

Requested by Senator KNOPP

**PROPOSED AMENDMENTS TO  
SENATE BILL 560**

1 On page 1 of the printed bill, line 2, after “238.005” delete the rest of the  
2 line and delete line 3 and insert “and 238.350; and”.

3 Delete lines 6 through 26 and delete pages 2 through 16 and insert:

4 **“SECTION 1.** ORS 238.005 is amended to read:

5 “238.005. For purposes of this chapter:

6 “(1) ‘Active member’ means a member who is presently employed by a  
7 participating public employer in a qualifying position and who has completed  
8 the six-month period of service required by ORS 238.015.

9 “(2) ‘Annuity’ means payments for life derived from contributions made  
10 by a member as provided in this chapter.

11 “(3) ‘Board’ means the Public Employees Retirement Board.

12 “(4) ‘Calendar year’ means 12 calendar months commencing on January  
13 1 and ending on December 31 following.

14 “(5) ‘Continuous service’ means service not interrupted for more than five  
15 years, except that such continuous service shall be computed without regard  
16 to interruptions in the case of:

17 “(a) An employee who had returned to the service of the employer as of  
18 January 1, 1945, and who remained in that employment until having estab-  
19 lished membership in the Public Employees Retirement System.

20 “(b) An employee who was in the armed services on January 1, 1945, and  
21 returned to the service of the employer within one year of the date of being

1 otherwise than dishonorably discharged and remained in that employment  
2 until having established membership in the Public Employees Retirement  
3 System.

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

11 “(7) ‘Earliest service retirement age’ means the age attained by a member  
12 when the member could first make application for retirement under the pro-  
13 visions of ORS 238.280.

14 “(8) ‘Employee’ includes, in addition to employees, public officers, but  
15 does not include:

16 “(a) Persons engaged as independent contractors.

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

20 “(c) Persons provided sheltered employment or made-work by a public  
21 employer in an employment or industries program maintained for the benefit  
22 of such persons.

23 “(d) Persons employed and paid from federal funds received under a fed-  
24 eral program intended primarily to alleviate unemployment. However, any  
25 such person shall be considered an ‘employee’ if not otherwise excluded by  
26 paragraphs (a) to (c) of this subsection and the public employer elects to  
27 have the person so considered by an irrevocable written notice to the board.

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

1 in effect since the inception of the system.

2 “(9) ‘Final average salary’ means whichever of the following is greater:

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

15 “(b) One-third of the total salary paid by a participating public employer  
16 to an employee who is an active member of the system in the last 36 calendar  
17 months of active membership before the effective date of retirement of the  
18 employee.

19 “(10) ‘Firefighter’ does not include a volunteer firefighter, but does in-  
20 clude:

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

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

26 “(11) ‘Fiscal year’ means 12 calendar months commencing on July 1 and  
27 ending on June 30 following.

28 “(12) ‘Fund’ means the Public Employees Retirement Fund.

29 “(13) ‘Inactive member’ means a member who is not employed in a quali-  
30 fying position, whose membership has not been terminated in the manner

1 described by ORS 238.095 and who is not retired for service or disability.

2 “(14) ‘Institution of higher education’ means a public university listed in  
3 ORS 352.002, the Oregon Health and Science University and a community  
4 college, as defined in ORS 341.005.

5 “(15) ‘Member’ means a person who has established membership in the  
6 system and whose membership has not been terminated as described in ORS  
7 238.095. ‘Member’ includes active, inactive and retired members.

8 “(16) ‘Member account’ means the regular account and the variable ac-  
9 count.

10 “(17) ‘Normal retirement age’ means:

11 “(a) For a person who establishes membership in the system before Jan-  
12 uary 1, 1996, as described in ORS 238.430, 55 years of age if the employee  
13 retires at that age as a police officer or firefighter or 58 years of age if the  
14 employee retires at that age as other than a police officer or firefighter.

15 “(b) For a person who establishes membership in the system on or after  
16 January 1, 1996, as described in ORS 238.430, 55 years of age if the employee  
17 retires at that age as a police officer or firefighter or 60 years of age if the  
18 employee retires at that age as other than a police officer or firefighter.

19 “(18) ‘Pension’ means annual payments for life derived from contributions  
20 by one or more public employers.

21 “(19) ‘Police officer’ includes:

22 “(a) Employees of institutions defined in ORS 421.005 as Department of  
23 Corrections institutions whose duties, as assigned by the Director of the  
24 Department of Corrections, include the custody of persons committed to the  
25 custody of or transferred to the Department of Corrections and employees  
26 of the Department of Corrections who were classified as police officers on  
27 or before July 27, 1989, whether or not such classification was authorized  
28 by law.

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

1 “(c) Employees of the Oregon Liquor Control Commission who are clas-  
2 sified as regulatory specialists by the administrator of the commission.

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

6 “(e) Police chiefs and police personnel of a city who are classified as po-  
7 lice officers by the council or other governing body of the city.

8 “(f) Police officers who are commissioned by a university under ORS  
9 352.121 or 353.125 and who are classified as police officers by the university.

10 “(g) Parole and probation officers employed by the Department of Cor-  
11 rections, parole and probation officers who are transferred to county em-  
12 ployment under ORS 423.549 and adult parole and probation officers, as  
13 defined in ORS 181A.355, who are classified as police officers for the pur-  
14 poses of this chapter by the county governing body. If a county classifies  
15 adult parole and probation officers as police officers for the purposes of this  
16 chapter, and the employees so classified are represented by a labor organ-  
17 ization, any proposal by the county to change that classification or to cease  
18 to classify adult parole and probation officers as police officers for the pur-  
19 poses of this chapter is a mandatory subject of bargaining.

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

21 “(i) Employees of the Port of Portland who are classified as airport police  
22 by the Board of Commissioners of the Port of Portland.

23 “(j) Employees of the State Department of Agriculture who are classified  
24 as livestock police officers by the Director of Agriculture.

25 “(k) Employees of the Department of Public Safety Standards and Train-  
26 ing who are classified by the department as other than secretarial or clerical  
27 personnel.

28 “(L) Investigators of the Criminal Justice Division of the Department of  
29 Justice.

30 “(m) Corrections officers as defined in ORS 181A.355.

1 “(n) Employees of the Oregon State Lottery Commission who are classi-  
2 fied by the Director of the Oregon State Lottery as enforcement agents pur-  
3 suant to ORS 461.110.

4 “(o) The Director of the Department of Corrections.

5 “(p) An employee who for seven consecutive years has been classified as  
6 a police officer as defined by this section, and who is employed or transferred  
7 by the Department of Corrections to fill a position designated by the Direc-  
8 tor of the Department of Corrections as being eligible for police officer sta-  
9 tus.

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

15 “(r) Employees of a school district who are appointed and duly sworn  
16 members of a law enforcement agency of the district as provided in ORS  
17 332.531 or otherwise employed full-time as police officers commissioned by  
18 the district.

19 “(s) Employees at youth correction facilities and juvenile detention facil-  
20 ities under ORS 419A.050, 419A.052 and 420.005 to 420.915 who are required  
21 to hold valid Oregon teaching licenses and who have supervisory, control or  
22 teaching responsibilities over juveniles committed to the custody of the De-  
23 partment of Corrections or the Oregon Youth Authority.

24 “(t) Employees at youth correction facilities as defined in ORS 420.005  
25 whose primary job description involves the custody, control, treatment, in-  
26 vestigation or supervision of juveniles placed in such facilities.

27 “(u) Employees of the Oregon Youth Authority who are classified as ju-  
28 venile parole and probation officers.

29 “(v) Employees of the Department of Human Services who are prohibited  
30 from striking under ORS 243.726 and whose duties include the care of resi-

1 dents of residential facilities, as defined in ORS 443.400, that house individ-  
2 uals with intellectual or developmental disabilities.

3 “(20) ‘Prior service credit’ means credit provided under ORS 238.442 or  
4 under ORS 238.225 (2) to (6) (1999 Edition).

5 “(21) ‘Public employer’ means the state, one of its agencies, any city,  
6 county, or municipal or public corporation, any political subdivision of the  
7 state or any instrumentality thereof, or an agency created by one or more  
8 such governmental organizations to provide governmental services. For pur-  
9 poses of this chapter, such agency created by one or more governmental or-  
10 ganizations is a governmental instrumentality and a legal entity with power  
11 to enter into contracts, hold property and sue and be sued.

12 “(22) ‘Qualifying position’ means one or more jobs with one or more par-  
13 ticipating public employers in which an employee performs 600 or more hours  
14 of service in a calendar year, excluding any service in a job for which a  
15 participating public employer does not provide benefits under this chapter  
16 pursuant to an application made under ORS 238.035.

17 “(23) ‘Regular account’ means the account established for each active and  
18 inactive member under ORS 238.250.

19 “(24) ‘Retired member’ means a member who is retired for service or dis-  
20 ability.

21 “(25) ‘Retirement credit’ means a period of time that is treated as credit-  
22 able service for the purposes of this chapter.

23 “(26)(a) ‘Salary’ means the remuneration paid an employee in cash out of  
24 the funds of a public employer in return for services to the employer, plus  
25 the monetary value, as determined by the Public Employees Retirement  
26 Board, of whatever living quarters, board, lodging, fuel, laundry and other  
27 advantages the employer furnishes the employee in return for services.

28 “(b) ‘Salary’ includes but is not limited to:

29 “(A) Payments of employee and employer money into a deferred compen-  
30 sation plan, which are deemed salary paid in each month of deferral;

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

3 “(C) Retroactive payments described in ORS 238.008; and

4 “(D) Wages of a deceased member paid to a surviving spouse or dependent  
5 children under ORS 652.190.

6 “(c) ‘Salary’ or ‘other advantages’ does not include:

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

9 “(B) Payments for insurance coverage by an employer on behalf of em-  
10 ployee or employee and dependents, for which the employee has no cash op-  
11 tion;

12 “(C) Payments made on account of an employee’s death;

13 “(D) Any lump sum payment for **accumulated unused vacation leave**  
14 **or other unused paid leave accrued on or after January 1, 2018, or for**  
15 **accumulated unused sick leave;**

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

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

20 “(G) Payments for periods of leave of absence after the date the employer  
21 and employee have agreed that no future services qualifying pursuant to ORS  
22 238.015 (3) will be performed, except for sick leave and vacation **accrued**  
23 **before January 1, 2018;**

24 “(H) Payments for instructional services rendered to public universities  
25 listed in ORS 352.002 or the Oregon Health and Science University when  
26 such services are in excess of full-time employment subject to this chapter.  
27 A person employed under a contract for less than 12 months is subject to this  
28 subparagraph only for the months to which the contract pertains; or

29 “(I) Payments made by an employer for insurance coverage provided to a  
30 domestic partner of an employee.



1 “(27) ‘School year’ means the period beginning July 1 and ending June 30  
2 next following.

3 “(28) ‘System’ means the Public Employees Retirement System.

4 “(29) ‘Variable account’ means the account established for a member who  
5 participates in the Variable Annuity Account under ORS 238.260.

6 “(30) ‘Vested’ means being an active member of the system in each of five  
7 calendar years.

8 “(31) ‘Volunteer firefighter’ means a firefighter whose position normally  
9 requires less than 600 hours of service per year.

10 **SECTION 2.** ORS 238.350 is amended to read:

11 “238.350. (1)(a) Upon the request by a public employer that its employees  
12 be compensated for accumulated unused sick leave with pay in the form of  
13 increased retirement benefits upon service or disability retirement, the board  
14 shall establish a procedure for adding to the gross amount of salary used in  
15 determining final average salary the monetary value of one-half of the ac-  
16 cumulated unused sick leave with pay of each retiring employee of the re-  
17 questing public employer and shall establish benefits of the retiring employee  
18 on the basis of a final average salary reflecting that addition.

19 “(b) For employees of a common school district, a union high school dis-  
20 trict, an education service district or an institution of higher education en-  
21 gaged in teaching or other school activity, or employees of the school  
22 operated under ORS 346.010 engaged in teaching or other school activity,  
23 who are employed under contract for a period of less than 12 consecutive  
24 months and who are entitled to sick leave with pay of less than 96 hours for  
25 a year, each hour of accumulated unused sick leave with pay shall be valued  
26 on the basis of the actual number of contract hours of employment during  
27 the last year of contributing membership of an employee before retiring and  
28 the salary of the employee during the same period. This paragraph does not  
29 apply to any employee who is employed under contract for 12 consecutive  
30 months in any of the three or less years used in determining the final aver-

1 age salary of the employee.

2 “(c) For the purpose of this subsection, accumulated unused sick leave  
3 with pay includes unused sick leave with pay accumulated by an active  
4 member of the system while in the service of any public employer partic-  
5 ipating in the system that has the request described in paragraph (a) of this  
6 subsection in effect at the time of the member’s separation from the service  
7 of the employer, whether that employer is or is not the employer of the  
8 member at the time of the member’s retirement.

9 “(d) The board shall establish rules requiring all public employers par-  
10 ticipating in the system to transmit to the board reports of unused sick leave  
11 with pay accumulated by their employees who are members of the system and  
12 to provide timely notification to each of those employees of unused sick leave  
13 with pay accumulated by the employee and reported to the board.

14 “(2) Accumulated unused sick leave with pay may be considered for the  
15 purpose of subsection (1) of this section only in accordance with the follow-  
16 ing requirements:

17 “(a) Sick leave not credited at the rate actually provided by the public  
18 employer may not be considered. The amount of sick leave exceeding an  
19 amount credited at the lowest rate in effect for any employee of the public  
20 employer who is normally entitled to sick leave, and in any event exceeding  
21 an amount credited at a rate of eight hours for each full month worked, may  
22 not be considered.

23 “(b) Sick leave credited for periods when an employee was absent from  
24 employment on sabbatical leave, educational leave or any leave without pay  
25 may not be considered.

26 “(c) Any period during which an employee was absent from employment  
27 for illness or injury that was charged against sick leave not qualified for  
28 consideration shall be deducted from sick leave qualified for consideration.

29 “(d) Sick leave for any period for which the public employer provides no  
30 sick leave with pay for its employees may not be considered.

1       “(e) Sick leave accumulated on and after July 1, 1973, may be considered  
2 only to the extent it is supported by records of accumulation and use pur-  
3 suant to a plan adopted formally by the public employer.

4       “(f) Accumulated unused sick leave for periods before July 1, 1973, may  
5 be considered as follows:

6       “(A) If any department, bureau or other organizational unit of a public  
7 employer maintained formal records of accumulation and use even though  
8 the public employer did not require that those records be maintained, the  
9 accumulated unused sick leave shall be considered according to those re-  
10 cords.

11       “(B) Where the public employer provided sick leave before July 1, 1973,  
12 but formal records of accumulation and use were not required or if required,  
13 are unavailable or incomplete, or the sick leave was subject to administra-  
14 tive limitations on total accumulation or transfer between public employers,  
15 accumulated unused sick leave for periods before July 1, 1973, may be con-  
16 sidered as equal to 2.675 hours for each full month worked or an amount per  
17 month equal to the average monthly accumulation by an employee during the  
18 period beginning July 1, 1973, and ending at the time of retirement, which-  
19 ever amount is greater, but reduced by the amount of any accumulated un-  
20 used sick leave credited to the employee on July 1, 1973.

21       “(g) The written certification of a member or former member of the Leg-  
22 islative Assembly shall constitute a formal record of accumulation and use  
23 in determining the amount of accumulated unused sick leave of an employee  
24 of the Legislative Assembly, either of its houses or any of its committees or  
25 officers for periods of employment before July 1, 1981. Sick leave accumu-  
26 lated on and after July 1, 1981, by employees of the Legislative Assembly,  
27 either of its houses or any of its committees or officers may be considered  
28 only to the extent it is supported by records of accumulation and use main-  
29 tained by the Legislative Administration Committee, or any statutory,  
30 standing, special or interim committee of the Legislative Assembly or either

1 house thereof, or any constitutional or statutory office of the Legislative  
2 Assembly or either house thereof, pursuant to a plan adopted formally by the  
3 committee or officer.

4 **“(h) Accumulated unused sick leave accrued on or after January 1,  
5 2018, may not be considered.**

6 “(3)(a) As used in this subsection, ‘legislative employee’ means any person  
7 employed by the Legislative Assembly, either of its houses or any of its  
8 committees or officers, but does not include a regular employee of a statutory  
9 committee or statutory office of the Legislative Assembly described in ORS  
10 173.005 (1).

11 “(b) Upon the request of a retiring legislative employee who is a member  
12 of the system, and the request of the public employer of the legislative em-  
13 ployee, that the legislative employee be compensated for accumulated unused  
14 vacation with pay for periods of legislative employment in the form of in-  
15 creased retirement benefits upon service or disability retirement, the board  
16 shall add to the gross amount of salary used in determining final average  
17 salary of the legislative employee the monetary value of one-half of the ac-  
18 cumulated unused vacation with pay of the legislative employee and shall  
19 establish the benefits of the legislative employee on the basis of a final av-  
20 erage salary reflecting that addition.

21 “(c) Accumulated unused vacation with pay may be considered for the  
22 purposes of paragraph (b) of this subsection only in accordance with the  
23 following requirements:

24 “(A) Vacation not credited at the rate actually provided by the public  
25 employer may not be considered.

26 “(B) Amounts of vacation exceeding amounts creditable to employees in  
27 the classified service of the state service pursuant to ORS 240.515 (1), and  
28 rules adopted pursuant thereto, in effect on June 30, 1981, shall not be con-  
29 sidered.

30 “(C) Vacation accumulated before, on and after July 1, 1981, may be con-

1 sidered only to the extent it is supported by records of accumulation and use  
2 pursuant to a plan adopted formally by the public employer. However, the  
3 written certification of a member or former member of the Legislative As-  
4 sembly shall constitute a formal record of accumulation and use in deter-  
5 mining the amount of accumulated unused vacation of a legislative employee  
6 for periods of legislative employment before July 1, 1981.

7 **“(D) Vacation accumulated on or after January 1, 2018, may not be**  
8 **considered.**

9 “(4) Employers with plans providing payments on account of sickness in  
10 lieu of sick leave with pay may request the board to consider the monetary  
11 value of accumulated unused payments on account of sickness as if such  
12 payments were an equivalent amount of accumulated unused sick leave with  
13 pay under the same terms and conditions specified in subsections (1) and (2)  
14 of this section.

15 **“SECTION 3. (1) As soon as practicable after the effective date of**  
16 **this 2017 Act, the Public Employees Retirement Board shall:**

17 **“(a) Determine the amount of savings in employer contributions**  
18 **that are attributable to the provisions of this 2017 Act; and**

19 **“(b) Recalculate the contribution rates of all employers, pursuant**  
20 **to ORS 238.225, to reflect the provisions of this 2017 Act.**

21 **“(2) The board shall issue corrected contribution rate orders to**  
22 **employers affected by rates recalculated under this section as soon as**  
23 **is practicable after the effective date of this 2017 Act. The corrected**  
24 **rates are effective on July 1, 2017.**

25 **“SECTION 4. (1) Jurisdiction is conferred upon the Supreme Court**  
26 **to determine in the manner provided by this section whether this 2017**  
27 **Act breaches any contract between members of the Public Employees**  
28 **Retirement System and their employers or violates any provision of**  
29 **the Oregon Constitution or of the United States Constitution, includ-**  
30 **ing but not limited to impairment of contract rights of members of the**

1 **Public Employees Retirement System under Article I, section 21, of the**  
2 **Oregon Constitution, or Article I, section 10, clause 1, of the United**  
3 **States Constitution.**

4 **“(2) A person who is adversely affected by this 2017 Act or who will**  
5 **be adversely affected by this 2017 Act may institute a proceeding for**  
6 **review by filing with the Supreme Court a petition that meets the**  
7 **following requirements:**

8 **“(a) The petition must be filed within 60 days after the effective**  
9 **date of this 2017 Act.**

10 **“(b) The petition must include the following:**

11 **“(A) A statement of the basis of the challenge; and**

12 **“(B) A statement and supporting affidavit showing how the**  
13 **petitioner is adversely affected.**

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

17 **“(4) Proceedings for review under this section shall be given priority**  
18 **over all other matters before the Supreme Court.**

19 **“(5) The Supreme Court shall allow public employers participating**  
20 **in the Public Employees Retirement System to intervene in any pro-**  
21 **ceeding under this section.**

22 **“(6)(a) The Supreme Court shall allow members of the Legislative**  
23 **Assembly to intervene in any proceeding relating to this 2017 Act. Af-**  
24 **ter a member intervenes in a proceeding relating to this 2017 Act, the**  
25 **member has standing to participate in the proceeding even if the**  
26 **member ceases to be a member of the Legislative Assembly.**

27 **“(b) A member of the Senate or the House of Representatives who**  
28 **intervenes in a proceeding under this subsection may not use public**  
29 **funds to pay legal expenses incurred in intervening in or participating**  
30 **in the proceeding.**

1       **“(7) In the event the Supreme Court determines that there are**  
2 **factual issues in the petition, the Supreme Court may appoint a special**  
3 **master to hear evidence and to prepare recommended findings of fact.**

4       **“(8) The Supreme Court may not award attorney fees to a petitioner**  
5 **in a proceeding under this section.**

6       **“SECTION 5. This 2017 Act being necessary for the immediate**  
7 **preservation of the public peace, health and safety, an emergency is**  
8 **declared to exist, and this 2017 Act takes effect on its passage.”.**

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