

# Senate Bill 661

Sponsored by Senator WHITSETT

## 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**.

Provides that certain persons hired by participating public employer on or after January 1, 2014, may not become members of pension program of Oregon Public Service Retirement Plan.

Allows person who may not become member of pension program to elect to make employee contribution to individual account program of up to six percent of salary. Allows employer to agree to match all or part of employee contribution made by person who may not become member of pension program.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to public employee retirement; amending ORS 238A.005, 238A.100, 238A.330 and 238A.335;  
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 238A.100 is amended to read:

6 238A.100. (1) Except as provided by [*subsection (2)*] **subsections (2) and (3)** of this section, an  
7 eligible employee who is employed in a qualifying position on or after August 29, 2003, by a public  
8 employer that is participating in the pension program and who will not receive benefits under ORS  
9 chapter 238 for service with the participating public employer pursuant to the provisions of ORS  
10 238A.025 becomes a member of the pension program on the first day of the month after the employee  
11 completes six full calendar months of employment. The six-month requirement may not be inter-  
12 rupted by more than 30 consecutive working days.

13 (2) A person who is elected or appointed to an office with a fixed term other than as a member  
14 of the Legislative Assembly, or who is appointed by the Governor to an office as head of a depart-  
15 ment, may elect not to become a member of the pension program by giving the Public Employees  
16 Retirement Board written notice not later than 30 days after taking office. An election under this  
17 subsection also operates as an election not to become a member of the individual account program.  
18 An election under this subsection is irrevocable during the term of office for which the election is  
19 made.

20 **(3) A person may not become a member of the pension program if:**

21 **(a) The person is employed by a participating public employer on or after January 1, 2014;**  
22 **and**

23 **(b) The person has not performed any period of service for a participating public em-**  
24 **ployer before January 1, 2014, that is credited to the six-month period of employment re-**  
25 **quired of an employee under subsection (1) of this section before the employee becomes a**  
26 **member of the pension program under subsection (1) of this section.**

27 **SECTION 2.** ORS 238A.330 is amended to read:

28 238A.330. (1) A member of the individual account program **who is a member of the pension**

**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 **program under ORS 238A.100** must make an employee [*contributions*] **contribution** to the individ-  
2 ual account program of six percent of the member's salary.

3 **(2) A member of the individual account program who may not become a member of the**  
4 **pension program under ORS 238A.100 (3) may elect to make an employee contribution to the**  
5 **individual account program. An employee contribution under this subsection must be a per-**  
6 **centage of salary, may not be less than one percent of salary or more than six percent of**  
7 **salary, and must be a whole number.**

8 [(2)] (3) An employee [*contributions*] **contribution** made by a member of the individual account  
9 program under this section shall be credited by the **Public Employees Retirement** Board to the  
10 employee account established for the member under ORS 238A.350 (2).

11 **(4) The employee contribution required or permitted by this section, whether made by the**  
12 **member or by the employer pursuant to an agreement under ORS 238A.335, must be remitted**  
13 **by the employer to the board in the manner established by the board.**

14 **SECTION 3.** ORS 238A.335 is amended to read:

15 238A.335. (1)(a) A participating public employer may agree, by a written employment policy or  
16 by a collective bargaining agreement, to pay the employee contribution required under ORS  
17 238A.330 (1). The policy or agreement need not include all members of the individual account pro-  
18 gram employed by the employer.

19 [(2)] (b) An agreement under this [*section to pay the required employee contribution*] **subsection**  
20 may provide that:

21 [(a)] (A) **Amounts be deducted from** employee compensation [*be reduced*] to generate the funds  
22 needed to make [*the*] employee contributions; [*or*]

23 [(b)] (B) Additional amounts be paid by the employer for the purpose of making [*the*] employee  
24 contributions[, *and employee compensation not be reduced for the purpose of generating the funds*  
25 *needed to make the employee contributions*]; **or**

26 (C) **Amounts be deducted from employee compensation under subparagraph (A) of this**  
27 **paragraph to generate the funds needed to make a portion of employee contributions, and**  
28 **additional amounts be paid by the employer under subparagraph (B) of this paragraph to**  
29 **generate the funds needed to make a portion of employee contributions.**

30 **(2) A participating public employer may agree, by a written employment policy or by a**  
31 **collective bargaining agreement, to match all or part of the employee contribution permitted**  
32 **under ORS 238A.330 (2). The employer may enter into an agreement under this section with**  
33 **all or some of the employees employed by the employer. Matching amounts paid under this**  
34 **subsection must be paid by the employer and may not be deducted from employee compen-**  
35 **sation.**

36 (3) A participating public employer must give written notice to the Public Employees Retirement  
37 Board at the time that [*a written employment policy or collective bargaining agreement described in*  
38 *subsection (1) of*] **an agreement under** this section is adopted or changed. The notice must specif-  
39 ically [*indicate whether the agreement is as described in subsection (2)(a) or (b) of this section.*] **de-**  
40 **scribe the apportionment of the employee contribution between the members and the**  
41 **employer if the employee contribution is apportioned under subsection (1) of this section.**  
42 [*Any change in the manner in which employee contributions are to be paid applies only to employee*  
43 *contributions made on and after the date the notice is received by the board.*]

44 **SECTION 4.** ORS 238A.005, as amended by section 1, chapter 31, Oregon Laws 2012, is amended  
45 to read:

1 238A.005. For the purposes of this chapter:

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

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

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

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

10 (a) Persons engaged as independent contractors;

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

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

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

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

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

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

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

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

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

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

28 (L) Judges.

29 (5) "Firefighter" means:

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

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

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

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

38 (7)(a) "Hour of service" means:

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

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

1 thorized leave.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (E) Retroactive payments described in ORS 238.008.

44 (F) The amount of an employee contribution to the individual account program that is [*paid by*  
45 *the employer and*] deducted from the compensation of the employee[, *as provided under ORS*

1 238A.335 (1) and (2)(a)].

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

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

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

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

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

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

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

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

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

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

21 (H) The amount of an employee contribution to the individual account program that is paid by  
22 the employer and is not deducted from the compensation of the employee[, *as provided*] under ORS  
23 238A.335 [(1) and (2)(b)].

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

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

30 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**  
31 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
32 **on its passage.**

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