increase  
34 that is described in subsection (2) of this section and that is provided for by laws that become  
35 effective on or after the effective date of this 2011 Act applies to participating public em-  
36 ployers other than the state only if the benefit increase is approved in writing by the par-  
37 ticipating public employer. Written approval of the benefit increase must be delivered to the  
38 Public Employees Retirement Board within three months after the session of the Legislative  
39 Assembly that enacted the benefit increase adjourns sine die. If the benefit increase is ap-  
40 proved in the manner provided by this section, the benefit increase becomes operative on  
41 January 1 of the next calendar year.

42 (2) The provisions of this section apply to any change to the benefits provided under  
43 sections 1 to 20 of this 2011 Act that is the result of laws enacted during a single legislative  
44 session, excluding any change that is made solely to maintain the status of the Fair Retirement  
45 Plan as a tax-qualified governmental plan, if the change results in an increase in the



1 total liability for benefits under the Fair Plan, whether funded or not funded, that is in ex-  
 2 cess of one-tenth of one percent.

3 **SECTION 19. Application of benefit increases to legislators.** Any law enacted after Jan-  
 4 uary 1, 2012, that has the effect of increasing the total liability for benefits under sections 1  
 5 to 20 of this 2011 Act that is in excess of one-tenth of one percent does not apply to service  
 6 by members of the Legislative Assembly that entitles those members to benefits under  
 7 sections 1 to 20 of this 2011 Act.

8  
 9 **CONTRACT RIGHTS**

10  
 11 **SECTION 20.** Except as provided in section 18 of this 2011 Act, nothing in sections 1 to  
 12 20 of this 2011 Act prevents the Legislative Assembly or the Public Employees Retirement  
 13 Board from changing or terminating the retirement benefits payable to persons who become  
 14 Fair Plan members on or after July 1, 2011, as described in section 2 of this 2011 Act, as long  
 15 as the change or termination applies only to benefits accruing on or after the date the  
 16 change or termination is effective.

17  
 18 **TAX QUALIFICATION**

19  
 20 **SECTION 21.** (1) Except as provided in this section, sections 1 to 20 and 22 of this 2011  
 21 Act, the amendments to ORS 106.340, 169.810, 173.051, 192.502, 196.165, 237.620, 237.650, 238.105,  
 22 238.115, 238.265, 238.445, 238.455, 238.465, 238.630, 238.645, 238.650, 238.700, 238.705, 238.715,  
 23 238A.245, 243.800, 243.830, 268.240, 338.135, 341.290, 353.117, 377.836, 396.330, 576.306 and 777.775  
 24 by sections 23 to 52 of this 2011 Act and the repeal of ORS 238.750 by section 53 of this 2011  
 25 Act become operative on July 1, 2011.

26 (2) As soon as possible after the effective date of this 2011 Act, the Public Employees  
 27 Retirement Board shall submit the provisions of sections 1 to 20 of this 2011 Act to the  
 28 Internal Revenue Service and seek approval of sections 1 to 20 of this 2011 Act as a qualified  
 29 governmental retirement plan and trust under the Internal Revenue Code.

30 (3) As soon as possible after the effective date of this 2011 Act, the board shall adopt all  
 31 rules necessary for the implementation and operation of the Fair Retirement Plan.

32 **SECTION 22.** (1) Subject to the provisions of this section, until June 30, 2013, the Public  
 33 Employees Retirement System may use assets of the Public Employees Retirement Fund  
 34 that are unrelated to sections 1 to 20 of this 2011 Act to pay the administrative costs of the  
 35 Fair Retirement Plan.

36 (2) Before January 1, 2018, the Public Employees Retirement Board shall transfer from  
 37 accounts established under the Fair Retirement Plan the amount used under subsection (1)  
 38 of this section, with interest, to accounts in the fund established to provide retirement ben-  
 39 efits under ORS chapter 238. The rate of interest must be at least equal to the rate that the  
 40 moneys would have earned had the moneys remained invested in the fund established to  
 41 provide retirement benefits under ORS chapter 238, and in no event less than two percent  
 42 per annum.

43 (3) Until such time as all moneys and interest are repaid under subsection (2) of this  
 44 section, beneficiaries of the fund established to provide retirement benefits under ORS  
 45 chapter 238 have a security interest in the assets of the Fair Retirement Plan equal to the

1 amount used under subsection (1) of this section and the interest required under subsection  
 2 (2) of this section. The security interest may be foreclosed in an action at law.

3 (4) If the board fails to transfer any amount required under subsection (2) of this section  
 4 before January 1, 2018, a person entitled to benefits under ORS chapter 238 may bring a  
 5 mandamus action to compel the board to make the transfer and to perform all acts within  
 6 the authority of the board to collect employer or employee contributions to the Fair Retirement  
 7 Plan necessary to fund the transfer.

8 (5) In determining the amount of employer contributions necessary under the Fair Retirement  
 9 Plan, the board shall include any amounts required to be transferred under subsection  
 10 (2) of this section that are attributable to paying the costs of administering the Fair  
 11 Retirement Plan.

12 (6) The board shall deduct from the member accounts established under section 6 of this  
 13 2011 Act the amounts to be transferred under subsection (2) of this section that are attributable  
 14 to paying the costs of administering the Fair Retirement Plan. The deduction must  
 15 be a uniform percentage of the member accounts.

16  
 17 **CONFORMING AMENDMENTS**  
 18

19 **SECTION 23.** ORS 106.340 is amended to read:

20 106.340. (1) Any privilege, immunity, right or benefit granted by statute, administrative or court  
 21 rule, policy, common law or any other law to an individual because the individual is or was married,  
 22 or because the individual is or was an in-law in a specified way to another individual, is granted  
 23 on equivalent terms, substantive and procedural, to an individual because the individual is or was  
 24 in a domestic partnership or because the individual is or was, based on a domestic partnership, related  
 25 in a specified way to another individual.

26 (2) Any responsibility imposed by statute, administrative or court rule, policy, common law or  
 27 any other law on an individual because the individual is or was married, or because the individual  
 28 is or was an in-law in a specified way to another individual, is imposed on equivalent terms, substantive  
 29 and procedural, on an individual because the individual is or was in a domestic partnership  
 30 or because the individual is or was, based on a domestic partnership, related in a specified way to  
 31 another individual.

32 (3) Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative  
 33 or court rule, policy, common law or any other law to or on a spouse with respect to  
 34 a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural,  
 35 to or on a partner with respect to a child of either of the partners.

36 (4) Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative  
 37 or court rule, policy, common law or any other law to or on a former or surviving  
 38 spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms,  
 39 substantive and procedural, to or on a former or surviving partner with respect to a child of either  
 40 of the partners.

41 (5) Many of the laws of this state are intertwined with federal law, and the Legislative Assembly  
 42 recognizes that it does not have the jurisdiction to control federal laws or the privileges, immunities,  
 43 rights, benefits and responsibilities related to federal laws.

44 (6) ORS 106.300 to 106.340 do not require or permit the extension of any benefit under ORS  
 45 chapter 238 or 238A or sections 1 to 20 of this 2011 Act, or under any other retirement, deferred

1 compensation or other employee benefit plan, if the plan administrator reasonably concludes that the  
 2 extension of benefits would conflict with a condition for tax qualification of the plan, or a condition  
 3 for other favorable tax treatment of the plan, under the Internal Revenue Code or regulations  
 4 adopted under the Internal Revenue Code.

5 (7) ORS 106.300 to 106.340 do not require the extension of any benefit under any employee  
 6 benefit plan that is subject to federal regulation under the Employee Retirement Income Security  
 7 Act of 1974.

8 (8) For purposes of administering Oregon tax laws, partners in a domestic partnership, surviving  
 9 partners in a domestic partnership and the children of partners in a domestic partnership have the  
 10 same privileges, immunities, rights, benefits and responsibilities as are granted to or imposed on  
 11 spouses in a marriage, surviving spouses and their children.

12 **SECTION 24.** ORS 169.810 is amended to read:

13 169.810. (1) Assumption by the regional correctional facility of those custodial duties formerly  
 14 performed by a county or city jail constitutes an assumption of duties by a public employer subject  
 15 to ORS 236.610 to 236.640.

16 (2) An employee who transfers from employment at a county or city jail to employment at a  
 17 regional correctional facility operated by the county or city by which the employee has been em-  
 18 ployed shall be accorded the following rights:

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

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

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

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

39 (e) If an employee fails to elect to continue under the retirement system in which participating  
 40 under county or city employment as provided in paragraph (c) of this subsection or was not partic-  
 41 ipating in a retirement system under county or city employment, the employee shall become, if eli-  
 42 gible, a member of the Public Employees Retirement System. If the employee is eligible to become  
 43 a member of the Public Employees Retirement System, the period of continuous service of the em-  
 44 ployee under county or city employment immediately before the transfer of the employee shall apply  
 45 to the six months' service requirement of ORS 238.015, 238A.100 or 238A.300 **or section 6 of this**

1 **2011 Act.**

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

5 **SECTION 25.** ORS 173.051 is amended to read:

6 173.051. The Legislative Fiscal Officer, with the aid of the Public Employees Retirement Board  
 7 and public employers providing benefits under ORS chapter 238A **or sections 1 to 20 of this 2011**  
 8 **Act**, shall prepare a fiscal impact statement on each measure reported out of a committee of the  
 9 Legislative Assembly that would increase employer contributions under ORS chapter 238A **or**  
 10 **sections 1 to 20 of this 2011 Act**. If the Legislative Fiscal Officer determines that a proposed  
 11 measure would result in an increase in the total liability for benefits under ORS chapter 238A **or**  
 12 **sections 1 to 20 of this 2011 Act** that is in excess of one-tenth of one percent, the Legislative  
 13 Fiscal Officer shall promptly notify the Public Employees Retirement Board. The board shall there-  
 14 after promptly give notice of the proposed measure, and the fiscal impact of the proposed measure  
 15 as determined by the Legislative Fiscal Officer, to all public employers providing benefits under ORS  
 16 chapter 238A **or sections 1 to 20 of this 2011 Act**.

17 **SECTION 26.** ORS 192.502, as amended by section 15, chapter 76, Oregon Laws 2010, is  
 18 amended to read:

19 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

20 (1) Communications within a public body or between public bodies of an advisory nature to the  
 21 extent that they cover other than purely factual materials and are preliminary to any final agency  
 22 determination of policy or action. This exemption shall not apply unless the public body shows that  
 23 in the particular instance the public interest in encouraging frank communication between officials  
 24 and employees of public bodies clearly outweighs the public interest in disclosure.

25 (2) Information of a personal nature such as but not limited to that kept in a personal, medical  
 26 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the  
 27 public interest by clear and convincing evidence requires disclosure in the particular instance. The  
 28 party seeking disclosure shall have the burden of showing that public disclosure would not consti-  
 29 tute an unreasonable invasion of privacy.

30 (3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and  
 31 telephone numbers contained in personnel records maintained by the public body that is the em-  
 32 ployer or the recipient of volunteer services. This exemption:

33 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-  
 34 unteers who are elected officials, except that a judge or district attorney subject to election may  
 35 seek to exempt the judge's or district attorney's address or telephone number, or both, under the  
 36 terms of ORS 192.445;

37 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure  
 38 shows by clear and convincing evidence that the public interest requires disclosure in a particular  
 39 instance;

40 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-  
 41 fessional education association of which the substitute teacher may be a member; and

42 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

43 (4) Information submitted to a public body in confidence and not otherwise required by law to  
 44 be submitted, where such information should reasonably be considered confidential, the public body  
 45 has obliged itself in good faith not to disclose the information, and when the public interest would

1 suffer by the disclosure.

2 (5) Information or records of the Department of Corrections, including the State Board of Parole  
 3 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of  
 4 a person in custody of the department or substantially prejudice or prevent the carrying out of the  
 5 functions of the department, if the public interest in confidentiality clearly outweighs the public in-  
 6 terest in disclosure.

7 (6) Records, reports and other information received or compiled by the Director of the Depart-  
 8 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not  
 9 otherwise required by law to be made public, to the extent that the interests of lending institutions,  
 10 their officers, employees and customers in preserving the confidentiality of such information out-  
 11 weighs the public interest in disclosure.

12 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

13 (8) Any public records or information the disclosure of which is prohibited by federal law or  
 14 regulations.

15 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-  
 16 wise made confidential or privileged under Oregon law.

17 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information  
 18 compiled in a public record when:

19 (A) The basis for the claim of exemption is ORS 40.225;

20 (B) The factual information is not prohibited from disclosure under any applicable state or fed-  
 21 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410  
 22 to 192.505;

23 (C) The factual information was compiled by or at the direction of an attorney as part of an  
 24 investigation on behalf of the public body in response to information of possible wrongdoing by the  
 25 public body;

26 (D) The factual information was not compiled in preparation for litigation, arbitration or an  
 27 administrative proceeding that was reasonably likely to be initiated or that has been initiated by  
 28 or against the public body; and

29 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement  
 30 characterizing or partially disclosing the factual information compiled by or at the attorney's di-  
 31 rection.

32 (10) Public records or information described in this section, furnished by the public body ori-  
 33 ginally compiling, preparing or receiving them to any other public officer or public body in con-  
 34 nection with performance of the duties of the recipient, if the considerations originally giving rise  
 35 to the confidential or exempt nature of the public records or information remain applicable.

36 (11) Records of the Energy Facility Siting Council concerning the review or approval of security  
 37 programs pursuant to ORS 469.530.

38 (12) Employee and retiree address, telephone number and other nonfinancial membership records  
 39 and employee financial records maintained by the Public Employees Retirement System pursuant to  
 40 ORS chapters 238 and 238A **and sections 1 to 20 of this 2011 Act.**

41 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the  
 42 agents of the treasurer or the council relating to active or proposed publicly traded investments  
 43 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or  
 44 liquidation of the investments. For the purposes of this subsection:

45 (a) The exemption does not apply to:

1 (A) Information in investment records solely related to the amount paid directly into an invest-  
2 ment by, or returned from the investment directly to, the treasurer or council; or

3 (B) The identity of the entity to which the amount was paid directly or from which the amount  
4 was received directly.

5 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange  
6 or liquidation of the investment has been concluded.

7 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the  
8 Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual  
9 or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a  
10 private asset including but not limited to records regarding the solicitation, acquisition, deployment,  
11 exchange or liquidation of the investments including but not limited to:

12 (A) Due diligence materials that are proprietary to an investment fund, to an asset ownership  
13 or to their respective investment vehicles.

14 (B) Financial statements of an investment fund, an asset ownership or their respective invest-  
15 ment vehicles.

16 (C) Meeting materials of an investment fund, an asset ownership or their respective investment  
17 vehicles.

18 (D) Records containing information regarding the portfolio positions in which an investment  
19 fund, an asset ownership or their respective investment vehicles invest.

20 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-  
21 spective investment vehicles.

22 (F) Investment agreements and related documents.

23 (b) The exemption under this subsection does not apply to:

24 (A) The name, address and vintage year of each privately placed investment fund.

25 (B) The dollar amount of the commitment made to each privately placed investment fund since  
26 inception of the fund.

27 (C) The dollar amount of cash contributions made to each privately placed investment fund since  
28 inception of the fund.

29 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State  
30 Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the  
31 treasurer, council or board from each privately placed investment fund.

32 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately  
33 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment  
34 Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

35 (F) The net internal rate of return of each privately placed investment fund since inception of  
36 the fund.

37 (G) The investment multiple of each privately placed investment fund since inception of the fund.

38 (H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end  
39 basis to each privately placed investment fund.

40 (I) The dollar amount of cash profit received from each privately placed investment fund on a  
41 fiscal year-end basis.

42 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the  
43 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as  
44 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

45 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted

1 by ORS 98.352.

2 (17)(a) The following records, communications and information submitted to the Oregon Business  
 3 Development Commission, the Oregon Business Development Department, the State Department of  
 4 Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in  
 5 ORS 777.005, by applicants for investment funds, loans or services including, but not limited to,  
 6 those described in ORS 285A.224:

7 (A) Personal financial statements.

8 (B) Financial statements of applicants.

9 (C) Customer lists.

10 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the  
 11 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
 12 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
 13 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-  
 14 ery or deposition statutes to a party to litigation or potential litigation.

15 (E) Production, sales and cost data.

16 (F) Marketing strategy information that relates to applicant's plan to address specific markets  
 17 and applicant's strategy regarding specific competitors.

18 (b) The following records, communications and information submitted to the State Department  
 19 of Energy by applicants for tax credits:

20 (A) Personal financial statements.

21 (B) Financial statements of applicants.

22 (C) Customer lists.

23 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the  
 24 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
 25 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
 26 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-  
 27 ery or deposition statutes to a party to litigation or potential litigation.

28 (E) Production, sales and cost data.

29 (F) Marketing strategy information that relates to applicant's plan to address specific markets  
 30 and applicant's strategy regarding specific competitors.

31 (18) Records, reports or returns submitted by private concerns or enterprises required by law  
 32 to be submitted to or inspected by a governmental body to allow it to determine the amount of any  
 33 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such  
 34 information is in a form which would permit identification of the individual concern or enterprise.  
 35 Nothing in this subsection shall limit the use which can be made of such information for regulatory  
 36 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-  
 37 payer of the delinquency immediately by certified mail. However, in the event that the payment or  
 38 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the  
 39 public body shall disclose, upon the request of any person, the following information:

40 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the  
 41 payment or delivery of the taxes.

42 (b) The period for which the taxes are delinquent.

43 (c) The actual, or estimated, amount of the delinquency.

44 (19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-  
 45 pointed counsel, and all information supplied to the court from whatever source for the purpose of

1 verifying the financial eligibility of a person pursuant to ORS 151.485.

2 (20) Workers' compensation claim records of the Department of Consumer and Business Services,  
3 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-  
4 ness Services, in any of the following circumstances:

5 (a) When necessary for insurers, self-insured employers and third party claim administrators to  
6 process workers' compensation claims.

7 (b) When necessary for the director, other governmental agencies of this state or the United  
8 States to carry out their duties, functions or powers.

9 (c) When the disclosure is made in such a manner that the disclosed information cannot be used  
10 to identify any worker who is the subject of a claim.

11 (d) When a worker or the worker's representative requests review of the worker's claim record.

12 (21) Sensitive business records or financial or commercial information of the Oregon Health and  
13 Science University that is not customarily provided to business competitors.

14 (22) Records of Oregon Health and Science University regarding candidates for the position of  
15 president of the university.

16 (23) The records of a library, including:

17 (a) Circulation records, showing use of specific library material by a named person;

18 (b) The name of a library patron together with the address or telephone number of the patron;  
19 and

20 (c) The electronic mail address of a patron.

21 (24) The following records, communications and information obtained by the Housing and Com-  
22 munity Services Department in connection with the department's monitoring or administration of  
23 financial assistance or of housing or other developments:

24 (a) Personal and corporate financial statements and information, including tax returns.

25 (b) Credit reports.

26 (c) Project appraisals.

27 (d) Market studies and analyses.

28 (e) Articles of incorporation, partnership agreements and operating agreements.

29 (f) Commitment letters.

30 (g) Project pro forma statements.

31 (h) Project cost certifications and cost data.

32 (i) Audits.

33 (j) Project tenant correspondence.

34 (k) Personal information about a tenant.

35 (L) Housing assistance payments.

36 (25) Raster geographic information system (GIS) digital databases, provided by private forestland  
37 owners or their representatives, voluntarily and in confidence to the State Forestry Department,  
38 that is not otherwise required by law to be submitted.

39 (26) Sensitive business, commercial or financial information furnished to or developed by a  
40 public body engaged in the business of providing electricity or electricity services, if the information  
41 is directly related to a transaction described in ORS 261.348, or if the information is directly related  
42 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and  
43 disclosure of the information would cause a competitive disadvantage for the public body or its re-  
44 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-  
45 velopment or review of generally applicable rate schedules.



1 (27) Sensitive business, commercial or financial information furnished to or developed by the  
 2 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath  
 3 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085  
 4 and disclosure of the information would cause a competitive disadvantage for the Klamath  
 5 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-  
 6 ment or review of generally applicable rate schedules.

7 (28) Personally identifiable information about customers of a municipal electric utility or a  
 8 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,  
 9 electronic mail addresses or Social Security numbers of customers who receive water, sewer or  
 10 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-  
 11 lease personally identifiable information about a customer, and a public body providing water, sewer  
 12 or storm drain services may release the name, date of birth, driver license number, telephone num-  
 13 ber, electronic mail address or Social Security number of a customer, if the customer consents in  
 14 writing or electronically, if the disclosure is necessary for the utility, district or other public body  
 15 to render services to the customer, if the disclosure is required pursuant to a court order or if the  
 16 disclosure is otherwise required by federal or state law. The utility, district or other public body  
 17 may charge as appropriate for the costs of providing such information. The utility, district or other  
 18 public body may make customer records available to third party credit agencies on a regular basis  
 19 in connection with the establishment and management of customer accounts or in the event such  
 20 accounts are delinquent.

21 (29) A record of the street and number of an employee's address submitted to a special district  
 22 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

23 (30) Sensitive business records, capital development plans or financial or commercial information  
 24 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

25 (31) Documents, materials or other information submitted to the Director of the Department of  
 26 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory  
 27 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates  
 28 or subsidiaries under ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to  
 29 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank  
 30 Act or the Insurance Code when:

31 (a) The document, material or other information is received upon notice or with an under-  
 32 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of  
 33 the document, material or other information; and

34 (b) The director has obligated the Department of Consumer and Business Services not to dis-  
 35 close the document, material or other information.

36 (32) A county elections security plan developed and filed under ORS 254.074.

37 (33) Information about review or approval of programs relating to the security of:

38 (a) Generation, storage or conveyance of:

39 (A) Electricity;

40 (B) Gas in liquefied or gaseous form;

41 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

42 (D) Petroleum products;

43 (E) Sewage; or

44 (F) Water.

45 (b) Telecommunication systems, including cellular, wireless or radio systems.

1 (c) Data transmissions by whatever means provided.

2 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-  
3 ignates the information as confidential by rule under ORS 1.002.

4 (35)(a) Employer account records of the State Accident Insurance Fund Corporation.

5 (b) As used in this subsection, "employer account records" means all records maintained in any  
6 form that are specifically related to the account of any employer insured, previously insured or un-  
7 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-  
8 mation obtained or developed by the corporation in connection with providing, offering to provide  
9 or declining to provide insurance to a specific employer. "Employer account records" includes, but  
10 is not limited to, an employer's payroll records, premium payment history, payroll classifications,  
11 employee names and identification information, experience modification factors, loss experience and  
12 dividend payment history.

13 (c) The exemption provided by this subsection may not serve as the basis for opposition to the  
14 discovery documents in litigation pursuant to applicable rules of civil procedure.

15 (36)(a) Claimant files of the State Accident Insurance Fund Corporation.

16 (b) As used in this subsection, "claimant files" includes, but is not limited to, all records held  
17 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all  
18 records pertaining to such a claim.

19 (c) The exemption provided by this subsection may not serve as the basis for opposition to the  
20 discovery documents in litigation pursuant to applicable rules of civil procedure.

21 (37) Except as authorized by ORS 408.425, records that certify or verify an individual's discharge  
22 or other separation from military service.

23 **SECTION 27.** ORS 196.165 is amended to read:

24 196.165. (1) The Columbia River Gorge Commission established under ORS 196.150 may designate  
25 its employees as employees and the commission as an employer subject to the Oregon Public Em-  
26 ployees Retirement System under ORS chapters 238 and 238A **and sections 1 to 20 of this 2011**  
27 **Act** or as an employer and employees subject to a retirement system provided by the State of  
28 Washington under the laws of the State of Washington.

29 (2) The commission may designate its employees as employees eligible under benefit plans pro-  
30 vided under ORS 243.105 to 243.285 or under benefit plans provided under the laws of the State of  
31 Washington.

32 **SECTION 28.** ORS 237.620 is amended to read:

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

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

42 (a) Police officers or firefighters who are entitled to receive benefits only under ORS chapter  
43 238 and who established membership in the system before January 1, 1996, as described in ORS  
44 238.430 (2);

45 (b) Police officers or firefighters who are entitled to receive benefits only under ORS chapter

1 238 and who established membership in the system on or after January 1, 1996, and before August  
2 29, 2003, as described in ORS 238A.025 (4); [and]

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

5 **(d) Police officers or firefighters who establish membership in the system on or after the**  
6 **effective date of this 2011 Act, and are entitled to benefits only under sections 1 to 20 of this**  
7 **2011 Act.**

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

19 **SECTION 29.** ORS 237.650 is amended to read:

20 237.650. (1) A person appointed or elected as a member of the Legislative Assembly must elect  
21 within 30 days after taking office if the person will:

22 (a) Become a member of the [*Oregon Public Service Retirement Plan established under ORS*  
23 *chapter 238A*] **Public Employees Retirement System under sections 1 to 20 of this 2011 Act;**

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

25 (c) Decline to become a member of the [*Oregon Public Service Retirement Plan*] **Public Em-**  
26 **ployees Retirement System**, or to become a legislator member of the state deferred compensation  
27 plan, for service as a member of the Legislative Assembly.

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

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

36 [(4)] (3) An election under this section does not affect the ability of a person appointed or  
37 elected as a member of the Legislative Assembly to participate in the state deferred compensation  
38 plan in the manner provided by ORS 243.401 to 243.507.

39 **SECTION 30.** ORS 238.105 is amended to read:

40 238.105. (1) Whenever, within five years after the employee is separated from all service entitling  
41 the employee to membership in the system, an employee who has withdrawn the amount credited to  
42 the member account of the member reenters the service of an employer participating in the system,  
43 the employee's rights in the system that were forfeited by the withdrawal shall be restored upon  
44 repaying to the board within one year after reentering the service of the employer, the full amount  
45 so withdrawn together with the interest that would have been accumulated on the sum had the

1 amount not been withdrawn.

2 (2) Restoration of rights under this section does not affect any forfeiture of rights of a person  
3 by reason of:

4 (a) Withdrawal of an account established under ORS 238.440;

5 (b) Withdrawal from the pension program under ORS 238A.120; *[or]*

6 (c) Withdrawal of individual accounts pursuant to ORS 238A.375; **or**

7 **(d) Withdrawal of member accounts under section 14 of this 2011 Act.**

8 **SECTION 31.** ORS 238.115 is amended to read:

9 238.115. (1)(a) A member of the system who, after separation from all service entitling the em-  
10 ployee to membership in the system and withdrawal of the amount credited to the member account  
11 of the member, reenters the service of an employer participating in the system and serves as an  
12 active member of the system for 10 years after that reentry, and who has not otherwise obtained  
13 restoration of creditable service forfeited by the withdrawal, shall obtain restoration of one full  
14 month of creditable service forfeited by the withdrawal for each three full months of service as an  
15 active member after that reentry if the member, within 90 days before the effective date of retire-  
16 ment of the member:

17 (A) Applies in writing to the board for restoration of creditable service; and

18 (B) Pays to the board in a lump sum for credit to the member account of the member the amount  
19 withdrawn and interest on the amount withdrawn compounded annually for each year or portion of  
20 a year after the date of the withdrawal and before the effective date of retirement of the member.  
21 The interest shall be computed at the annual rate of 7.5 percent.

22 (b) If a member who obtains restoration of creditable service as provided in this subsection does  
23 not obtain restoration of all creditable service forfeited by the withdrawal pursuant to service after  
24 reentry, the payment under paragraph (a) of this subsection shall be reduced proportionately to re-  
25 flect the percentage of creditable service restored.

26 (c) A member who obtains restoration of creditable service as provided in this subsection is not  
27 entitled to elect to receive the service retirement benefit described in ORS 238.305 (2) or (3).

28 (2) A member who forfeited creditable service rendered to a public employer before March 27,  
29 1953, because under ORS 237.976 (2) the employee withdrew contributions of the employee to the  
30 Public Employees Retirement System established by chapter 401, Oregon Laws 1945, and who did  
31 not obtain restoration of creditable service so forfeited as provided in chapter 857, Oregon Laws  
32 1977, shall, upon retirement, receive restoration of creditable service so forfeited, if the member,  
33 before the effective date of retirement of the member:

34 (a) Applies in writing to the board for the restoration of the creditable service; and

35 (b) Pays to the board in a lump sum for credit to the member account of the member an amount  
36 determined by the board to be equal to the full amount of contributions so withdrawn and the in-  
37 terest that would have accumulated to the regular account of the member had those contributions  
38 not been withdrawn.

39 (3)(a) A member of the Public Employees Retirement System who was a member of an associ-  
40 ation established pursuant to ORS chapter 239 (1997 Edition), but separated from all service entitl-  
41 ing the employee to membership in the system of the association and withdrew the amount credited  
42 to the member account of the employee in the retirement fund of the association, and who, after that  
43 separation, entered the service of an employer in the field of education participating in the Public  
44 Employees Retirement System and served as an active member of that system for 10 years after that  
45 entry, and who has not otherwise obtained restoration of all creditable service forfeited by the

1 withdrawal, shall obtain creditable service as a member of the Public Employees Retirement System  
2 equal to all creditable service forfeited by the withdrawal if the member within 90 days before the  
3 effective date of retirement of the member:

4 (A) Applies in writing to the Public Employees Retirement Board for that creditable service; and

5 (B) Pays to the board in a lump sum for credit to the member account of the member the amount  
6 withdrawn and interest on the amount withdrawn compounded annually for each year or portion of  
7 a year after the date of the withdrawal and before the effective date of retirement or effective date  
8 of application of the member. The interest shall be computed at the rate actually credited to regular  
9 accounts for that period.

10 (b) This subsection provides a method of obtaining creditable service for forfeited creditable  
11 service described in this subsection that is in lieu of any application of subsection (1) of this section  
12 for that purpose.

13 (4) Restoration of creditable service under this section does not affect any forfeiture of rights  
14 of a person by reason of:

15 (a) Withdrawal of an account established under ORS 238.440;

16 (b) Withdrawal from the pension program under ORS 238A.120; [or]

17 (c) Withdrawal of individual accounts pursuant to ORS 238A.375; or

18 (d) **Withdrawal of member accounts under section 14 of this 2011 Act.**

19 **SECTION 32.** ORS 238.265 is amended to read:

20 238.265. (1) Except as otherwise provided in this section, a member of the Public Employees  
21 Retirement System may withdraw from the Public Employees Retirement Fund the amount credited  
22 to the member account, if any, for the member if:

23 (a) The member is separated from all service with participating public employers;

24 (b) The member is separated from all service with employers who are treated as part of a par-  
25 ticipating public employer's controlled group under the federal laws and rules governing the status  
26 of the system and the fund as a qualified governmental retirement plan and trust;

27 (c) The member has not attained earliest service retirement age; and

28 (d) The separation from service is not by reason of death or disability.

29 (2) If a member wishes to withdraw the member account, if any, of the member under this sec-  
30 tion, the member must transmit to the Public Employees Retirement Board a withdrawal request.  
31 The board shall deny the withdrawal, or shall take all reasonable steps to recover withdrawn  
32 amounts, if:

33 (a) The board determines that the separation is not a bona fide separation; or

34 (b) The member fails to remain absent from the service of all employers described in subsection  
35 (1) of this section for at least one calendar month following the month in which the member sepa-  
36 rates from service.

37 (3) If a member has contributed to the fund in each of five calendar years and has separated  
38 from all service in the manner described in subsection (1) of this section before reaching earliest  
39 service retirement age, the member may elect to withdraw the member account of the member under  
40 this section at any time before reaching earliest service retirement age. If the inactive member does  
41 not make an election to withdraw under this section, the member shall be paid the benefits or re-  
42 tirement allowances described in ORS 238.425.

43 (4) A member who is vested in the pension program established under ORS chapter 238A and  
44 who is eligible to withdraw from the pension program under ORS 238A.120 may withdraw a member  
45 account under this section only if the member also withdraws from the pension program. A member

1 who has an individual account or accounts in the individual account program established under ORS  
 2 chapter 238A, **or a member account under sections 1 to 20 of this 2011 Act**, may withdraw a  
 3 member account under this section only if the member also withdraws all individual **and member**  
 4 accounts pursuant to ORS 238A.375 **and section 14 of this 2011 Act**. A member who has an account  
 5 established under ORS 238.440 may withdraw a member account under this section only if the  
 6 member also withdraws the account established under ORS 238.440.

7 (5) Withdrawal of [*a member*] **an** account under this section cancels all membership rights in the  
 8 system, including the right to claim credit for any employment before withdrawal.

9 **SECTION 33.** ORS 238.445 is amended to read:

10 238.445. (1) Except as provided in this section, the right of a person to a pension, an annuity  
 11 or a retirement allowance, to the return of contribution, the pension, annuity or retirement allow-  
 12 ance itself, any optional benefit or death benefit, or any other right accrued or accruing to any  
 13 person under the provisions of this chapter or ORS chapter 238A **or sections 1 to 20 of this 2011**  
 14 **Act**, and the money in the various funds created by ORS 238.660 and 238.670, shall be exempt from  
 15 garnishment and all state, county and municipal taxes heretofore or hereafter imposed, except as  
 16 provided under ORS chapter 118, shall not be subject to execution, garnishment, attachment or any  
 17 other process or to the operation of any bankruptcy or insolvency law heretofore or hereafter ex-  
 18 isting or enacted, and shall be unassignable.

19 (2) Subsection (1) of this section does not apply to state personal income taxation of amounts  
 20 paid under this chapter and ORS chapter 238A **and sections 1 to 20 of this 2011 Act**.

21 (3) Unless otherwise ordered by a court under ORS 25.387, the exemption from execution or  
 22 other process granted under this section applies to 75 percent of amounts paid under this chapter  
 23 and ORS chapter 238A **and sections 1 to 20 of this 2011 Act** if the execution or other process is  
 24 issued for a support obligation or an order or notice entered or issued under ORS chapter 25, 107,  
 25 108, 109, 110, 416, 419B or 419C.

26 **SECTION 34.** ORS 238.455 is amended to read:

27 238.455. (1)(a) Whenever a member of the system is retired for service and is entitled to receive  
 28 a retirement allowance or benefit that is payable monthly, and the Public Employees Retirement  
 29 Board is unable to calculate the amount of the monthly payment in time to allow mailing of the  
 30 monthly payment to the member within 62 days of the date the first monthly payment is due, the  
 31 board shall calculate an estimated amount for the monthly payment based on the information then  
 32 available to the board and shall mail that payment to the member within 62 days of the date the first  
 33 monthly payment is due.

34 (b) Whenever a member of the system is retired for disability and is entitled to receive a re-  
 35 tirement allowance or benefit that is payable monthly, and the board is unable to calculate the  
 36 amount of the monthly payment in time to allow mailing of the monthly payment to the member  
 37 within 10 days of either the date the board approves the member's application or the date that the  
 38 first monthly payment is due, whichever is later, the board shall calculate an estimated amount for  
 39 the monthly payment based on the information then available to the board and shall mail that pay-  
 40 ment to the member within 10 days of the date the board approves the member's disability benefit,  
 41 the date the board receives the member's election of one of the optional forms of disability retire-  
 42 ment allowance or the date the first monthly payment is due, whichever is later.

43 (2) The board shall continue to mail estimated payments under subsection (1) of this section  
 44 until such time as the correct amount of the monthly payment is determined.

45 (3) The board shall notify the member receiving an estimated payment under subsection (1) of

1 this section that the payment is an estimated payment only. The board shall further notify the  
2 member of the provisions of subsection (4) of this section.

3 (4) If the board determines that any estimated payment made to the member under subsection  
4 (1) of this section resulted in payment to the member of an amount other than the correct amount  
5 due the member as a retirement allowance or benefit, the board shall immediately so notify the  
6 member. Thereafter, the board may increase or decrease the monthly payment to the member until  
7 such time as the total difference between the amount or amounts the member received and the  
8 amount or amounts the member should have received is accounted for. Thereafter the member shall  
9 receive the monthly payment as finally calculated by the board.

10 (5) If the estimated payment made to the member under subsection (1) of this section results in  
11 an underpayment to the member of \$10 or more a month, the board shall pay interest on the balance  
12 of such underpayment at a rate established by rule of the board until such time as the underpayment  
13 is paid to the member pursuant to subsection (4) of this section.

14 (6) No member shall have any right to any allowance or other benefit other than that provided  
15 for in this chapter [*and*] **or** ORS chapter 238A **or sections 1 to 20 of this 2011 Act** based on the  
16 board's estimate under this section or based on any other estimate made by the board for any other  
17 purpose under this chapter and ORS chapter 238A.

18 **SECTION 35.** ORS 238.465 is amended to read:

19 238.465. (1) Notwithstanding ORS 238.445 or any other provision of law, payments under this  
20 chapter [*or*], ORS chapter 238A **or sections 1 to 20 of this 2011 Act** of any pension, annuity, re-  
21 tirement allowance, disability benefit, death benefit, refund benefit or other benefit that would oth-  
22 erwise be made to a person entitled thereto under this chapter [*or*], ORS chapter 238A **or sections**  
23 **1 to 20 of this 2011 Act** shall be paid, in whole or in part, by the Public Employees Retirement  
24 Board to an alternate payee if and to the extent expressly provided for in the terms of any judgment  
25 of annulment or dissolution of marriage or of separation, or the terms of any court order or court-  
26 approved property settlement agreement incident to any judgment of annulment or dissolution of  
27 marriage or of separation. Notwithstanding any other provisions of this section, the total value of  
28 benefits payable to a member and to an alternate payee under this section may not be greater than  
29 the value of the benefits the member would otherwise be eligible to receive. Any payment under this  
30 subsection to an alternate payee bars recovery by any other person.

31 (2) A judgment, order or settlement providing for payment to an alternate payee under sub-  
32 section (1) of this section may also provide:

33 (a) That payments to the alternate payee may commence, at the election of the alternate payee,  
34 at any time after the earlier of:

35 (A) The earliest date the member would be eligible to receive retirement benefits if the member  
36 separates from service; or

37 (B) The date the member actually separates from service due to death, disability, retirement or  
38 termination of employment.

39 (b) That the alternate payee may elect to receive payment in any form of pension, annuity, re-  
40 tirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit  
41 in the form of a joint and survivor annuity, that would be available to the member under this  
42 chapter or ORS chapter 238A **or sections 1 to 20 of this 2011 Act**, or that would be available to  
43 the member if the member retired or separated from service at the time of election by the alternate  
44 payee, without regard to the form of benefit elected by the member.

45 (c) That the alternate payee's life is the measuring life for the purpose of measuring payments

1 to the alternate payee under the form of benefit selected by the alternate payee and for the purpose  
2 of determining necessary employer reserves.

3 (d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person designated by the  
4 member as a beneficiary under ORS 238.300, 238.305, 238.325, 238A.190 or 238A.400 **or section 15**  
5 **of this 2011 Act** be changed, even though the member has retired and has begun receiving a re-  
6 tirement allowance or pension. If a change of beneficiary is ordered under this paragraph, the board  
7 shall adjust the anticipated benefits that would be payable to the member and the beneficiary to  
8 ensure that the cost to the system of providing benefits to the member and the new beneficiary does  
9 not exceed the cost that the system would have incurred to provide benefits to the member and the  
10 original beneficiary. The judgment, order or settlement may not provide for any change to the option  
11 selected by the retired member under ORS 238.300, 238.305, 238.320, 238.325, 238A.190 or 238A.400  
12 as to the form of the retirement benefit.

13 (3) The board shall adopt rules that provide for:

14 (a) The creation of a separate account in the name of the alternate payee reflecting the  
15 judgment's, order's or agreement's distribution of the member's benefits under this chapter or ORS  
16 chapter 238A **or sections 1 to 20 of this 2011 Act**;

17 (b) The establishing of criteria to determine whether domestic relations judgments, orders and  
18 agreements comply with this section; and

19 (c) The definitions and procedures for the administration of this section.

20 (4) An alternate payee may designate a beneficiary for the purposes of death benefits payable  
21 under ORS 238.390 and 238.395 **and section 15 of this 2011 Act**. Subject to ORS 238A.410 (2), an  
22 alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS  
23 238A.410. If the alternate payee fails to designate a beneficiary for the purposes of death benefits  
24 payable under ORS 238.390 and 238.395 **and section 15 of this 2011 Act**, the benefits shall be paid  
25 as provided by ORS 238.390 (2) **and section 15 (2) of this 2011 Act**. If the alternate payee fails to  
26 designate a beneficiary for the purposes of death benefits payable under ORS 238A.410, the benefits  
27 shall be paid as provided by ORS 238A.410 (3). If a judgment, order or agreement awards an interest  
28 to an alternate payee, and if the alternate payee predeceases the member before the alternate payee  
29 has commenced receiving benefits, the alternate payee shall be considered a member of the system  
30 who died before retiring for the purposes of the death benefits provided in ORS 238.390, 238.395,  
31 238A.230 and 238A.410 **and section 15 of this 2011 Act**, but for purposes of the death benefits  
32 provided in ORS 238.395, the alternate payee shall be considered a member of the system who died  
33 before retiring only if the member would have been eligible for death benefits under ORS 238.395  
34 had the member died at the same time as the alternate payee. Payment of the death benefits to the  
35 beneficiaries, estate or other persons entitled to receive the benefits under ORS 238.390, 238.395,  
36 238A.230 and 238A.410 **and section 15 of this 2011 Act**, shall constitute payment in full of the al-  
37 ternate payee's interest under the judgment, order or agreement.

38 (5) Any increase in the retirement allowance provided to the member shall increase the amounts  
39 paid to the spouse or former spouse of the member in the same proportion, except that an alternate  
40 payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other retirement  
41 allowance increase until benefits are first paid from the system on behalf of the member.

42 (6) An alternate payee under this section is not eligible to receive the benefits provided under  
43 ORS 238.410, 238.415, 238.420 and 238.440 by reason of the provisions of this section.

44 (7) An alternate payee who elects to begin receiving payments under subsection (1) of this sec-  
45 tion before the member's effective date of retirement is not eligible to receive any additional pay-



1 ment by reason of credit in the system acquired by the member after the alternate payee begins to  
2 receive payments.

3 (8) Subsection (1) of this section applies only to payments made by the board after the date of  
4 receipt by the board of written notice of the judgment, order or agreement and such additional in-  
5 formation and documentation as the board may prescribe.

6 (9) Whenever the board is required to make payment to an alternate payee under the provisions  
7 of this section, the board shall charge and collect out of the benefits payable to the member and the  
8 alternate payee actual and reasonable administrative expenses and related costs incurred by the  
9 board in obtaining data and making calculations that are necessary by reason of the provisions of  
10 this section. The board may not charge more than \$300 for total administrative expenses and related  
11 costs incurred in obtaining data or making calculations that are necessary by reason of the pro-  
12 visions of this section. The board shall allocate expenses and costs charged under the provisions of  
13 this subsection between the member and the alternate payee based on the fraction of the benefit  
14 received by the member or alternate payee.

15 (10) Unless otherwise provided by the judgment, order or agreement, a member has no interest  
16 in the benefit payable to an alternate payee under this section. Upon the death of an alternate  
17 payee, the board shall make such payment to the beneficiary designated by the alternate payee as  
18 may be required under the form of benefit elected by the alternate payee. If a death benefit is pay-  
19 able under ORS 238.390 or 238.395 **or section 15 of this 2011 Act** by reason of the death of an al-  
20 ternate payee, payment of the death benefit shall be made to the beneficiary designated by the  
21 alternate payee under ORS 238.390 (1), or as otherwise provided by ORS 238.390 and 238.395 **and**  
22 **section 15 of this 2011 Act.**

23 (11) As used in this section, "court" means any court of appropriate jurisdiction of this or any  
24 other state or of the District of Columbia.

25 **SECTION 36.** ORS 238.630 is amended to read:

26 238.630. (1) The governing authority of the system shall be a board known as the Public Em-  
27 ployees Retirement Board and consisting of five members appointed by the Governor subject to  
28 confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Except as otherwise  
29 provided in ORS 238.640, the term of each member shall be three years. The Governor shall desig-  
30 nate one member to serve as chairperson, who shall serve as chairperson at the pleasure of the  
31 Governor.

32 (2) The board shall have:

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

35 (b) The power and duty, subject to the limitations of this chapter and ORS chapter 238A **and**  
36 **sections 1 to 20 of this 2011 Act**, of managing the system.

37 (3) The board:

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

39 (b) Shall employ a director;

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

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

45 (e) Shall publish and distribute to all employer and employee members of the system an annual

1 report including a summary of investments of moneys in the fund, investment earnings, significant  
 2 legislative or administrative changes in the system and other pertinent information on the operation  
 3 of the system for the preceding year;

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

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

15 (4) The board established by this section shall succeed to all the duties and prerogatives of the  
 16 Public Employees Retirement Board created by chapter 401, Oregon Laws 1945, in relation to the  
 17 Public Employees Retirement Fund, and in addition shall perform all duties required of it by ORS  
 18 237.950 to 237.980, in regard to moneys payable to or from such fund.

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

23 **SECTION 37.** ORS 238.645 is amended to read:

24 238.645. The system shall be administered, subject to the limitations of this chapter[,] **and** ORS  
 25 chapter 238A **and sections 1 to 20 of this 2011 Act** and the budget prescribed by the board, by the  
 26 director provided for by ORS 238.630 and by a staff [*which*] **that** the board authorizes and [*which*]  
 27 **that** the director appoints. The director shall hold that position during the discretion of the board  
 28 and the members of the staff shall hold their respective positions during the discretion of the di-  
 29 rector. No member of the staff may be removed from it, however, in a manner contrary to the laws  
 30 of the state regarding civil service. The director shall furnish such bond as is required by the board.

31 **SECTION 38.** ORS 238.650 is amended to read:

32 238.650. (1) Subject to the limitations of this chapter and ORS chapter 238A **and sections 1 to**  
 33 **20 of this 2011 Act**, the Public Employees Retirement Board shall, from time to time, establish rules  
 34 for transacting its business and administering the system in accordance with the requirements of  
 35 ORS chapter 183.

36 (2) All rules adopted by the board become part of the written plan document of the Public Em-  
 37 ployees Retirement System for the purpose of the status of the system and the Public Employees  
 38 Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue  
 39 Code and under regulations adopted pursuant to the Internal Revenue Code.

40 **SECTION 39.** ORS 238.700 is amended to read:

41 238.700. All provisions of ORS 238.655, 238.705, 238.710 and 238.715 hereby are made applicable  
 42 for enforcement of the requirements of this chapter and ORS chapter 238A **and sections 1 to 20**  
 43 **of this 2011 Act**.

44 **SECTION 40.** ORS 238.705 is amended to read:

45 238.705. (1) All public employers that are members of the system shall promptly and regularly

1 remit to the Public Employees Retirement Board all contributions required of them by law and fur-  
 2 nish all reports required by the board.

3 (2) Any public employer delinquent in remitting contributions shall be charged interest on the  
 4 total amount of contributions due from it at the rate of one percent per month or fraction thereof  
 5 during which the public employer is delinquent. Interest so paid shall be deposited in the Public  
 6 Employees Retirement Fund and shall be used by the board in paying administrative expenses of the  
 7 system.

8 (3) If any state officer or agency fails to remit any contribution or other obligation required by  
 9 law, the Public Employees Retirement Board, within 30 days after the date the request therefor has  
 10 been made by it by registered mail or by certified mail with return receipt, may certify to the  
 11 Oregon Department of Administrative Services the fact of such failure and the amount of the de-  
 12 linquent contribution or obligation, together with its request that such amount be set over from  
 13 funds of the delinquent officer or agency to the credit of the Public Employees Retirement Fund. A  
 14 copy of such certification and request shall be furnished the delinquent officer or agency. The de-  
 15 partment shall, within 10 days after receipt of the request of the board, approve the payment of such  
 16 amount by the delinquent officer or agency from funds allocated to the officer or agency for the  
 17 current biennium and draw a warrant for payment of the amount of the contribution or obligation  
 18 due out of funds in the State Treasury allocated to the use of the delinquent officer or agency.

19 (4) If any public employer other than a state agency fails to remit any contribution or pay any  
 20 other obligation due under this chapter [*or*], ORS chapter 238A **or sections 1 to 20 of this 2011**  
 21 **Act**, the board may certify to the department the fact of such failure. Upon receipt of the certif-  
 22 ication the department shall withhold payment to the public employer of any revenues or funds in  
 23 the State Treasury in which the public employer is entitled by law to share and which have been  
 24 apportioned to the public employer until the board certifies to the department that the failure has  
 25 been remedied. The board shall send a copy of each certification it makes under this subsection to  
 26 the public employer affected.

27 (5) Any public employer delinquent in making reports or supplying information concerning its  
 28 employees in the manner required by the board shall be charged a penalty of the lesser of \$2,000  
 29 or one percent of the total annual contributions, for each month or fraction thereof during which  
 30 the employer is delinquent. In addition, the board may send an auditor to the office of the employer  
 31 to examine its records and to obtain the necessary reports, the entire cost of such audit to be paid  
 32 by the delinquent employer. Penalties and other charges so paid shall be used by the board in paying  
 33 administrative expenses of the system.

34 **SECTION 41.** ORS 238.715 is amended to read:

35 238.715. (1) If the Public Employees Retirement Board determines that a member of the Public  
 36 Employees Retirement System or any other person receiving a monthly payment from the Public  
 37 Employees Retirement Fund has received any amount in excess of the amounts that the member or  
 38 other person is entitled to under this chapter [*and*], ORS chapter 238A **or sections 1 to 20 of this**  
 39 **2011 Act**, the board may recover the overpayment or other improperly made payment by:

40 (a) Reducing the monthly payment to the member or other person for as many months as may  
 41 be determined by the board to be necessary to recover the overpayment or other improperly made  
 42 payment; or

43 (b) Reducing the monthly payment to the member or other person by an amount actuarially de-  
 44 termined to be adequate to recover the overpayment or other improperly made payment during the  
 45 period during which the monthly payment will be made to the member or other person.

1 (2)(a) Any person who receives a payment from the Public Employees Retirement Fund and who  
2 is not entitled to receive that payment, including a member of the system who receives an over-  
3 payment, holds the improperly made payment in trust subject to the board's recovery of that pay-  
4 ment under this section or by a civil action or other proceeding.

5 (b) The board may recover an improperly made payment in the manner provided by subsection  
6 (1) of this section from any person who receives an improperly made payment from the fund and  
7 who subsequently becomes entitled to receive a monthly payment from the fund.

8 (c) The board may recover an improperly made payment by reducing any lump sum payment in  
9 the amount necessary to recover the improperly made payment if a person who receives an im-  
10 properly made payment from the fund subsequently becomes entitled to receive a lump sum payment  
11 from the fund.

12 (3) Unless the member or other person receiving a monthly payment from the fund authorizes  
13 a greater reduction, the board may not reduce the monthly payment made to a member or other  
14 person under the provisions of subsection (1) of this section by an amount that is equal to more than  
15 10 percent of the monthly payment.

16 (4) Before reducing a benefit to recover an overpayment or erroneous payment, or pursuing any  
17 other collection action under this section, the board shall give notice of the overpayment or erro-  
18 neous payment to the person who received the payment. The notice shall describe the manner in  
19 which the person who received the payment may appeal the board's determination that an over-  
20 payment or erroneous payment was made, the action the board may take if the person does not re-  
21 spond to the notice and the authority of the board to assess interest, penalties or costs of collection.

22 (5) If the board determines that an overpayment or erroneous payment was not caused by the  
23 system or by a participating public employer, the board may assess interest in an amount equal to  
24 one percent per month on the balance of the improperly made payment until the payment is fully  
25 recovered. The board may also assess to the member or other person all costs incurred by the sys-  
26 tem in recovering the payment, including attorney fees. Interest and costs may be collected in the  
27 manner prescribed in subsections (1) and (2) of this section. The board may waive the interest and  
28 costs on an overpayment or other improperly made payment for good cause shown.

29 (6) Notwithstanding ORS 293.240, the board may waive the recovery of any payment or payments  
30 made to a person who was not entitled to receive the payment or payments if the total amount of  
31 the overpayment or other improperly made payments is less than \$50.

32 (7) A payment made to a person from the fund may not be recovered by the board unless within  
33 six years after the date that the payment was made the board has commenced proceedings to re-  
34 cover the payment. For the purposes of subsection (1) of this section, the board shall be considered  
35 to have commenced proceedings to recover the payment upon mailing of notice to the person re-  
36 ceiving a monthly payment that the board has determined that an overpayment or other improperly  
37 made payment has been made.

38 (8) The remedies authorized under this section are supplemental to any other remedies that may  
39 be available to the board for recovery of amounts incorrectly paid from the fund to members of the  
40 system or other persons.

41 (9) The board shall adopt rules establishing the procedures to be followed by the board in re-  
42 covering overpayments and erroneous payments under this section.

43 **SECTION 42.** ORS 238A.245 is amended to read:

44 238A.245. (1) Except as provided in subsection (3) of this section, the Public Employees Retirement  
45 Board shall cease making pension payments to a retired member of the pension program who

1 is reemployed by a participating public employer in a qualifying position. A retired member of the  
2 pension program who is employed in a qualifying position becomes an active member of the pension  
3 program without serving the probationary period provided for in ORS 238A.100.

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

8 (3) A retired member of the pension program who becomes a member of the Legislative Assem-  
9 bly shall continue to receive the pension elected by the member. A retired member of the pension  
10 program who becomes a member of the Legislative Assembly may not elect under ORS 237.650 to  
11 become an active member of the [*Oregon Public Service Retirement Plan*] **Public Employees Re-**  
12 **retirement System under sections 1 to 20 of this 2011 Act** or a legislator member of the state de-  
13 ferred compensation plan.

14 **SECTION 43.** ORS 243.800 is amended to read:

15 243.800. (1) Notwithstanding any provision of ORS chapter 238 or 238A or ORS 243.910 to  
16 243.945 or **sections 1 to 20 of this 2011 Act**, the State Board of Higher Education shall establish  
17 and administer an Optional Retirement Plan for administrative and academic employees of the  
18 Oregon University System who are eligible for membership in the Public Employees Retirement  
19 System. The Optional Retirement Plan must be a qualified plan under the Internal Revenue Code,  
20 capable of accepting funds transferred under subsection (7) of this section without the transfer being  
21 treated as a taxable event under the Internal Revenue Code, and willing to accept those funds. Re-  
22 tirement and death benefits shall be provided under the plan by the purchase of annuity contracts,  
23 fixed or variable or a combination thereof, or by contracts for investments in mutual funds.

24 (2) The State Board of Higher Education shall select at least two life insurance companies pro-  
25 viding fixed and variable annuities and at least two investment companies providing mutual funds,  
26 but not more than five companies in total, for the purpose of providing benefits under the Optional  
27 Retirement Plan. The State Board of Higher Education shall establish selection criteria for the  
28 purpose of this subsection.

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

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

34 (a) Remains or becomes a member of the Public Employees Retirement System in accordance  
35 with ORS chapters 238 [*and*] or 238A or **sections 1 to 20 of this 2011 Act**; or

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

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

42 (6)(a) An administrative or academic employee who elects to participate in the Optional Retire-  
43 ment Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who  
44 is not vested shall be considered by the Public Employees Retirement Board to be a terminated  
45 member under the provisions of ORS 238.095 as of the effective date of the election, and the amount

1 credited to the member account of the member shall be transferred directly to the Optional Retirement  
2 Plan by the Public Employees Retirement Board in the manner provided by subsection (7) of  
3 this section.

4 (b) An administrative or academic employee who elects to participate in the Optional Retirement  
5 Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is  
6 vested shall be considered to be an inactive member by the Public Employees Retirement Board and  
7 shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes  
8 a written request to the Public Employees Retirement Board for a transfer of the amounts credited  
9 to the member account of the member to the Optional Retirement Plan. A request for a transfer  
10 must be made at the time the member elects to participate in the Optional Retirement Plan. Upon  
11 receiving the request, the Public Employees Retirement Board shall transfer all amounts credited  
12 to the member account of the member directly to the Optional Retirement Plan, and shall terminate  
13 all rights, privileges and options of the employee under ORS chapter 238.

14 (c) An administrative or academic employee who elects to participate in the Optional Retirement  
15 Plan, and who is not a vested member of the pension program of the Oregon Public Service Retirement  
16 Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be  
17 considered to be a terminated member of the pension program by the Public Employees Retirement  
18 Board as of the effective date of the election.

19 (d) An administrative or academic employee who elects to participate in the Optional Retirement  
20 Plan, and who is a vested member of the pension program of the Oregon Public Service Retirement  
21 Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be consid-  
22 ered an inactive member of the pension program by the Public Employees Retirement Board as of  
23 the effective date of the election. An employee who is subject to the provisions of this paragraph  
24 retains all the rights, privileges and options of an inactive member of the pension program. If the  
25 actuarial equivalent of the employee's benefit under the pension program at the time that the  
26 election becomes effective is \$5,000 or less, the employee may make a written request to the Public  
27 Employees Retirement Board for a transfer of the employee's interest under the pension program to  
28 the Optional Retirement Plan. The request must be made at the time the member elects to partic-  
29 ipate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement  
30 Board shall transfer the amount determined to be the actuarial equivalent of the employee's benefit  
31 under the pension program directly to the Optional Retirement Plan, and shall terminate the mem-  
32 bership of the employee in the pension program.

33 (e) An administrative or academic employee who elects to participate in the Optional Retirement  
34 Plan, and who is a vested member of the individual account program of the Oregon Public Service  
35 Retirement Plan as described in ORS 238A.320 on the date that the election becomes effective, shall  
36 be considered an inactive member of the individual account program by the Public Employees Re-  
37 tirement Board as of the effective date of the election. An employee who is subject to the provisions  
38 of this paragraph retains all the rights, privileges and options of an inactive member of the indi-  
39 vidual account program. An administrative or academic employee who elects to participate in the  
40 Optional Retirement Plan, and who is a member of the individual account program of the Oregon  
41 Public Service Retirement Plan, may make a written request to the Public Employees Retirement  
42 Board that all amounts in the member's employee account, rollover account and employer account,  
43 to the extent the member is vested in those accounts under ORS 238A.320, be transferred to the  
44 Optional Retirement Plan. The request must be made at the time the member elects to participate  
45 in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement

1 Board shall transfer the amounts directly to the Optional Retirement Plan, and shall terminate the  
2 membership of the employee in the individual account program upon making the transfer.

3 **(f) An administrative or academic employee who elects to participate in the Optional**  
4 **Retirement Plan, and who is a vested member of the Fair Retirement Plan on the date that**  
5 **the election becomes effective, shall be considered an inactive member of the Fair Retirement**  
6 **Plan as of the effective date of the election. An employee who is subject to the provisions of this paragraph retains all the rights, privileges and options of an inactive member**  
7 **of the Fair Retirement Plan. An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a member of the Fair Retirement Plan,**  
8 **may make a written request to the Public Employees Retirement Board that all amounts in**  
9 **the member's account, to the extent the member is vested in those accounts under section**  
10 **11 of this 2011 Act, be transferred to the Optional Retirement Plan. The request must be**  
11 **made at the time the member elects to participate in the Optional Retirement Plan. Upon**  
12 **receiving the request, the Public Employees Retirement Board shall transfer the amounts**  
13 **directly to the Optional Retirement Plan, and shall terminate the membership of the employee in the Fair Retirement Plan upon making the transfer.**

14  
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16  
17 *[(f)]* **(g)** Notwithstanding paragraphs (b), (d), **(e)** and *[(e)]* **(f)** of this subsection, the Public Employees Retirement Board may not treat any employee as an inactive member under the provisions  
18 of this subsection for the purpose of receiving any benefit under ORS chapter 238 or 238A **or**  
19 **sections 1 to 20 of this 2011 Act** that requires that the employee be separated from all service with  
20 participating public employers and with employers who are treated as part of a participating public  
21 employer's controlled group under the federal laws and rules governing the status of the system and  
22 the Public Employees Retirement Fund as a qualified governmental retirement plan and trust.

23  
24 (7) Any amounts transferred from the Public Employees Retirement Fund under subsection (6)  
25 of this section shall be transferred directly to the Optional Retirement Plan by the Public Employees  
26 Retirement Board and may not be made available to the employee.

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

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

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

39 (11) Benefits under the Optional Retirement Plan are payable to employees who elect to partic-  
40 ipate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accord-  
41 ance with the terms of the annuity contracts or the terms of the contract with the mutual fund.  
42 Employees electing to participate in the plan agree that benefits payable under the plan are not  
43 obligations of the State of Oregon or of the Public Employees Retirement System.

44 **SECTION 44.** ORS 243.830 is amended to read:

45 243.830. An agreement executed pursuant to ORS 243.820 by an employee who is subject to ORS

1 chapter 238 or 238A **or sections 1 to 20 of this 2011 Act**, or a similar retirement program for  
 2 public employees, in no way affects the contributions to be made or the benefits to be provided for  
 3 such employee under ORS chapter 238 or 238A **or sections 1 to 20 of this 2011 Act** or the other  
 4 similar program. Reduction of salary or forgoing a salary increase by a stated amount under ORS  
 5 243.820 shall not be deemed a reduction in salary for the purpose of such contributions and benefits.

6 **SECTION 45.** ORS 268.240 is amended to read:

7 268.240. (1) A district that is not participating in the Public Employees Retirement System may,  
 8 by application to the board, include any class of employees of the district in the system [*established*  
 9 *by ORS chapters 238 and 238A*] without entering into a contract of integration with the board under  
 10 ORS 238.680.

11 (2) The board shall consider an application received under this section to be an application to  
 12 become a participating employer [*under ORS chapters 238 and 238A*] **in the Public Employees**  
 13 **Retirement System**, but only to the extent of providing membership for the class of employees  
 14 described in the application.

15 (3) The board, upon such terms as are set forth in a contract between the board and the em-  
 16 ployer, shall allow every employee in the specified class to become members of the Public Employees  
 17 Retirement System [*in accordance with ORS chapters 238 and 238A*].

18 (4) When a district enters into a contract with the board under subsection (3) of this section,  
 19 the district shall agree to eventually extend [*coverage under ORS chapters 238 and 238A*] **mem-**  
 20 **bership in the system** to all eligible district employees through successive contracts with the  
 21 board.

22 (5) All employees who have completed the period of service with the public employer that is  
 23 required under ORS 238.015, 238A.100 or 238A.300 **or section 6 of this 2011 Act** shall become  
 24 members of the system on a date specified by the board. All other employees in the described class  
 25 shall become members upon completion of the required period of service.

26 (6) As used in this section, “board” means the Public Employees Retirement Board established  
 27 under ORS 238.630.

28 **SECTION 46.** ORS 338.135 is amended to read:

29 338.135. (1) Employee assignment to a public charter school shall be voluntary.

30 (2)(a) A public charter school or the sponsor of the public charter school is considered the em-  
 31 ployer of any employees of the public charter school. If a school district board is not the sponsor  
 32 of the public charter school, the school district board may not be the employer of the employees of  
 33 the public charter school and the school district board may not collectively bargain with the em-  
 34 ployees of the public charter school. The public charter school governing body shall control the  
 35 selection of employees at the public charter school.

36 (b) If a virtual public charter school or the sponsor of a virtual public charter school contracts  
 37 with a for-profit entity to provide educational services through the virtual public charter school, the  
 38 for-profit entity may not be the employer of any employees of the virtual public charter school.

39 (3) The school district board of the school district within which the public charter school is lo-  
 40 cated shall grant a leave of absence to any employee who chooses to work in the public charter  
 41 school. The length and terms of the leave of absence shall be set by negotiated agreement or by  
 42 board policy. However, the length of the leave of absence may not be less than two years unless:

43 (a) The charter of the public charter school is terminated or the public charter school is dis-  
 44 solved or closed during the leave of absence; or

45 (b) The employee and the school district board have mutually agreed to a different length of



1 time.

2 (4) An employee of a public charter school operating within a school district who is granted a  
 3 leave of absence from the school district and returns to employment with the school district shall  
 4 retain seniority and benefits as an employee pursuant to the terms of the leave of absence.  
 5 Notwithstanding ORS 243.650 to 243.782, a school district that was the employer of an employee of  
 6 a public charter school not operating within the school district may make provisions for the return  
 7 of the employee to employment with the school district.

8 (5) For purposes of ORS chapters 238 and 238A **and sections 1 to 20 of this 2011 Act**, a public  
 9 charter school shall be considered a public employer and as such shall participate in the Public  
 10 Employees Retirement System.

11 (6) For teacher licensing, employment experience in public charter schools shall be considered  
 12 equivalent to experience in public schools.

13 (7)(a) Any person employed as an administrator in a public charter school shall be licensed or  
 14 registered to administer by the Teacher Standards and Practices Commission.

15 (b) Any person employed as a teacher in a public charter school shall be licensed or registered  
 16 to teach by the commission.

17 (c) Notwithstanding paragraph (a) or (b) of this subsection, at least one-half of the total full-time  
 18 equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by  
 19 the commission pursuant to ORS 342.135, 342.136, 342.138 or 342.140.

20 (8) Notwithstanding ORS 243.650, a public charter school shall be considered a school district  
 21 for purposes of ORS 243.650 to 243.782. An employee of a public charter school may be a member  
 22 of a labor organization or organize with other employees to bargain collectively. Bargaining units  
 23 at the public charter school may be separate from other bargaining units of the sponsor or of the  
 24 school district in which the public charter school is located. Employees of a public charter school  
 25 may be part of the bargaining units of the sponsor or of the school district in which the public  
 26 charter school is located.

27 (9) A school district or the State Board of Education may not waive the right to sponsor a public  
 28 charter school in a collective bargaining agreement.

29 **SECTION 47.** ORS 341.290 is amended to read:

30 341.290. The board of education of a community college district shall be responsible for the  
 31 general supervision and control of any and all community colleges operated by the district. Con-  
 32 sistent with any applicable rules of the State Board of Education, the board may:

33 (1) Subject to ORS chapters 238 and 238A **and sections 1 to 20 of this 2011 Act**, employ ad-  
 34 ministrative officers, professional personnel and other employees, define their duties, terms and  
 35 conditions of employment and prescribe compensation therefor, pursuant to ORS 243.650 to 243.782.

36 (2) Enact rules for the government of the community college, including professional personnel  
 37 and other employees thereof and students therein.

38 (3) Prescribe the educational program.

39 (4) Control use of and access to the grounds, buildings, books, equipment and other property of  
 40 the district.

41 (5) Acquire, receive, hold, control, convey, sell, manage, operate, lease, lease-purchase, lend, in-  
 42 vest, improve and develop any and all property of whatever nature given to or appropriated for the  
 43 use, support or benefit of any activity under the control of the board, according to the terms and  
 44 conditions of such gift or appropriation.

45 (6) Purchase real property upon a contractual basis when the period of time allowed for payment

1 under the contract does not exceed 30 years.

2 (7) Fix standards of admission to the community college, prescribe and collect tuition for ad-  
3 mission to the community college, including fixing different tuition rates for students who reside in  
4 the district, students who do not reside in the district but are residents of the state and students  
5 who do not reside in the state.

6 (8) Prescribe and collect fees and expend funds so raised for special programs and services for  
7 the students and for programs for the cultural and physical development of the students.

8 (9) Provide and disseminate to the public information relating to the program, operation and fi-  
9 nances of the community college.

10 (10) Establish or contract for advisory and consultant services.

11 (11) Take, hold and dispose of mortgages on real and personal property acquired by way of gift  
12 or arising out of transactions entered into in accordance with the powers, duties and authority of  
13 the board and institute, maintain and participate in suits and actions and other judicial proceedings  
14 in the name of the district for the foreclosure of such mortgages.

15 (12) Maintain programs, services and facilities, and, in connection therewith, cooperate and en-  
16 ter into agreements with any person or public or private agency.

17 (13) Provide student services including health, guidance, counseling and placement services, and  
18 contract therefor.

19 (14) Join appropriate associations and pay any required dues therefor from resources of the  
20 district.

21 (15) Apply for federal funds and accept and enter into any contracts or agreements for the re-  
22 ceipt of such funds from the federal government or its agencies for educational purposes.

23 (16) Exercise any other power, duty or responsibility necessary to carry out the functions under  
24 this section or required by law.

25 (17) Prescribe rules for the use and access to public records of the district that are consistent  
26 with ORS 192.420, and education records of students under applicable state and federal law and  
27 rules of the State Board of Education. Whenever a student has attained 18 years of age or is at-  
28 tending an institution of post-secondary education, the permission or consent required of and the  
29 rights accorded to a parent of the student regarding education records shall thereafter be required  
30 of and accorded to only the student. However, faculty records relating to matters such as conduct,  
31 personal and academic evaluations, disciplinary actions, if any, and other personal matters shall not  
32 be made available to public inspection for any purpose except with the consent of the person who  
33 is the subject of the record or upon order of a court of competent jurisdiction.

34 (18) Enter into contracts for the receipt of cash or property, or both, and establish charitable  
35 gift annuities pursuant to ORS 731.038; and, commit, appropriate, authorize and budget for the pay-  
36 ment of or other disposition of general funds to pay, in whole or in part, sums due under an agree-  
37 ment for a charitable gift annuity, and to provide the necessary funding for reserves or other trust  
38 funds pursuant to ORS 731.038.

39 (19) Encourage gifts to the district by faithfully devoting the proceeds of such gifts to the dis-  
40 trict purposes for which intended.

41 (20) Build, furnish, equip, repair, lease, purchase and raze facilities; and locate, buy and acquire  
42 lands for all district purposes. Financing may be by any prudent method including but not limited  
43 to loans, contract purchase or lease. Leases authorized by this section include lease-purchase  
44 agreements under which the district may acquire ownership of the leased property at a nominal  
45 price. Such financing agreements may be for a term of up to 30 years except for lease arrangements

1 which may be for a term of up to 50 years.

2 (21) Participate in an educational consortium with public and private institutions that offer up-  
 3 per division and graduate instruction. Community colleges engaged in such consortiums may expend  
 4 money, provide facilities and assign staff to assist those institutions offering upper division and  
 5 graduate instruction.

6 (22) Enter into contracts of insurance or medical and hospital service contracts or may operate  
 7 a self-insurance program as provided in ORS 341.312.

8 **SECTION 48.** ORS 353.117 is amended to read:

9 353.117. (1) Pursuant to ORS 353.050, Oregon Health and Science University may create and  
 10 maintain an entity that is exempt from federal income tax under section 501(c)(3) of the Internal  
 11 Revenue Code, as amended, for the purpose of conducting clinical care and practice and advancing  
 12 other university missions by the faculty.

13 (2) Any entity created by the university under subsection (1) of this section shall be considered:

14 (a) A public employer for purposes of ORS 236.605 to 236.640 and ORS chapters 238 and 238A  
 15 **and sections 1 to 20 of this 2011 Act;**

16 (b) A unit of local government for purposes of ORS 190.003 to 190.130;

17 (c) A public body for purposes of ORS 30.260 to 30.300 and 307.112;

18 (d) A public agency for purposes of ORS 200.090; and

19 (e) A public corporation for purposes of ORS 307.090.

20 **SECTION 49.** ORS 377.836 is amended to read:

21 377.836. (1) Except as otherwise provided by law, and except as provided in subsection (2) of this  
 22 section, the provisions of ORS 279.835 to 279.855 and ORS chapters 240, 276, 279A, 279B, 279C, 282,  
 23 283, 291, 292 and 293 do not apply to the Travel Information Council. The council is subject to all  
 24 other statutes governing a state agency that do not conflict with ORS 377.700 to 377.840, including  
 25 the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS chapter 183. Subject  
 26 to the requirements of ORS chapters 238 and 238A **and sections 1 to 20 of this 2011 Act**, the  
 27 council's employees are members of the Public Employees Retirement System.

28 (2) The following shall apply to the council:

29 (a) ORS 279A.250 to 279A.290;

30 (b) ORS 282.210 to 282.230; and

31 (c) ORS 293.235, 293.240, 293.245, 293.611, 293.625 and 293.630.

32 **SECTION 50.** ORS 396.330 is amended to read:

33 396.330. (1) State employees of the Oregon Military Department who are not otherwise members  
 34 of the Oregon National Guard may be required as a condition of employment to obtain membership  
 35 in the Oregon State Defense Force when in the judgment of the Adjutant General the membership  
 36 maintains or enhances the readiness and stability of the department to provide services if the need  
 37 for Oregon State Defense Force assistance should arise. The decision of the Adjutant General shall  
 38 be carried out by written regulation and shall not be subject to collective bargaining.

39 (2) Members of the Oregon National Guard or Oregon State Defense Force who are ordered to  
 40 state active duty under the provisions of ORS chapter 399 shall be considered as being in the mili-  
 41 tary service of the state and shall be considered temporary employees of the military department.

42 (3) State employees of the military department may be ordered to state active duty under ORS  
 43 chapter 399 without jeopardizing their status as regular employees. Employees so ordered must be  
 44 in an authorized leave status from their regular military department employment during the period  
 45 served on active duty.

1 (4) State employees of the military department shall be subject to ORS chapter 240 or 243 when  
2 performing as regular employees.

3 (5) Members of the Oregon National Guard who are serving under Title 10 or Title 32 of the  
4 United States Code are not eligible, by reason of that service, for the rights or benefits of public  
5 employees granted or authorized by ORS chapter 236, 237, 238, 238A, 240 or 243 **or sections 1 to**  
6 **20 of this 2011 Act.** Except as required by federal law or regulation, ORS chapters 652, 653, 654,  
7 656, 657, 659, 659A, 661 and 663 do not apply to members of the Oregon National Guard who are  
8 serving under Title 10 or Title 32 of the United States Code.

9 **SECTION 51.** ORS 576.306 is amended to read:

10 576.306. (1) A commodity commission may contract with an independent contractor for the per-  
11 formance of any services. However, the commission may not contract with an independent con-  
12 tractor to perform the discretionary functions of the commission. ORS 279.835 to 279.855 and ORS  
13 chapters 240, 279A, 279B and 279C do not apply to the commission in obtaining such services, except  
14 that no contract for such services shall take effect until approved by the State Department of Ag-  
15 riculture as provided in subsection (7) of this section.

16 (2) The commission may rent space or acquire supplies and equipment from any contractor as  
17 described in subsection (1) of this section. ORS chapters 276, 278, 279A, 279B, 279C and 283 and ORS  
18 279.835 to 279.855 and 291.038 do not apply to such rentals or acquisitions.

19 (3) Except as provided in this section, a contractor described in subsection (1) of this section  
20 shall be considered an independent contractor and not an employee, eligible employee, public em-  
21 ployee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 238A,  
22 240, 243, 291, 292, 316 and 652 **and sections 1 to 20 of this 2011 Act.**

23 (4) Nothing in this section precludes the state or a commission from being considered the em-  
24 ployer of the contractor described in subsection (1) of this section for purposes of unemployment  
25 compensation under ORS chapter 657 and ORS 670.600.

26 (5) A contractor described in subsection (1) of this section shall be considered an independent  
27 contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

28 (6) A contractor described in subsection (1) of this section may not be considered a public offi-  
29 cial, public officer, state officer or executive official for purposes of Oregon law, including ORS  
30 chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

31 (7) The State Department of Agriculture shall review the contract described in subsection (1)  
32 of this section for the adequacy of the clauses pertaining to statement of work, starting and ending  
33 dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, com-  
34 pliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work  
35 product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any  
36 other clause the department deems necessary.

37 (8) The Oregon Department of Administrative Services, in consultation with the State Depart-  
38 ment of Agriculture, shall adopt rules necessary for the screening and selection of independent  
39 contractors under this section.

40 (9) Except as provided in subsection (8) of this section, the State Department of Agriculture may  
41 promulgate any rules necessary for the administration and enforcement of this section.

42 **SECTION 52.** ORS 777.775 is amended to read:

43 777.775. (1) An export trading corporation is not a contracting agency for the purposes of ORS  
44 279A.055, 279A.065, 279A.070, 279A.075, 279A.100, 279A.105, 279A.120, 279C.005, 279C.100 to  
45 279C.125, 279C.300 to 279C.470 and 279C.570 and ORS chapter 279B, except ORS 279B.025, 279B.235,

1 279B.240, 279B.270, 279B.275 and 279B.280.

2 (2) An export trading corporation is not a public employer for the purposes of ORS chapters 238  
3 and 238A and sections 1 to 20 of this 2011 Act.

4 **SECTION 53. ORS 238.750 is repealed.**

5  
6 **CAPTIONS**

7  
8 **SECTION 54. The unit and section captions used in this 2011 Act are provided only for  
9 the convenience of the reader and do not become part of the statutory law of this state or  
10 express any legislative intent in the enactment of this 2011 Act.**

11  
12 **EMERGENCY CLAUSE**

13  
14 **SECTION 55. This 2011 Act being necessary for the immediate preservation of the public  
15 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
16 on its passage.**

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