

A-Engrossed
House Bill 2196

Ordered by the House April 15
Including House Amendments dated April 15

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Veterans and Emergency Preparedness)

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 that employee of Oregon Military Department whose primary duties include fighting fires qualifies as firefighter under Public Employees Retirement System.

[Directs Oregon Military Department to study and make recommendations regarding improvements to operations of department. Requires department to submit report on findings to Legislative Assembly by January 1, 2021.]

A BILL FOR AN ACT

1
2 Relating to the military; creating new provisions; and amending ORS 238.005 and 238A.005.

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

4 **SECTION 1.** ORS 238.005, as amended by section 4, chapter 54, Oregon Laws 2018, is amended
5 to read:

6 238.005. For purposes of this chapter:

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

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

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

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

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

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

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

24 (6) "Creditable service" means any period of time during which an active member is being paid
25 a salary by a participating public employer and for which benefits under this chapter are funded by
26 employer contributions and earnings on the fund. For purposes of computing years of "creditable

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 service,” full months and major fractions of a month shall be considered to be one-twelfth of a year
2 and shall be added to all full years. “Creditable service” includes all retirement credit received by
3 a member.

4 (7) “Earliest service retirement age” means the age attained by a member when the member
5 could first make application for retirement under the provisions of ORS 238.280.

6 (8) “Employee” includes, in addition to employees, public officers, but does not include:

7 (a) Persons engaged as independent contractors.

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

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

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

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

19 (f) Persons employed in positions classified as post-doctoral scholar positions by a public uni-
20 versity listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370.

21 (9) “Final average salary” means whichever of the following is greater:

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

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

34 (10) “Firefighter” does not include a volunteer firefighter, but does include:

35 (a) The State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals; *[and]*

36 (b) An employee of the State Forestry Department who is certified by the State Forester as a
37 professional wildland firefighter and whose primary duties include the abatement of uncontrolled
38 fires as described in ORS 477.064[.]; **and**

39 **(c) An employee of the Oregon Military Department whose primary duties include fight-**
40 **ing structural, aircraft, wildland or other fires.**

41 (11) “Fiscal year” means 12 calendar months commencing on July 1 and ending on June 30 fol-
42 lowing.

43 (12) “Fund” means the Public Employees Retirement Fund.

44 (13) “Inactive member” means a member who is not employed in a qualifying position, whose
45 membership has not been terminated in the manner described by ORS 238.095 and who is not retired

1 for service or disability.

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

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

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

8 (17) "Normal retirement age" means:

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

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

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

18 (19) "Police officer" includes:

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

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

26 (c) Employees of the Oregon Liquor Control Commission who are classified as regulatory spe-
27 cialists by the administrator of the commission.

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

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

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

34 (g) Parole and probation officers employed by the Department of Corrections, parole and pro-
35 bation officers who are transferred to county employment under ORS 423.549 and adult parole and
36 probation officers, as defined in ORS 181A.355, who are classified as police officers for the purposes
37 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
38 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
39 ented by a labor organization, any proposal by the county to change that classification or to cease
40 to classify adult parole and probation officers as police officers for the purposes of this chapter is
41 a mandatory subject of bargaining.

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

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

45 (j) Employees of the State Department of Agriculture who are classified as livestock police of-

1 ficers by the Director of Agriculture.

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

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

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

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

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

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

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

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

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

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

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

29 (v) Employees of the Department of Human Services who are prohibited from striking under ORS
30 243.726 and whose duties include the care of residents of residential facilities, as defined in ORS
31 443.400, that house individuals with intellectual or developmental disabilities.

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

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

40 (22) "Qualifying position" means one or more jobs with one or more participating public em-
41 ployers in which an employee performs 600 or more hours of service in a calendar year, excluding
42 any service in a job for which a participating public employer does not provide benefits under this
43 chapter pursuant to an application made under ORS 238.035.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement
26 gratuitous payment;

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

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

34 (I) Payments made by an employer for insurance coverage provided to a domestic partner of an
35 employee;

36 (J) Compensation described and authorized under ORS 341.556 that is not paid by the community
37 college employing the faculty member;

38 (K) Compensation described and authorized under ORS 352.232 that is not paid by the public
39 university employing the officer or employee; or

40 (L) Compensation described and authorized under ORS 353.270 that is not paid by Oregon Health
41 and Science University.

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

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

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

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

2 (31) "Volunteer firefighter" means a firefighter whose position normally requires less than 600
3 hours of service per year.

4 **SECTION 2.** ORS 238A.005, as amended by section 5, chapter 54, Oregon Laws 2018, and section
5 2, chapter 101, Oregon Laws 2018, is amended to read:

6 238A.005. For the purposes of this chapter:

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

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

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

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

15 (a) Persons engaged as independent contractors;

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

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

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

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

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

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

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

26 (i) Persons employed in positions classified as post-doctoral scholar positions by a public uni-
27 versity listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370;

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

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

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

34 (m) Judges.

35 (5) "Firefighter" means:

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

38 (b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals;
39 [and]

40 (c) An employee of the State Forestry Department who is certified by the State Forester as a
41 professional wildland firefighter and whose primary duties include the abatement of uncontrolled
42 fires as described in ORS 477.064[.]; and

43 **(d) An employee of the Oregon Military Department whose primary duties include fight-**
44 **ing structural, aircraft, wildland or other fires.**

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

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

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

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

10 (b) "Hour of service" does not include any hour for which payment is made or due under a plan
11 maintained solely for the purpose of complying with applicable unemployment compensation laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit
45 plan by the employer at the election of the employee and that is not includable in the taxable in-

1 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2017.

2 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
3 election of the employee and that is not included in the taxable income of the employee by reason
4 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2017.

5 (E) Retroactive payments described in ORS 238.008.

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

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

11 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
12 652.190.

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

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

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

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

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

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

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

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

28 (H) The amount of an employee contribution to the individual account program that is paid by
29 the employer and is not deducted from the compensation of the employee, as provided under ORS
30 238A.335 (1) and (2)(b).

31 (I) Compensation described and authorized under ORS 341.556 that is not paid by the community
32 college employing the faculty member.

33 (J) Compensation described and authorized under ORS 352.232 that is not paid by the public
34 university employing the officer or employee.

35 (K) Compensation described and authorized under ORS 353.270 that is not paid by Oregon
36 Health and Science University.

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

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

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

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

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

1 **SECTION 3.** (1) The amendments to ORS 238.005 and 238A.005 by sections 1 and 2 of this
2 2019 Act apply only to a person who:

3 (a) Is employed by the Oregon Military Department and whose primary duties include
4 fighting fires on the effective date of this 2019 Act; or

5 (b) Becomes employed by the department as a person whose primary duties include
6 fighting fires after the effective date of this 2019 Act.

7 (2) A person whose service as a firefighter for the department before the effective date
8 of this 2019 Act was reported to the Public Employees Retirement Board as service as a
9 firefighter before the effective date of this 2019 Act shall be deemed a firefighter for purposes
10 of ORS chapters 238 and 238A for all service as a firefighter performed for the department,
11 whether performed before, on or after the effective date of this 2019 Act.

12 (3) A person whose service as a firefighter for the department before the effective date
13 of this 2019 Act was reported to the board as service as a general service member shall be
14 deemed a firefighter for purposes of ORS chapters 238 and 238A only for service as a fire-
15 fighter performed for the department on or after the effective date of this 2019 Act.

16 (4) For purposes of subsections (2) and (3) of this section, a person's service for the de-
17 partment is considered to have been reported to the board as service as a firefighter before
18 the effective date of this 2019 Act to the extent that the department has made the employer
19 contributions for the person, before the effective date of this 2019 Act, that were required
20 because the person's service was reported to the board as service as a firefighter at the time
21 of the employer contribution.

22 _____