

A-Engrossed
Senate Bill 712

Ordered by the Senate April 10
Including Senate Amendments dated April 10

Sponsored by COMMITTEE ON WORKFORCE

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.

Provides hours of service credit for vesting purposes and retirement credit to member of Oregon Public Service Retirement Plan who receives workers' compensation disability payments and subsequently is reemployed by any participating public employer.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to credit for periods of disability under the Oregon Public Service Retirement Plan; creat-
3 ing new provisions; amending ORS 238A.005 and 238A.155; and declaring an emergency.

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

5 **SECTION 1.** ORS 238A.155 is amended to read:

6 238A.155. (1) Notwithstanding any other provision of ORS 238A.100 to 238A.250, an active
7 member of the pension program described in subsection (2) of this section who becomes disabled
8 shall accrue retirement credit and hours of service credit for vesting purposes for the period during
9 which the member is disabled.

10 (2) The provisions of this section apply only to:

11 (a) A member who has accrued 10 years or more of retirement credit before the member becomes
12 disabled; or

13 (b) A member who becomes disabled by reason of injury or disease sustained while in the actual
14 performance of duty.

15 (3) Retirement credit accrues under this section only for as long as the member remains disabled
16 or until the member reaches the normal retirement age under ORS 238A.160.

17 (4) If a disabled member does not return to employment with a participating public employer
18 after the period of disability, the member shall receive a pension under ORS 238A.180, 238A.185 or
19 238A.190 upon retirement based on an adjusted salary. The adjusted salary shall be the salary paid
20 to the disabled member on the date the member left active employment with the participating public
21 employer by reason of disability, adjusted for each year after the member left employment and before
22 the member's effective date of retirement to reflect cost-of-living changes, based on the Portland-
23 Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the
24 Bureau of Labor Statistics of the United States Department of Labor. Adjustments under this sub-
25 section may not exceed a two percent increase or decrease for any year. An adjustment shall be
26 made under this subsection only for calendar years in which the member is disabled for at least six
27 months during the year.

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 (5) A pension program member is considered to be disabled for the purpose of this section if:

2 (a) The member is found, after being examined by one or more physicians selected by the Public
3 Employees Retirement Board, to be mentally or physically incapacitated for an extended duration
4 and unable to perform any work for which qualified, by reason of injury or disease that was not
5 intentionally self-inflicted[.]; or

6 (b) **The member receives workers' compensation benefits by reason of injury or disease**
7 **that was sustained while in actual performance of duty with a participating public employer**
8 **and that was not intentionally self-inflicted and returns to employment with a participating**
9 **public employer after the period of disability.**

10 **SECTION 2.** ORS 238A.005, as amended by section 2, chapter 33, Oregon Laws 2016, is amended
11 to read:

12 238A.005. For the purposes of this chapter:

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

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

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

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

21 (a) Persons engaged as independent contractors;

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

23 (c) Persons provided sheltered employment or make-work by a public employer;

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

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

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

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

30 (h) Employees of a public university listed in ORS 352.002 who are actively participating in an
31 optional retirement plan offered under ORS 243.800;

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

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

36 (k) Any person who is retired under ORS 238A.100 to 238A.250 or ORS chapter 238 and who
37 continues to receive retirement benefits while employed; and

38 (L) Judges.

39 (5) "Firefighter" means:

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

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

44 (c) An employee of the State Forestry Department who is certified by the State Forester as a
45 professional wildland firefighter and whose primary duties include the abatement of uncontrolled

1 fires as described in ORS 477.064.

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

3 (7)(a) “Hour of service” means:

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

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

12 (b) “Hour of service” does not include any hour for which payment is made or due under a plan
13 maintained solely for the purpose of complying with applicable [*workers’ compensation laws or*] un-
14 employment compensation laws.

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

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

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

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

25 (12) “Participating public employer” means a public employer as defined in ORS 238.005 that
26 provides retirement benefits for employees of the public employer under the system.

27 (13) “Pension program” means the defined benefit pension program of the Oregon Public Service
28 Retirement Plan established under ORS 238A.025.

29 (14) “Police officer” means a police officer as described in ORS 238.005.

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

34 (16) “Retired member” means a pension program member who is receiving a pension as provided
35 in ORS 238A.180 to 238A.195.

36 (17)(a) “Salary” means the remuneration paid to an active member in return for services to the
37 participating public employer, including remuneration in the form of living quarters, board or other
38 items of value, to the extent the remuneration is includable in the employee’s taxable income under
39 Oregon law. “Salary” includes the additional amounts specified in paragraph (b) of this subsection,
40 but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether
41 those amounts are includable in taxable income.

42 (b) “Salary” includes the following amounts:

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

45 (B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the

1 employee.

2 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit
3 plan by the employer at the election of the employee and that is not includable in the taxable in-
4 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2015.

5 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
6 election of the employee and that is not included in the taxable income of the employee by reason
7 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2015.

8 (E) Retroactive payments described in ORS 238.008.

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

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

14 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
15 652.190.

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

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

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

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

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

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

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

27 (G) Payments for instructional services rendered to public universities listed in ORS 352.002 or
28 the Oregon Health and Science University when those services are in excess of full-time employment
29 subject to this chapter. A person employed under a contract for less than 12 months is subject to
30 this subparagraph only for the months covered by the contract.

31 (H) The amount of an employee contribution to the individual account program that is paid by
32 the employer and is not deducted from the compensation of the employee, as provided under ORS
33 238A.335 (1) and (2)(b).

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

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

40 (19) "Workers' compensation benefits" means:

41 (a) Payments made under ORS chapter 656; or

42 (b) Payments provided in lieu of workers' compensation benefits under ORS 656.027 (6).

43 **SECTION 3. (1) The amendments to ORS 238A.005 and 238A.155 by sections 1 and 2 of this**
44 **2017 Act apply to members of the Public Employees Retirement System receiving workers'**
45 **compensation benefits on or after the effective date of this 2017 Act and whose effective date**

1 of retirement is on or after the effective date of this 2017 Act.

2 (2) A member of the Public Employees Retirement System who is receiving workers'
3 compensation benefits due to an injury or disease on the effective date of this 2017 Act shall
4 accrue retirement credit and hours of service credit for vesting purposes for the entire pe-
5 riod during which the member receives workers' compensation benefits for the injury or
6 disease, whether received before, on or after the effective date of this 2017 Act.

7 SECTION 4. This 2017 Act being necessary for the immediate preservation of the public
8 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
9 on its passage.

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