

# House Bill 2786

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Multnomah County Prosecuting Attorneys 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**.

Provides that district attorneys and deputy district attorneys qualify as police officers under Public Employees Retirement System.

## A BILL FOR AN ACT

1  
2 Relating to the status of district attorneys in the Public Employees Retirement System; creating new  
3 provisions; and amending ORS 238.005.

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

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

7 238.005. For purposes of this chapter:

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

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

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

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

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

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

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

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

31 (7) "Earliest service retirement age" means the age attained by a member when the member

**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 could first make application for retirement under the provisions of ORS 238.280.

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

3 (a) Persons engaged as independent contractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (16) "Member account" means the regular account and the variable account.
- 2 (17) "Normal retirement age" means:
- 3 (a) For a person who establishes membership in the system before January 1, 1996, as described
- 4 in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter
- 5 or 58 years of age if the employee retires at that age as other than a police officer or firefighter.
- 6 (b) For a person who establishes membership in the system on or after January 1, 1996, as de-
- 7 scribed in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or
- 8 firefighter or 60 years of age if the employee retires at that age as other than a police officer or
- 9 firefighter.
- 10 (18) "Pension" means annual payments for life derived from contributions by one or more public
- 11 employers.
- 12 (19) "Police officer" includes:
- 13 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions
- 14 whose duties, as assigned by the Director of the Department of Corrections, include the custody of
- 15 persons committed to the custody of or transferred to the Department of Corrections and employees
- 16 of the Department of Corrections who were classified as police officers on or before July 27, 1989,
- 17 whether or not such classification was authorized by law.
- 18 (b) Employees of the Department of State Police who are classified as police officers by the
- 19 Superintendent of State Police.
- 20 (c) Employees of the Oregon Liquor Control Commission who are classified as regulatory spe-
- 21 cialists by the administrator of the commission.
- 22 (d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified
- 23 by the sheriff, are the regular duties of police officers or corrections officers.
- 24 (e) Police chiefs and police personnel of a city who are classified as police officers by the
- 25 council or other governing body of the city.
- 26 (f) Police officers who are commissioned by a university under ORS 352.121 or 353.125 and who
- 27 are classified as police officers by the university.
- 28 (g) Parole and probation officers employed by the Department of Corrections, parole and pro-
- 29 bation officers who are transferred to county employment under ORS 423.549 and adult parole and
- 30 probation officers, as defined in ORS 181A.355, who are classified as police officers for the purposes
- 31 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
- 32 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
- 33 ented by a labor organization, any proposal by the county to change that classification or to cease
- 34 to classify adult parole and probation officers as police officers for the purposes of this chapter is
- 35 a mandatory subject of bargaining.
- 36 (h) Police officers appointed under ORS 276.021 or 276.023.
- 37 (i) Employees of the Port of Portland who are classified as airport police by the Board of Com-
- 38 missioners of the Port of Portland.
- 39 (j) Employees of the State Department of Agriculture who are classified as livestock police of-
- 40 ficers by the Director of Agriculture.
- 41 (k) Employees of the Department of Public Safety Standards and Training who are classified by
- 42 the department as other than secretarial or clerical personnel.
- 43 (L) Investigators of the Criminal Justice Division of the Department of Justice.
- 44 (m) Corrections officers as defined in ORS 181A.355.
- 45 (n) Employees of the Oregon State Lottery Commission who are classified by the Director of the

1 Oregon State Lottery as enforcement agents pursuant to ORS 461.110.

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

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

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

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

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

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

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

23 (v) Employees of the Department of Human Services who are prohibited from striking under ORS  
24 243.726 and whose duties include the care of residents of residential facilities, as defined in ORS  
25 443.400, that house individuals with intellectual or developmental disabilities.

26 **(w) District attorneys and deputy district attorneys.**

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

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

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

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

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

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

44 (26)(a) "Salary" means the remuneration paid an employee in cash out of the funds of a public  
45 employer in return for services to the employer, plus the monetary value, as determined by the

1 Public Employees Retirement Board, of whatever living quarters, board, lodging, fuel, laundry and  
2 other advantages the employer furnishes the employee in return for services.

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

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

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

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

9 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
10 652.190.

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

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

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

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

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

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

20 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement  
21 gratuitous payment;

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

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

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

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

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

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

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

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

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

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

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

44 **SECTION 2. (1) The amendments to ORS 238.005 by section 1 of this 2019 Act apply only**  
45 **to a person who:**

1       **(a) Is employed as a district attorney or a deputy district attorney on the effective date**  
2 **of this 2019 Act; or**

3       **(b) Becomes employed as a district attorney or a deputy district attorney after the ef-**  
4 **fective date of this 2019 Act.**

5       **(2) A person who is employed as a district attorney or a deputy district attorney on or**  
6 **after the effective date of this 2019 Act is entitled to service under the Public Employees**  
7 **Retirement System as a police officer only for service performed as a district attorney or**  
8 **deputy district attorney on or after the effective date of this 2019 Act.**

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