

House Bill 3313

Sponsored by Representative SPRENGER (at the request of Oregon School Boards Association)

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**.

Changes definition of "qualifying position" for purposes of public employee retirement benefits to require employee to work at least 1040 hours in calendar year.

Requires public employee to work at least 1040 hours in calendar year to qualify for certain benefits.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; creating new provisions; amending ORS 238.005, 238.015,
3 238A.005, 238A.115, 238A.145 and 238A.320; repealing ORS 238.074 and 238A.142; and declaring
4 an emergency.

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

6 **SECTION 1.** ORS 238.005, as amended by section 30, chapter 54, Oregon Laws 2012, is amended
7 to read:

8 238.005. For purposes of this chapter:

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

12 (2) "Annuity" means payments for life derived from contributions made by a member as provided
13 in this chapter.

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

15 (4) "Calendar year" means 12 calendar months commencing on January 1 and ending on De-
16 cember 31 following.

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

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

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

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

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 a member.

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

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

5 (a) Persons engaged as independent contractors.

6 (b) Seasonal, emergency or casual workers whose periods of employment with any public em-
7 ployer or public employers do not total [600] 1040 hours in any calendar year.

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

11 (d) Persons employed and paid from federal funds received under a federal program intended
12 primarily to alleviate unemployment. However, any such person shall be considered an "employee"
13 if not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects
14 to have the person so considered by an irrevocable written notice to the board.

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

18 (9) "Final average salary" means whichever of the following is greater:

19 (a) The average salary per calendar year paid by one or more participating public employers to
20 an employee who is an active member of the system in three of the calendar years of membership
21 before the effective date of retirement of the employee, in which three years the employee was paid
22 the highest salary. The three calendar years in which the employee was paid the largest total salary
23 may include calendar years in which the employee was employed for less than a full calendar year.
24 If the number of calendar years of active membership before the effective date of retirement of the
25 employee is three or fewer, the final average salary for the employee is the average salary per cal-
26 endar year paid by one or more participating public employers to the employee in all of those years,
27 without regard to whether the employee was employed for the full calendar year.

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

31 (10) "Firefighter" does not include a volunteer firefighter, but does include:

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

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

36 (11) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-
37 lowing.

38 (12) "Fund" means the Public Employees Retirement Fund.

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

42 (14) "Institution of higher education" means a public university listed in ORS 352.002, the
43 Oregon Health and Science University and a community college, as defined in ORS 341.005.

44 (15) "Member" means a person who has established membership in the system and whose mem-
45 bership has not been terminated as described in ORS 238.095. "Member" includes active, inactive

1 and retired members.

2 (16) "Member account" means the regular account and the variable account.

3 (17) "Normal retirement age" means:

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

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

11 (18) "Pension" means annual payments for life derived from contributions by one or more public
12 employers.

13 (19) "Police officer" includes:

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

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

21 (c) Employees of the Oregon Liquor Control Commission who are classified as liquor enforce-
22 ment inspectors by the administrator of the commission.

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

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

27 (f) Police officers who are commissioned by a university under ORS 352.383 and who are clas-
28 sified as police officers by the university.

29 (g) Parole and probation officers employed by the Department of Corrections, parole and pro-
30 bation officers who are transferred to county employment under ORS 423.549 and adult parole and
31 probation officers, as defined in ORS 181.610, who are classified as police officers for the purposes
32 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
33 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
34 ented by a labor organization, any proposal by the county to change that classification or to cease
35 to classify adult parole and probation officers as police officers for the purposes of this chapter is
36 a mandatory subject of bargaining.

37 (h) Police officers appointed under ORS 276.021 or 276.023.

38 (i) Employees of the Port of Portland who are classified as airport police by the Board of Com-
39 missioners of the Port of Portland.

40 (j) Employees of the State Department of Agriculture who are classified as livestock police of-
41 ficers by the Director of Agriculture.

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

44 (L) Investigators of the Criminal Justice Division of the Department of Justice.

45 (m) Corrections officers as defined in ORS 181.610.

1 (n) Employees of the Oregon State Lottery Commission who are classified by the Director of the
 2 Oregon State Lottery as enforcement agents pursuant to ORS 461.110.

3 (o) The Director of the Department of Corrections.

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

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

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

15 (s) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,
 16 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who
 17 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the
 18 Department of Corrections or the Oregon Youth Authority.

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

22 (u) Employees of the Oregon Youth Authority who are classified as juvenile parole and pro-
 23 bation officers.

24 (20) "Prior service credit" means credit provided under ORS 238.442 or under ORS 238.225 (2)
 25 to (6) (1999 Edition).

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

32 (22) "Qualifying position" means one or more jobs with one or more participating public em-
 33 ployers in which an employee performs [600] **1040** or more hours of service in a calendar year, ex-
 34 cluding any service in a job for which a participating public employer does not provide benefits
 35 under this chapter pursuant to an application made under ORS 238.035.

36 (23) "Regular account" means the account established for each active and inactive member un-
 37 der ORS 238.250.

38 (24) "Retired member" means a member who is retired for service or disability.

39 (25) "Retirement credit" means a period of time that is treated as creditable service for the
 40 purposes of this chapter.

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

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

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

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

5 (C) Retroactive payments described in ORS 238.008; and

6 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
7 652.190.

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

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

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

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

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

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

17 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement
18 gratuitous payment;

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

22 (H) Payments for instructional services rendered to public universities of the Oregon University
23 System or the Oregon Health and Science University when such services are in excess of full-time
24 employment subject to this chapter. A person employed under a contract for less than 12 months is
25 subject to this subparagraph only for the months to which the contract pertains; or

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

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

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

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

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

33 (31) "Volunteer firefighter" means a firefighter whose position normally requires less than
34 [600] 1040 hours of service per year.

35 **SECTION 2.** ORS 238A.005, as amended by section 1, chapter 31, Oregon Laws 2012, is amended
36 to read:

37 238A.005. For the purposes of this chapter:

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

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

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

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

- 1 (a) Persons engaged as independent contractors;
- 2 (b) Aliens working under a training or educational visa;
- 3 (c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190,
- 4 provided sheltered employment or make-work by a public employer;
- 5 (d) Persons categorized by a participating public employer as student employees;
- 6 (e) Any person who is an inmate of a state institution;
- 7 (f) Employees of foreign trade offices of the Oregon Business Development Department who live
- 8 and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);
- 9 (g) An employee actively participating in an alternative retirement program established under
- 10 ORS 353.250 or an optional retirement plan established under ORS 341.551;
- 11 (h) Employees of the Oregon University System who are actively participating in an optional
- 12 retirement plan offered under ORS 243.800;
- 13 (i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003,
- 14 for membership in the system under the provisions of ORS chapter 238 or other law;
- 15 (j) Any person who belongs to a class of employees who are not eligible to become members of
- 16 the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);
- 17 (k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who
- 18 continues to receive retirement benefits while employed; and
- 19 (L) Judges.
- 20 (5) "Firefighter" means:
- 21 (a) A person employed by a local government, as defined in ORS 174.116, whose primary job
- 22 duties include the fighting of fires;
- 23 (b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals;
- 24 and
- 25 (c) An employee of the State Forestry Department who is certified by the State Forester as a
- 26 professional wildland firefighter and whose primary duties include the abatement of uncontrolled
- 27 fires as described in ORS 477.064.
- 28 (6) "Fund" means the Public Employees Retirement Fund.
- 29 (7)(a) "Hour of service" means:
- 30 (A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment
- 31 by a participating public employer for performance of duties in a qualifying position; and
- 32 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave
- 33 during which an employee does not perform duties but for which the employee is directly or indi-
- 34 rectly paid or entitled to payment by a participating public employer for services in a qualifying
- 35 position, as long as the hour is within the number of hours regularly scheduled for the performance
- 36 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-
- 37 thorized leave.
- 38 (b) "Hour of service" does not include any hour for which payment is made or due under a plan
- 39 maintained solely for the purpose of complying with applicable workers' compensation laws or un-
- 40 employment compensation laws.
- 41 (8) "Inactive member" means a member of the pension program or the individual account pro-
- 42 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who
- 43 is not a retired member and who is not employed in a qualifying position.
- 44 (9) "Individual account program" means the defined contribution individual account program of
- 45 the Oregon Public Service Retirement Plan established under ORS 238A.025.

1 (10) "Institution of higher education" means a public university listed in ORS 352.002, the
 2 Oregon Health and Science University or a community college, as defined in ORS 341.005.

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

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

8 (13) "Pension program" means the defined benefit pension program of the Oregon Public Service
 9 Retirement Plan established under ORS 238A.025.

10 (14) "Police officer" means a police officer as described in ORS 238.005.

11 (15) "Qualifying position" means one or more jobs with one or more participating public em-
 12 ployers in which an eligible employee performs [600] **1040** or more hours of service in a calendar
 13 year, excluding any service in a job for which benefits are not provided under the Oregon Public
 14 Service Retirement Plan pursuant to ORS 238A.070 (2).

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

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

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

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

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

28 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit
 29 plan by the employer at the election of the employee and that is not includable in the taxable in-
 30 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2011.

31 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
 32 election of the employee and that is not included in the taxable income of the employee by reason
 33 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2011.

34 (E) Retroactive payments described in ORS 238.008.

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

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

40 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
 41 652.190.

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

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

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

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

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

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

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

8 (G) Payments for instructional services rendered to public universities of the Oregon University
9 System or the Oregon Health and Science University when those services are in excess of full-time
10 employment subject to this chapter. A person employed under a contract for less than 12 months is
11 subject to this subparagraph only for the months covered by the contract.

12 (H) The amount of an employee contribution to the individual account program that is paid by
13 the employer and is not deducted from the compensation of the employee, as provided under ORS
14 238A.335 (1) and (2)(b).

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

20 (18) "System" means the Public Employees Retirement System.

21 **SECTION 3.** ORS 238A.115 is amended to read:

22 238A.115. (1) Except as provided in subsection (2) of this section, a member of the pension pro-
23 gram becomes vested in the pension program on the earliest of the following dates:

24 (a) The date on which the member completes at least [600] **1040** hours of service in each of five
25 calendar years. The five calendar years need not be consecutive, but are subject to the provisions
26 of subsection (3) of this section.

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

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

31 (2) If on the date that a person becomes an active member the person has already reached the
32 normal retirement age for the person under ORS 238A.160, the person is vested in the pension pro-
33 gram on that date.

34 (3) If a member of the pension program who is not vested in the pension program performs fewer
35 than [600] **1040** hours of service in each of five consecutive calendar years, hours of service per-
36 formed before the first calendar year of the period of five consecutive calendar years shall be dis-
37 regarded for purposes of determining whether the member is vested under subsection (1)(a) of this
38 section.

39 (4) Solely for purposes of determining whether a member is vested under this section, hours of
40 service include creditable service, as defined in ORS 238.005, performed by the person before the
41 person became an eligible employee, as long as the membership of the person under ORS chapter
42 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes
43 an eligible employee.

44 **SECTION 4.** ORS 238A.145 is amended to read:

45 238A.145. (1) A pension program member who is not vested forfeits all retirement credit if the

1 member performs fewer than [600] **1040** hours of service in each of five consecutive calendar years.
 2 A forfeiture under this section takes effect at the end of the fifth calendar year.

3 (2) If a pension program member forfeits retirement credit under this section and is subsequently
 4 reemployed by a participating public employer:

5 (a) The person may acquire retirement credit under the pension program only for the purpose
 6 of service performed after the person is reemployed; and

7 (b) Any service performed before the forfeiture may not be credited toward the period of service
 8 required by ORS 238A.100 or 238A.115, or toward the accrual of retirement credit under ORS
 9 238A.140, 238A.150 or 238A.155.

10 **SECTION 5.** ORS 238A.320 is amended to read:

11 238A.320. (1) A member of the individual account program becomes vested in the employee ac-
 12 count established for the member under ORS 238A.350 (2) on the date the employee account is es-
 13 tablished.

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

16 (3) Except as provided in subsection (4) of this section, if an employer makes employer contri-
 17 butions for a member under ORS 238A.340 the member becomes vested in the employer account es-
 18 tablished under ORS 238A.350 (3) on the earliest of the following dates:

19 (a) The date on which the member completes at least [600] **1040** hours of service in each of five
 20 calendar years. The five calendar years need not be consecutive, but are subject to the provisions
 21 of subsection (5) of this section.

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

24 (c) If the individual account program is terminated, the date on which termination becomes ef-
 25 fective, but only to the extent the account is then funded.

26 (d) The date on which an active member becomes disabled, as described in ORS 238A.155 (5).

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

28 (4) If on the date that a person becomes an active member the person has already reached the
 29 normal retirement age for the person under ORS 238A.160, and the employer makes employer con-
 30 tributions for the member under ORS 238A.340, the person is vested in the employer account es-
 31 tablished under ORS 238A.350 (3) on that date.

32 (5) If a member of the individual account program who is not vested in the employer account
 33 performs fewer than [600] **1040** hours of service in each of five consecutive calendar years, hours
 34 of service performed before the first calendar year of the period of five consecutive calendar years
 35 shall be disregarded for purposes of determining whether the member is vested under subsection
 36 (3)(a) of this section.

37 (6) Solely for purposes of determining whether a member is vested under subsection (3)(a) of this
 38 section, hours of service include creditable service, as defined in ORS 238.005, performed by the
 39 person before the person became an eligible employee, as long as the membership of the person
 40 under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date
 41 the person becomes an eligible employee.

42 **SECTION 6.** ORS 238.015 is amended to read:

43 238.015. (1) No person may become a member of the system unless that person is in the service
 44 of a public employer and has completed six months' service uninterrupted by more than 30 consec-
 45 utive working days during the six months' period. Every employee of a participating employer shall

1 become a member of the system at the beginning of the first full pay period of the employee fol-
2 lowing the six months' period. Contributions for new members shall first be made for those wages
3 that are attributable to services performed by the employee during the first full pay period following
4 the six months' period, without regard to when those wages are considered earned for other pur-
5 poses under this chapter. All public employers participating in the Public Employees Retirement
6 System established by chapter 401, Oregon Laws 1945, as amended, at the time of repeal of that
7 chapter, and all school districts of the state, shall participate in, and their employees shall be
8 members of, the system, except as otherwise specifically provided by law.

9 (2) Any active member of the Public Employees Retirement System who, through the annexation
10 of a political subdivision employing the member or by change of employment, becomes the employee
11 of another political subdivision which is participating in the Public Employees Retirement System
12 and has also a separate retirement system for its employees, shall remain an active member of the
13 Public Employees Retirement System unless, within 60 days after the effective date of the
14 annexation or change of employment or April 8, 1953, the member shall by written notice to the
15 Public Employees Retirement Board and to the administrative body of the new public employer elect
16 to relinquish membership in the Public Employees Retirement System and become a member of the
17 separate retirement system of the employer, if eligible for membership in that retirement system, and
18 the member shall be so carried by the new employer. Immediately upon such annexation of any
19 political subdivision or such change of employment, the new public employer shall inform such em-
20 ployee in writing of the right of the employee to exercise an election as in this section provided.

21 (3) A political subdivision (other than a school district) not participating in the retirement sys-
22 tem established by chapter 401, Oregon Laws 1945, as amended, which employs one or more em-
23 ployees, each of whose position requires [600] **1040** hours of service per year, or an agency created
24 by two or more political subdivisions to provide themselves governmental services, which employs
25 one or more employees, each of whose position requires [600] **1040** hours of service per year, may,
26 through its governing body, notify the board in writing, that it elects to include its employees in the
27 system hereby established. Such public employer may request the board to make a study and esti-
28 mate of the cost of including it and its eligible employees, other than volunteer firefighters, in the
29 system, which the board thereupon shall cause to be made and the cost of which the employer shall
30 bear. Upon completion of the study and estimate the employer may apply for admission to the sys-
31 tem, whereupon it shall begin to participate therein and its eligible employees other than volunteer
32 firefighters shall become members of the system. If the employer is an agency created by two or
33 more political subdivisions to provide themselves governmental services and ceases thereafter to
34 transmit to the board contributions for any of its eligible employees, the benefits based upon em-
35 ployer contributions to which such employees would otherwise be entitled shall be reduced accord-
36 ingly.

37 (4) No inmate of a state institution or an alien on a training or educational visa working for
38 any participating employer, even though the inmate or alien received compensation from a partic-
39 ipating employer, shall be eligible to become a member of the system. No person employed by a
40 participating employer and defined by such employer as a student employee is eligible to become a
41 member of the system for such student employment.

42 (5) A person holding an elective office or an appointive office with a fixed term or an office as
43 head of a department to which the person is appointed by the Governor may become a member of
44 the system by giving the board written notice of desire to do so within 30 days after taking the of-
45 fice or, in the event that the officer is not eligible to become a member of the system at the time

1 of taking the office, within 30 days after becoming so eligible. Membership so established shall not
2 be discontinued during the appointive or elective term of the officer except upon separation of the
3 officer from service.

4 (6) A public employer employing volunteer firefighters may apply to the board at any time for
5 them to become members of the system. Upon receiving the application the board shall fix a wage
6 at which, for purposes of this chapter only, they shall be considered to be employed and which shall
7 be the basis for computing the amounts of the contributions, if any, which they pay into, and of the
8 benefits which they and their beneficiaries receive from, the fund; and if the wage so fixed is satis-
9 factory to the employer, shall include the firefighters in the system.

10 (7)(a) In the event that an employee enters the service of a public employer which is partic-
11 ipating in or later begins to participate in the system and in the event that at the time of entering
12 that service or at the time that the employer begins to participate in the system the employee has
13 commenced to purchase and is continuing to purchase a retirement annuity, if the employer deems
14 the annuity adequate for the purposes of this chapter, it may enter into an agreement with the em-
15 ployee and the board pursuant to which the employee may be exempted from contributing to the
16 Public Employees Retirement Fund, and, if no public funds are being used to purchase the annuity
17 or a corresponding pension, the employer, in lieu of the contributions which it otherwise would
18 make to the fund on account of the employee, may make contributions toward the cost of purchasing
19 the annuity. Such employee otherwise shall be subject to the provisions of this chapter, except that
20 neither the employee nor any person claiming under the employee shall receive any payments from
21 the retirement fund as service or disability allowance.

22 (b) An employee who enters into an agreement under paragraph (a) of this subsection may elect
23 at any time thereafter to start to participate in the system by giving written notice of desire to
24 participate to the board and to the employer. The employee shall receive no retirement credit for
25 the period during which the employee was exempted from contributing to the fund under the
26 agreement, but the employee shall be considered to have completed the six months' service required
27 for membership in the system. When the employee starts to participate in the system the employer
28 shall start to contribute to the fund on account of the employee in the same manner as the employer
29 contributes on account of other employees who are active members of the system and the employer
30 shall stop making contributions toward the cost of purchasing the retirement annuity.

31 (8)(a) All new appointees in the Federal Cooperative Extension Service or in any other service
32 in which participation in the Federal Civil Service retirement program is mandatory, who receive
33 a federal appointment on or after July 1, 1955, may participate in the Public Employees Retirement
34 System only by giving written notice of their election to so participate to the Public Employees
35 Retirement Board within six months after the effective date of their appointment.

36 (b) All persons employed by the Federal Cooperative Extension Service or by any other service
37 in which participation in the Federal Civil Service retirement program is mandatory, who are under
38 federal appointment as of July 1, 1955, and who are members of the state retirement system, shall
39 continue such membership unless, prior to February 1, 1956, they give written notice to the Public
40 Employees Retirement Board of their desire to cancel their membership.

41 (c) Any person who is an active member of the Public Employees Retirement System, who, on
42 or after July 1, 1955, is employed by the Federal Cooperative Extension Service or by any other
43 service in which participation in the Federal Civil Service retirement program is mandatory, and
44 who is given a federal appointment, shall continue such membership in the Public Employees Re-
45 tirement System unless, within six months after the effective date of the appointment, the person

1 gives written notice to the Public Employees Retirement Board of the desire to cancel membership.

2 (d) A cancellation of membership under paragraph (b) or (c) of this subsection terminates mem-
 3 bership in the Public Employees Retirement System and cancels the right to any benefits from, or
 4 claims against, that system. Such cancellation prevents the withdrawing member from claiming
 5 thereafter any retirement credit for any period of employment before the cancellation. Upon receipt
 6 of a notice of cancellation, the Public Employees Retirement Board shall refund the member account
 7 of the withdrawing member, regardless of the age of the withdrawing member.

8 (9) Employees, including managers, of foreign trade offices of the Oregon Business Development
 9 Department who live and perform services in foreign countries under the provisions of ORS 285A.075
 10 (1)(g) shall not be members of the system. However, any person who is an active member of the
 11 system immediately before becoming an employee of a foreign trade office shall continue to be a
 12 member of the system during the period of time the person serves as an employee of the foreign
 13 trade office.

14 (10) An employee who is participating in an alternative retirement program established pursuant
 15 to ORS 353.250 or an optional retirement plan established pursuant to ORS 341.551 may not be an
 16 active member of the Public Employees Retirement System.

17 **SECTION 7. ORS 238.074 and 238A.142 are repealed.**

18 **SECTION 8. The amendments to ORS 238.005, 238.015, 238A.005, 238A.115, 238A.145 and
 19 238A.320 by sections 1 to 6 of this 2013 Act and the repeal of ORS 238.074 and 238A.142 by
 20 section 7 of this 2013 Act apply only to calendar years beginning on and after the effective
 21 date of this 2013 Act.**

22 **SECTION 9. (1) Jurisdiction is conferred on the Supreme Court to determine in the
 23 manner provided by this section whether this 2013 Act breaches any contract between
 24 members of the Public Employees Retirement System and their employers or violates any
 25 constitutional provision, including but not limited to impairment of contract rights of mem-
 26 bers of the Public Employees Retirement System under Article I, section 21, of the Oregon
 27 Constitution, or Article I, section 10, clause 1, of the United States Constitution.**

28 (2) A person who is or who will be adversely affected by this 2013 Act may institute a
 29 proceeding for review by filing with the Supreme Court a petition that meets the following
 30 requirements:

31 (a) The petition must be filed within 60 days after the effective date of this 2013 Act.

32 (b) The petition must include the following:

33 (A) A statement of the basis of the challenge; and

34 (B) A statement and supporting affidavit showing how the petitioner is or will be ad-
 35 versely affected.

36 (3) The petitioner shall serve a copy of the petition by registered or certified mail upon
 37 the Public Employees Retirement Board, the Attorney General and the Governor.

38 (4) Proceedings for review under this section shall be given priority over all other mat-
 39 ters before the Supreme Court.

40 (5) The Supreme Court shall allow public employers participating in the Public Employees
 41 Retirement System to intervene in any proceeding under this section.

42 (6) In the event the Supreme Court determines that there are factual issues in the peti-
 43 tion, the Supreme Court may appoint a special master to hear evidence and to prepare re-
 44 commended findings of fact.

45 **SECTION 10. This 2013 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
2 **on its passage.**

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