Senate Bill 531

Sponsored by Senator KNOPP (Presession filed.)

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.

Redirrects employee contribution to Public Employees Retirement System to account to be used to pay for pension or other retirement benefits payable to member or member's beneficiary accrued on or after January 1, 2020.

For years beginning in 2020, caps at $100,000 annual salary used to calculate final average salary for purposes of system.

Changes calculation of final average salary for purposes of system to use five years of salary instead of three years, for salary paid on and after January 1, 2020.

Lowers pension factor used to calculate pension benefits of members of system for service performed on and after January 1, 2020.

Directs Public Employees Retirement Board to recalculate employer contribution rates to reflect savings attributable to Act.

Provides for expedited review of Act by Supreme Court upon petition by adversely affected party.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 238.005, 238.300, 238.350, 238.435, 238A.005, 238A.125, 238A.130, 238A.320, 238A.330, 238A.350, 238A.375, 238A.410, 243.800 and 341.551; and declaring an emergency.

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

REDIRECTION OF EMPLOYEE CONTRIBUTIONS

SECTION 1. ORS 238A.330 is amended to read:

238A.330. (1) A member of the individual account program must make employee contributions to the individual account program of six percent of the member’s salary.

(2) Employee contributions made by a member of the individual account program under this section shall be credited by the board to the [employee] contributions account established for the member under ORS 238A.350 (2).

(3) A new member of the individual account program shall first make contributions under this section for those wages that are attributable to services performed by the employee during the first full pay period following the six-month probationary period required under ORS 238A.300, without regard to when those wages are considered earned for other purposes under this chapter.

SECTION 2. ORS 238A.350 is amended to read:

238A.350. (1) Upon any contributions being made to the individual account program by or on behalf of a member of the program, the Public Employees Retirement Board shall create the account or accounts described in this section. Each account shall be adjusted at least annually in accordance with rules adopted by the board to reflect any net earnings or losses on those contributions and to pay the reasonable administrative costs of maintaining the program to the extent the earnings on

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.

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the assets of the program are insufficient to pay those costs. The adjustments described in this
subsection shall continue until the account is distributed to the member [or], forfeited or applied
to pay the costs of a pension or other retirement benefits under subsection (3) of this
section.

(2)(a) The board shall establish an employee account, which shall consist of the employee con-
tributions made by or on behalf of the member before January 1, 2020, as adjusted under subsection
(1) of this section.

(b) The board shall create a separate employee account for a member who becomes an active
member for the purpose of service in the Legislative Assembly under ORS 237.650, which shall
consist of the employee contributions made by or on behalf of the member that are attributable to
the member's legislative service, as adjusted under subsection (1) of this section.

(3)(a) The board shall establish a contributions account, which shall consist of the em-
ployee contributions made by or on behalf of the member under ORS 238A.330 on and after
January 1, 2020, as adjusted under subsection (1) of this section.

(b) Unless the amounts in a contributions account established under this subsection are
withdrawn under ORS 238A.375, the amounts in the account shall be applied by the board to
pay the costs of the pension or other retirement benefits payable to the member or the
member's beneficiary under this chapter or ORS chapter 238 that are earned on or after

(c) If the amounts in the contributions account established under this subsection exceed
the actuarially projected costs of the pension or other retirement benefits payable to the
member or the member's beneficiary under this chapter or ORS chapter 238 that are earned on or after
January 1, 2020, the board shall refund the excess amounts to the member upon
retirement.

If the public employer agrees to make employer contributions under ORS 238A.340, the
board shall establish an employer account, which shall consist of the employer contributions made
on behalf of the member as adjusted under subsection (1) of this section.

If the board accepts rollover contributions on behalf of the member, the board shall
establish a rollover account, which shall consist of the rollover contributions made by the member
as adjusted under subsection (1) of this section. Contributions and the earnings attributable to the
contributions must be accounted for separately.

The board shall provide an annual statement to each active and inactive member of the
program that reflects the amount credited to the accounts established under this section. The
statement shall reflect whether the member is vested in the employer account under the provisions
of ORS 238A.320.

SECTION 3. ORS 238A.320 is amended to read:

238A.320. (1) A member of the individual account program becomes vested in the employee ac-
count established for the member under ORS 238A.350 on the date the employee account is es-

(2) A member who makes rollover contributions becomes vested in the rollover account estab-
lished for the member under ORS 238A.350 on the date the rollover account is established.

(3) Except as provided in subsection (4) of this section, if an employer makes employer contrib-
utions for a member under ORS 238A.340, the member becomes vested in the employer account
established under ORS 238A.350 on the earliest of the following dates:

(a) The date on which the member completes at least 600 hours of service in each of five cal-
end years. The five calendar years need not be consecutive, but are subject to the provisions of subsection (5) of this section.

(b) The date on which an active member reaches the normal retirement age for the member under ORS 238A.160.

(c) If the individual account program is terminated, the date on which termination becomes effective, but only to the extent the account is then funded.

(d) The date on which an active member becomes disabled, as described in ORS 238A.155 (5).

(e) The date on which an active member dies.

(4) If on the date that a person becomes an active member the person has already reached the normal retirement age for the person under ORS 238A.160, and the employer makes employer contributions for the member under ORS 238A.340, the person is vested in the employer account established under ORS 238A.350 (3) on that date.

(5) If a member of the individual account program who is not vested in the employer account performs fewer than 600 hours of service in each of five consecutive calendar years, hours of service performed before the first calendar year of the period of five consecutive calendar years shall be disregarded for purposes of determining whether the member is vested under subsection (3)(a) of this section.

(6) Solely for purposes of determining whether a member is vested under subsection (3)(a) of this section, hours of service include creditable service, as defined in ORS 238.005, performed by the person before the person became an eligible employee, as long as the membership of the person under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes an eligible employee.

(7) A member becomes vested in the contributions account established for the member under ORS 238A.350 (3) on the date the account is established.

SECTION 4. ORS 238A.375 is amended to read:

ORS 238A.375. (1) An inactive member of the individual account program may elect to receive a distribution of the amounts in the member’s employee account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320 if the inactive member has separated from all service with participating public employers and with employers who are treated as part of a participating public employer’s controlled group under the federal laws and rules governing the status of the system and the fund as a qualified governmental retirement plan and trust.

(b)(A) An inactive member of the individual account program may elect to receive a distribution of the amounts in the member’s contributions account established for the member under ORS 238A.350 (3) if:

(i) The inactive member has separated from all service with participating public employers and with employers who are treated as part of a participating public employer’s controlled group under the federal laws and rules governing the status of the system and the fund as a qualified governmental retirement plan and trust; and

(ii) The member is eligible to withdraw and withdraws from the pension program under ORS 238A.120.

(B) The withdrawal of the member’s accounts under this paragraph cancels all membership rights in the Public Employees Retirement System.

(2) If an inactive member of the individual account program who is not vested in the employer account receives a distribution under subsection (1) of this section, the employer account of the
member is permanently forfeited as of the date of the distribution.

(3) A member may not make an election under this section for less than all of the member’s in-
dividual accounts described in ORS 238A.350 in which the member is vested.

(4) A member who is vested in the pension program established under this chapter and who is
eligible to withdraw from the pension program under ORS 238A.120 may make an election under this
section only if the member also withdraws from the pension program.

(5) A member who has a member account established under ORS chapter 238 may make an
election under this section only if the member also withdraws that member account in the manner
provided by ORS 238.265. A member who has an account established under ORS 238.440 may make
an election under this section only if the member also withdraws the account established under ORS
238.440.

(6) If an inactive member receives a distribution under subsection (1) of this section and is
subsequently reemployed by a participating public employer, any service performed before the date
the member became an inactive member may not be used toward the period of service required for
vesting in the employer account under ORS 238A.320.

SECTION 5. ORS 238A.410, as amended by section 9, chapter 101, Oregon Laws 2018, is
amended to read:

238A.410. (1)(a) If a member of the individual account program dies before retirement, the
amounts in the member’s employee account, rollover account and employer account, to the extent
the member is vested in those accounts under ORS 238A.320, shall be paid in a lump sum to the
beneficiary or beneficiaries designated by the member for the purposes of this section.

(b) If a member of the individual account program dies before retirement, the amounts
in the contributions account established for the member under ORS 238A.350 (3) shall be
applied by the Public Employees Retirement Board to pay the costs of any benefit payable
under ORS 238A.230. If the amounts in the contributions account exceed the costs of the
benefit payable under ORS 238A.230, the excess amounts shall be paid in a lump sum to the
beneficiary or beneficiaries designated by the member for the purposes of this section.

(2) If a member of the individual account program is married at the time of death, or there exists
at the time of death any other person who is constitutionally required to be treated in the same
manner as a spouse for the purpose of retirement benefits, the spouse or other person shall be the
beneficiary for purposes of the death benefit payable under this section unless the spouse or other
person consents to the designation of a different beneficiary or beneficiaries before the designation
has been made and the consent has not been revoked by the spouse or other person as of the time
of the member’s death. Consent and revocation of consent must be in writing, acknowledged by a
notary public, and submitted to the [Public Employees Retirement] board in accordance with rules
adopted by the board. If the member’s spouse is designated as the member’s beneficiary and the
marriage of the member and spouse is subsequently dissolved, the former spouse shall be treated as
predeceasing the member for purposes of this section, unless the member expressly designates the
former spouse as beneficiary after the effective date of the dissolution or the former spouse is re-
quired to be designated as a beneficiary under the provisions of ORS 238.465.

(3) For purposes of this section and ORS 238A.400 (3), if a member fails to designate a benefi-
ciary, or if the person or persons designated do not survive the member, the death benefit provided
for in this section shall be paid to the following person or persons, in the following order of priority:

(a) The member’s surviving spouse or other person who is constitutionally required to be treated
in the same manner as a spouse;
(b) The member’s surviving children, in equal shares; or
(c) The member’s estate.

(4) The entire amount of a deceased member’s vested accounts must be distributed by December 31 of the fifth calendar year after the year in which the member died. Notwithstanding any other provision of this chapter, distributions of death benefits under the individual account program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on December 31, 2017. The [Public Employees Retirement] board shall adopt rules implementing those minimum distribution requirements.

SECTION 6. ORS 243.800 is amended to read:

243.800. (1) Notwithstanding any provision of ORS chapter 238 or 238A or ORS 243.910 to 243.945, the governing board of a public university listed in ORS 352.002 shall establish and administer an Optional Retirement Plan for administrative and academic employees of the public university. The Optional Retirement Plan must be a qualified plan under the Internal Revenue Code, capable of accepting funds transferred under subsection (7) of this section without the transfer being treated as a taxable event under the Internal Revenue Code, and willing to accept those funds. Retirement and death benefits shall be provided under the plan by the purchase of annuity contracts, fixed or variable or a combination thereof, or by contracts for investments in mutual funds.

(2) An administrative or academic employee who is eligible to remain or become a member of the Public Employees Retirement System may elect to participate in the Optional Retirement Plan upon completion of:

(a) Six hundred hours of employment, or the equivalent as determined by the governing board; and

(b) Six months of employment that is not interrupted by more than 30 consecutive working days.

(3) An administrative or academic employee who is eligible to remain or become a member of the Public Employees Retirement System, including an administrative or academic employee who previously participated in the Optional Retirement Plan because of employment in a position classified as a post-doctoral scholar position under ORS 350.370, may make an irrevocable election to participate in the Optional Retirement Plan within six months after being employed. An election under this subsection is effective on the first day of the month following the completion of the requirements of subsection (2) of this section.

(4) An administrative or academic employee who is eligible to remain or become a member of the Public Employees Retirement System and who does not elect to participate in the Optional Retirement Plan:

(a) Remains or becomes a member of the Public Employees Retirement System in accordance with ORS chapters 238 and 238A; or

(b) Continues to be assisted by the governing board under ORS 243.920 if the employee is being so assisted.

(5) Except as provided in subsection (6) of this section, employees who elect to participate in the Optional Retirement Plan are ineligible for active membership in the Public Employees Retirement System or for any assistance by the governing board under ORS 243.920 as long as those employees are employed in the public university and the plan is in effect.

(6)(a) An administrative or academic employee who elects to participate in the Optional Retirement Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.095 and who is not vested shall be considered by the Public Employees Retirement Board to be a terminated member under the provisions of ORS 238.095 as of the effective date of the election, and the
amounts credited to the member accounts of the member established under ORS 238.250 and 238.260 shall be transferred directly to the Optional Retirement Plan by the Public Employees Retirement Board in the manner provided by subsection (7) of this section.

(b) An administrative or academic employee who elects to participate in the Optional Retirement Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is vested shall be considered to be an inactive member by the Public Employees Retirement Board and shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes a written request to the Public Employees Retirement Board for a transfer of the amounts credited to the member accounts of the member established under ORS 238.250 and 238.260 to the Optional Retirement Plan. A request for a transfer must be made at the time the member elects to participate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer all amounts credited to the member accounts directly to the Optional Retirement Plan, and shall terminate all rights, privileges and options of the employee under ORS chapter 238 as provided in ORS 238.095.

(c) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is not a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115 An administrative or academic employee who elects to participate in the Optional Retirement Plan and who is a member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.100 on the date that the election becomes effective, but who has not vested in the program under ORS 238A.115 on the date that the election becomes effective, shall be considered to be a terminated member of the pension program by the Public Employees Retirement Board as of the effective date of the election. The board shall transfer the amounts credited to the member accounts of the member directly to the Optional Retirement Plan in the manner provided by subsection (7) of this section.

(d) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be considered an inactive member of the pension program by the Public Employees Retirement Board as of the effective date of the election. An employee who is subject to the provisions of this paragraph retains all the rights, privileges and options of an inactive member of the pension program. If the actuarial equivalent of the employee’s benefit under the pension program at the time that the election becomes effective is $5,000 or less, the employee may make a written request to the Public Employees Retirement Board for a transfer of the employee’s interest under the pension program to the Optional Retirement Plan. The request must be made at the time the member elects to participate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer the amount determined to be the actuarial equivalent of the employee’s benefit under the pension program directly to the Optional Retirement Plan, and shall terminate the membership of the employee in the pension program.

(e) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a vested member of the individual account program of the Oregon Public Service Retirement Plan as described in ORS 238A.320 on the date that the election becomes effective, shall be considered an inactive member of the individual account program by the Public Employees Retirement Board as of the effective date of the election. An employee who is subject to the provisions
of this paragraph retains all the rights, privileges and options of an inactive member of the individual account program. An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a member of the individual account program of the Oregon Public Service Retirement Plan, may make a written request to the Public Employees Retirement Board that all amounts [in the member's employee account, rollover account and employer account] credited to the member accounts of the member established under ORS 238A.350, to the extent the member is vested in those accounts under ORS 238A.320, be transferred to the Optional Retirement Plan. The request must be made at the time the member elects to participate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer the amounts directly to the Optional Retirement Plan, and shall terminate the membership of the employee in the individual account program upon making the transfer.

(f) Notwithstanding paragraphs (b), (d) and (e) of this subsection, the Public Employees Retirement Board may not treat any employee as an inactive member under the provisions of this subsection for the purpose of receiving any benefit under ORS chapter 238 or 238A that requires that the employee be separated from all service with participating public employers and with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust.

(7) Any amounts transferred from the Public Employees Retirement Fund under subsection (6) of this section shall be transferred directly to the Optional Retirement Plan by the Public Employees Retirement Board and may not be made available to the employee.

(8) An employee participating in the Optional Retirement Plan who was hired before July 1, 2014, shall contribute monthly an amount equal to the percentage of the employee's salary that the employee would otherwise have contributed as an employee contribution to the Public Employees Retirement System if the employee had not elected to participate in the Optional Retirement Plan.

(9) For an employee participating in the Optional Retirement Plan who was hired before July 1, 2014, the governing board shall contribute monthly to the Optional Retirement Plan the percentage of salary of the employee equal to the percentage of salary that would otherwise have been contributed as an employer contribution on behalf of the employee to the Public Employees Retirement System, before any offset under ORS 238.229 (2), if the employee had not elected to participate in the Optional Retirement Plan.

(10) For an employee participating in the Optional Retirement Plan who was hired on or after July 1, 2014, the governing board shall contribute monthly to the Optional Retirement Plan:

(a) Eight percent of the employee's salary; and

(b) A percentage of the employee's salary equal to the percentage of salary contributed by the employee to the public university's Tax-Deferred Investment 403(b) Plan under ORS 243.820, up to four percent of the employee's salary in each pay period.

(11)(a) Unless otherwise prohibited by law, a person employed in a position classified as a post-doctoral scholar position under ORS 350.370 is an academic employee under subsection (1) of this section and becomes a participant in the Optional Retirement Plan when the person participates in the public university's Tax-Deferred Investment 403(b) Plan under ORS 243.820.

(b) Participation in the Optional Retirement Plan under this subsection becomes effective on the first day of the month following the later of:

(A) Enrollment in the public university's Tax-Deferred Investment 403(b) Plan under ORS 243.820; or
(B) Completion of:
(i) Six hundred hours of employment, or the equivalent as determined by the governing board; and
(ii) Six months of employment that is not interrupted by more than 30 consecutive working days.
(c) For a post-doctoral scholar participating in the Optional Retirement Plan, the governing board shall contribute monthly to the Optional Retirement Plan a percentage of the post-doctoral scholar’s salary equal to the percentage of salary contributed by the post-doctoral scholar to the public university’s Tax-Deferred Investment 403(b) Plan under ORS 243.820, up to four percent of the post-doctoral scholar’s salary in each pay period.
(d) A post-doctoral scholar is an academic employee who elects to participate in the Optional Retirement Plan for purposes of subsection (6) of this section.
(e) Subsections (8) to (10) of this section do not apply to a post-doctoral scholar participating in the Optional Retirement Plan.

(12) Both employee and employer contributions to an Optional Retirement Plan shall be remitted directly to the companies that have issued annuity contracts to the participating employees or directly to the mutual funds.
(13) Benefits under the Optional Retirement Plan are payable to employees who elect to participate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accordance with the terms of the annuity contracts or the terms of the contract with the mutual fund. Employees electing to participate in the Optional Retirement Plan agree that benefits payable under the plan are not obligations of the State of Oregon or of the Public Employees Retirement System.

SECTION 7. ORS 341.551 is amended to read:

341.551. (1) Notwithstanding any provision of ORS chapter 238 or 238A, the Office of Community Colleges and Workforce Development may establish and administer an optional retirement plan for administrative employees of community college districts who are eligible for membership in the Public Employees Retirement System. Any community college district may participate in the plan by giving written notice to the office.
(2) An administrative employee may make an election to participate in the optional retirement plan if the community college district that employs the employee is participating in the plan. The election must be made in the following manner:
(a) An administrative employee who is an active member of the Public Employees Retirement System may make an election to participate in the plan within 180 days after the community college district commences participation in the plan, effective on the first day of the month following the election.
(b) An administrative employee who is hired after the community college district commences participation in the plan may make an election to participate in the plan within the first six months of employment, effective on the first day of the month following six full months of employment.
(3) An administrative employee who does not elect to participate in the optional retirement plan remains or becomes a member of the Public Employees Retirement System in accordance with ORS chapters 238 and 238A.
(4) An administrative employee may elect to participate in the optional retirement plan only if at the time the election becomes effective the employee is not concurrently employed in a position with any participating public employer other than the community college district in a position that entitles the employee to membership in the Public Employees Retirement System. Except as provided in subsection (9) of this section, employees who elect to participate in the optional retirement plan...
plan are ineligible for active membership in the Public Employees Retirement System for as long as those employees are employed by a community college district that participates in the plan, whether by reason of employment by the district or any other participating public employer.

(5)(a) An administrative employee who elects to participate in the optional retirement plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is not vested shall be considered by the Public Employees Retirement Board to be a terminated member under the provisions of ORS 238.095 as of the effective date of the election, and the [amount] amounts credited to the member [account] accounts of the member established under ORS 238.250 and 238.260 shall be transferred directly to the optional retirement plan by the Public Employees Retirement Board in the manner provided by subsection (6) of this section.

(b) An administrative employee who elects to participate in the optional retirement plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is vested shall be considered to be an inactive member by the Public Employees Retirement Board and shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes a written request to the Public Employees Retirement Board for a transfer of the amounts credited to the member [account] accounts of the member established under ORS 238.250 and 238.260 to the optional retirement plan. A request for a transfer must be made at the time the member elects to participate in the optional retirement plan. Upon receiving the request, the Public Employees Retirement Board shall transfer all amounts credited to the member [account] accounts of the member established under ORS 238.250 and 238.260 directly to the optional retirement plan and shall terminate all rights, privileges and options of the employee [under ORS chapter 238] as provided in ORS 238.095.

(c) [An administrative employee who elects to participate in the optional retirement plan and who is not a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115] An administrative employee who elects to participate in the optional retirement plan and who is a member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.100 on the date that the election becomes effective, but who has not vested in the program under ORS 238A.115 on the date that the election becomes effective, shall be considered to be a terminated member of the pension program by the Public Employees Retirement Board as of the effective date of the election. The board shall transfer the amounts credited to the member accounts of the member directly to the optional retirement plan in the manner provided by subsection (6) of this section.

(d) An administrative employee who elects to participate in the optional retirement plan and who is a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115 on the date that the election becomes effective shall be considered an inactive member of the pension program by the Public Employees Retirement Board as of the effective date of the election. An employee who is subject to the provisions of this paragraph retains all the rights, privileges and options of an inactive member of the pension program. If the actuarial equivalent of the employee's benefit under the pension program at the time that the election becomes effective is $5,000 or less, the employee may make a written request to the Public Employees Retirement Board for a transfer of the employee's interest under the pension program to the optional retirement plan. The request must be made at the time the member elects to participate in the optional retirement plan. Upon receiving the request, the Public Employees Retirement Board shall transfer the amount determined to be the actuarial equivalent of the employee's benefit under the pension program directly to the optional retirement plan and shall terminate the membership of the
employee in the pension program.

(e) An administrative employee who elects to participate in the optional retirement plan and who is a vested member of the individual account program of the Oregon Public Service Retirement Plan as described in ORS 238A.320 on the date that the election becomes effective shall be considered an inactive member of the individual account program by the Public Employees Retirement Board as of the effective date of the election. An employee who is subject to the provisions of this paragraph retains all the rights, privileges and options of an inactive member of the individual account program. An administrative employee who elects to participate in the optional retirement plan and who is a member of the individual account program of the Oregon Public Service Retirement Plan may make a written request to the Public Employees Retirement Board that all amounts [in the member's employee account, rollover account and employer account] credited to the member accounts of the member established under ORS 238A.350, to the extent the member is vested in those accounts under ORS 238A.320, be transferred to the optional retirement plan. The request must be made at the time the member elects to participate in the optional retirement plan. Upon receiving the request, the Public Employees Retirement Board shall transfer the amounts directly to the optional retirement plan and shall terminate the membership of the employee in the individual account program.

(f) Notwithstanding paragraphs (b), (d) and (e) of this subsection, the Public Employees Retirement Board shall not treat any employee as an inactive member under the provisions of this subsection for the purpose of receiving any benefit under ORS chapter 238 or 238A that requires that the employee be separated from all service with participating public employers and with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust.

(6) Any amounts transferred from the Public Employees Retirement Fund under subsection (5) of this section shall be transferred directly to the optional retirement plan by the Public Employees Retirement Board and shall not be made available to the employee.

(7) An employee participating in the optional retirement plan shall contribute monthly an amount equal to the percentage of the employee's salary that the employee would otherwise have contributed as an employee contribution to the Public Employees Retirement System if the employee had not elected to participate in the optional retirement plan.

(8) A participating community college district shall contribute monthly to the optional retirement plan the percentage of salary for each employee participating in the plan that is equal to the percentage of salary that is required to be made as the employer contribution under ORS 238A.220, less any contributions made by reason of unfunded liabilities. The district may make contributions under this subsection only during periods of time in which the employee would be eligible for membership in the Public Employees Retirement System if the employee had not elected to participate in the optional retirement plan.

(9) An administrative employee who elects to participate in the optional retirement plan may make an election to withdraw from the plan. An employee may make an election under this subsection only once. Upon withdrawing from the plan:

(a) All contributions made to the plan before the effective date of the withdrawal remain credited to the employee;

(b) The employee becomes a member of the Public Employees Retirement System under ORS chapter 238A if the member meets all requirements for membership under ORS chapter 238A; and
(c) The employee is barred from ever again electing to participate in the optional retirement plan.

(10) For the purposes of this section, “administrative employee” means a president, vice president or dean, or a person holding a position that is the equivalent of a president, vice president or dean.


(2) The Public Employees Retirement Board may take any action before the operative date specified in subsection (1) of this section to enable the board to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board by the amendments to ORS 238A.320, 238A.330, 238A.350, 238A.375, 238A.410, 243.800 and 341.551 by sections 1 to 7 of this 2019 Act.

FINAL AVERAGE SALARY

SECTION 9. ORS 238.005, as amended by section 4, chapter 54, Oregon Laws 2018, is amended to read:

ORS 238.005. For purposes of this chapter:

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

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

(3) “Board” means the Public Employees Retirement Board.

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

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

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

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

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

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

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

(a) Persons engaged as independent contractors.
(b) Seasonal, emergency or casual workers whose periods of employment with any public em-
ployer or public employers do not total 600 hours in any calendar year.

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

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

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

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

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

(a) The average salary per calendar year paid by one or more participating public employers to
an employee who is an active member of the system in three of the calendar years of membership
before the effective date of retirement of the employee and before January 1, 2020, in which three
years the employee was paid the highest salary. The three calendar years in which the employee
was paid the largest total salary may include calendar years in which the employee was employed
for less than a full calendar year. If the number of calendar years of active membership before the
effective date of retirement of the employee is three or fewer, the final average salary for the em-
ployee is the average salary per calendar year paid by one or more participating public employers
to the employee in all of those years, without regard to whether the employee was employed for the
full calendar year.

(b) The average salary per calendar year paid by one or more participating public em-
ployers to an employee who is an active member of the system in five of the calendar years
of membership before the effective date of retirement of the employee, in which five years
the employee was paid the highest salary. The five calendar years in which the employee was
paid the largest total salary may include calendar years in which the employee was employed
for less than a full calendar year. If the number of calendar years of active membership before the
effective date of retirement of the employee is five or fewer, the final average salary for the em-
ployee is the average salary per calendar year paid by one or more participating public employers
to the employee in all of those years, without regard to whether the em-
ployee was employed for the full calendar year.

[(b)] (c) One-third of the total salary paid by a participating public employer to an employee
who is an active member of the system in the last 36 calendar months of active membership before
the effective date of retirement of the employee and before January 1, 2020.

(d) One-fifth of the total salary paid by a participating public employer to an employee
who is an active member of the system in the last 60 calendar months of active membership.

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

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

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

(11) “Fiscal year” means 12 calendar months commencing on July 1 and ending on June 30 fol-
(12) “Fund” means the Public Employees Retirement Fund.
(13) “Inactive member” means a member who is not employed in a qualifying position, whose membership has not been terminated in the manner described by ORS 238.095 and who is not retired for service or disability.
(14) “Institution of higher education” means a public university listed in ORS 352.002, the Oregon Health and Science University and a community college, as defined in ORS 341.005.
(15) “Member” means a person who has established membership in the system and whose membership has not been terminated as described in ORS 238.095. “Member” includes active, inactive and retired members.
(16) “Member account” means the regular account and the variable account.
(17) “Normal retirement age” means:
(a) For a person who establishes membership in the system before January 1, 1996, as described in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter or 58 years of age if the employee retires at that age as other than a police officer or firefighter.
(b) For a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter or 60 years of age if the employee retires at that age as other than a police officer or firefighter.
(18) “Pension” means annual payments for life derived from contributions by one or more public employers.
(19) “Police officer” includes:
(a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions whose duties, as assigned by the Director of the Department of Corrections, include the custody of persons committed to the custody of or transferred to the Department of Corrections and employees of the Department of Corrections who were classified as police officers on or before July 27, 1989, whether or not such classification was authorized by law.
(b) Employees of the Department of State Police who are classified as police officers by the Superintendent of State Police.
(c) Employees of the Oregon Liquor Control Commission who are classified as regulatory specialists by the administrator of the commission.
(d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified by the sheriff, are the regular duties of police officers or corrections officers.
(e) Police chiefs and police personnel of a city who are classified as police officers by the council or other governing body of the city.
(f) Police officers who are commissioned by a university under ORS 352.121 or 353.125 and who are classified as police officers by the university.
(g) Parole and probation officers employed by the Department of Corrections, parole and probation officers who are transferred to county employment under ORS 423.549 and adult parole and probation officers, as defined in ORS 181A.355, who are classified as police officers for the purposes of this chapter by the county governing body. If a county classifies adult parole and probation officers as police officers for the purposes of this chapter, and the employees so classified are represented by a labor organization, any proposal by the county to change that classification or to cease to classify adult parole and probation officers as police officers for the purposes of this chapter is a mandatory subject of bargaining.
(h) Police officers appointed under ORS 276.021 or 276.023.

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

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

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

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

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

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

(o) The Director of the Department of Corrections.

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

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

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

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

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

(u) Employees of the Oregon Youth Authority who are classified as juvenile parole and probation officers.

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

(20) “Prior service credit” means credit provided under ORS 238.442 or under ORS 238.225 (2) (1999 Edition).

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

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

(23) “Regular account” means the account established for each active and inactive member under ORS 238.250.

(24) “Retired member” means a member who is retired for service or disability.

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

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

(b) “Salary” includes but is not limited to:

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

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

(C) Retroactive payments described in ORS 238.008; and

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

(c) “Salary” or “other advantages” does not include:

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

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

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

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

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

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

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

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

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

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

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

(L) Compensation described and authorized under ORS 353.270 that is not paid by Oregon Health and Science University[.]; or
(M) For years beginning on or after January 1, 2020, any amount in excess of $100,000 for a calendar year. If any period over which salary is determined is less than 12 months, the $100,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12.

(27) “School year” means the period beginning July 1 and ending June 30 next following.
(28) “System” means the Public Employees Retirement System.
(29) “Variable account” means the account established for a member who participates in the Variable Annuity Account under ORS 238.260.
(30) “Vested” means being an active member of the system in each of five calendar years.
(31) “Volunteer firefighter” means a firefighter whose position normally requires less than 600 hours of service per year.

SECTION 10. ORS 238A.005, as amended by section 5, chapter 54, Oregon Laws 2018, and section 2, chapter 101, Oregon Laws 2018, is amended to read:

238A.005. For the purposes of this chapter:
(1) “Active member” means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.
(2) “Actuarial equivalent” means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.
(3) “Board” means the Public Employees Retirement Board.
(4) “Eligible employee” means a person who performs services for a participating public employer, including elected officials other than judges. “Eligible employee” does not include:
(a) Persons engaged as independent contractors;
(b) Aliens working under a training or educational visa;
(c) Persons provided sheltered employment or make-work by a public employer;
(d) Persons categorized by a participating public employer as student employees;
(e) Any person who is an inmate of a state institution;
(f) Employees of foreign trade offices of the Oregon Business Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);
(g) An employee actively participating in an alternative retirement program established under ORS 353.250 or an optional retirement plan established under ORS 341.551;
(h) Employees of a public university listed in ORS 352.002 who are actively participating in an optional retirement plan offered under ORS 243.800;
(i) Persons employed in positions classified as post-doctoral scholar positions by a public university listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370;
(j) Any employee who belongs to a class of employees that was not eligible on August 28, 2003, for membership in the system under the provisions of ORS chapter 238 or other law;
(k) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);
(L) Any person who is retired under ORS 238A.100 to 238A.250 or ORS chapter 238 and who continues to receive retirement benefits while employed; and
(m) Judges.
(5) “Firefighter” means:
(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;
(b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals; and
(c) An employee of the State Forestry Department who is certified by the State Forester as a professional wildland firefighter and whose primary duties include the abatement of uncontrolled fires as described in ORS 477.064.
(6) “Fund” means the Public Employees Retirement Fund.
(7)(a) “Hour of service” means:
(A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and
(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.
(b) “Hour of service” does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable unemployment compensation laws.
(8) “Inactive member” means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan whose membership has not been terminated, who is not a retired member and who is not employed in a qualifying position.
(9) “Individual account program” means the defined contribution individual account program of the Oregon Public Service Retirement Plan established under ORS 238A.025.
(10) “Institution of higher education” means a public university listed in ORS 352.002, the Oregon Health and Science University or a community college, as defined in ORS 341.005.
(11) “Member” means an eligible employee who has established membership in the pension program or the individual account program of the Oregon Public Service Retirement Plan and whose membership has not been terminated under ORS 238A.110 or 238A.310.
(12) “Participating public employer” means a public employer as defined in ORS 238.005 that provides retirement benefits for employees of the public employer under the system.
(13) “Pension program” means the defined benefit pension program of the Oregon Public Service Retirement Plan established under ORS 238A.025.
(14) “Police officer” means a police officer as described in ORS 238.005.
(15) “Qualifying position” means one or more jobs with one or more participating public employers in which an eligible employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which benefits are not provided under the Oregon Public Service Retirement Plan pursuant to ORS 238A.070 (2).
(16) “Retired member” means a pension program member who is receiving a pension as provided in ORS 238A.180 to 238A.195.
(17)(a) “Salary” means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee’s taxable income under Oregon law. “Salary” includes the additional amounts specified in paragraph (b) of this subsection, but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in taxable income.
(b) “Salary” includes the following amounts:
(A) Payments of employee and employer money into a deferred compensation plan that are made at the election of the employee.

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

(C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit plan by the employer at the election of the employee and that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2017.

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

(E) Retroactive payments described in ORS 238.008.

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

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

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

(c) “Salary” does not include the following amounts:

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

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

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

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

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

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

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

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

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

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

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

(L) For years before 2020, any amount in excess of $200,000 for a calendar year. If any period over which salary is determined is less than 12 months, the $200,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination...
period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

(M) For years beginning on or after January 1, 2020, any amount in excess of $100,000 for a calendar year. If any period over which salary is determined is less than 12 months, the $100,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12.

(18) “System” means the Public Employees Retirement System.

(19) “Workers’ compensation benefits” means:

(a) Payments made under ORS chapter 656; or

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

SECTION 11. ORS 238.435 is amended to read:

238.435. (1) Notwithstanding the definition of “salary” or “other advantages” provided by ORS 238.005, for the purpose of calculating the retirement allowance of a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, the Public Employees Retirement Board shall not include any lump sum payment for accrued vacation pay made to the member during [the last 36 calendar months of membership before the effective date of retirement of the member, or during any period of time taken into account for purposes of determining the three years in which the member was paid the highest salary for the purposes of any period of time taken into account in determining the member’s final average salary.]

(2) Notwithstanding the definition of “final average salary” provided by ORS 238.005, for the purpose of calculating the retirement allowance of a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, and who is not employed by a local government as defined in ORS 174.116, the term “final average salary” means whichever of the following is greater:

(a) The average salary per calendar year paid to a public employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee and before January 1, 2020, in which three years the employee was paid the highest salary. The three calendar years in which the employee was paid the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is three or less, the final average salary for the employee is the average salary per calendar year paid to the public employee in all of those years, without regard to whether the employee was employed for full calendar years.

(b) The average salary per calendar year paid to a public employee who is an active member of the system in five of the calendar years of membership before the effective date of retirement of the employee, in which five years the employee was paid the highest salary. The five calendar years in which the employee was paid the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is five or less, the final average salary for the employee is the average salary per calendar year paid to the public employee in all of those years, without regard to whether the employee was employed for full calendar years.

(c) One-third of the total salary paid to a public employee who is an active member of the system in the last 36 calendar months of membership before the effective date of retirement of the employee and before January 1, 2020.
(d) One-fifth of the total salary paid to a public employee who is an active member of the system in the last 60 calendar months of membership before the effective date of retirement of the employee.

(3) For the purposes of calculating the final average salary of a member under subsection (2) of this section, the Public Employees Retirement Board shall:

(a) Include any salary paid in or for the calendar month of separation from employment;

(b) Exclude any salary for any pay period before the first full pay period that is included in the three calendar years of membership under subsection (2)(a) of this section or the five calendar years of membership under subsection (2)(b) of this section if the three or five calendar years were consecutive; and

(c) Exclude any salary for any pay period before the first full pay period that is included in the last 36 calendar months of membership under subsection [(2)(b) (2)(c) of this section or the last 60 calendar months of membership under subsection (2)(d) of this section.

(4) Notwithstanding the definition of “final average salary” provided by ORS 238.005, for the purpose of calculating the retirement allowance of a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, and who is employed by a local government as defined in ORS 174.116, the term “final average salary” means whichever of the following is greater:

(a) The average salary per calendar year earned by a public employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee and before January 1, 2020, in which three years the employee earned the highest salary. The three calendar years in which the employee earned the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is three or less, the final average salary for the employee is the average salary per calendar year earned by the public employee in all of those years, without regard to whether the employee was employed for full calendar years.

(b) The average salary per calendar year earned by a public employee who is an active member of the system in five of the calendar years of membership before the effective date of retirement of the employee, in which five years the employee earned the highest salary. The five calendar years in which the employee earned the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is five or less, the final average salary for the employee is the average salary per calendar year earned by the public employee in all of those years, without regard to whether the employee was employed for full calendar years.

[(b)(c) One-third of the total salary earned by a public employee who is an active member of the system in the last 36 calendar months of membership before the effective date of retirement of the employee and before January 1, 2020.

(d) One-fifth of the total salary earned by a public employee who is an active member of the system in the last 60 calendar months of membership before the effective date of retirement of the employee.

(5) The normal retirement age is 60 years of age for a member who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, and who retires as other than a police officer or firefighter.
ORS 238.255 does not apply to any person who establishes membership in the Public Employees Retirement System on or after January 1, 1996, as described in ORS 238.430.

(7) Except as provided in this section, all provisions of this chapter are applicable to persons who establish membership in the system on or after January 1, 1996, as described in ORS 238.430.

SECTION 12. ORS 238A.130 is amended to read:

238A.130. (1) Except as provided in subsection (3) of this section, for purposes of the computation of pension program benefits under ORS 238A.125, “final average salary” means whichever of the following is greater:

(a) The average salary per calendar year paid to an active member in the three consecutive calendar years of membership before January 1, 2020, that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is three or less, the final average salary for the member is the average salary per calendar year paid to the member in all of those years, without regard to whether the member was employed for full calendar years.

(b) The average salary per calendar year paid to an active member in the five consecutive calendar years of membership that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is five or less, the final average salary for the member is the average salary per calendar year paid to the member in all of those years, without regard to whether the member was employed for full calendar years.

(c) One-third of the total salary paid to an active member in the last 36 calendar months of membership before the effective date of retirement of the member and before January 1, 2020.

(d) One-fifth of the total salary paid to an active member in the last 60 calendar months of membership before the effective date of retirement of the member.

(2) For the purposes of calculating the final average salary of a member under subsection (1) of this section, the Public Employees Retirement Board shall:

(a) Include any salary paid in or for the calendar month of separation from employment;

(b) Exclude any salary for any pay period before the first full pay period that is included in the three consecutive calendar years of membership under subsection (1)(a) of this section or the five consecutive calendar years of membership under subsection (1)(b) of this section; and

(c) Exclude any salary for any pay period before the first full pay period that is included in the last 36 calendar months of membership under subsection (1)(c) of this section or the last 60 calendar months of membership under subsection (1)(d) of this section.

(3) For purposes of the computation of pension program benefits under ORS 238A.125 of a person employed by a local government as defined in ORS 174.116, “final average salary” means whichever of the following is greater:

(a) The average salary per calendar year earned by an active member in the three consecutive calendar years of membership before January 1, 2020, that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is three or less, the final average salary for the member is the average salary per calendar year earned by the member in all of those years, without regard to whether the member was employed for full calendar years.
(b) The average salary per calendar year earned by an active member in the five consecutive calendar years of membership that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is five or less, the final average salary for the member is the average salary per calendar year earned by the member in all of those years, without regard to whether the member was employed for full calendar years.

[(b)] (c) One-third of the total salary earned by an active member in the last 36 calendar months of membership before the effective date of retirement of the member and before January 1, 2020.

(d) One-fifth of the total salary earned by an active member in the last 60 calendar months of membership before the effective date of retirement of the member.

(4) For the purposes of calculating the final average salary of a member under this section, the salary of the member does not include:

(a) Any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same class of employees as established by rule of the Public Employees Retirement Board. The Oregon Department of Administrative Services shall establish by rule more than one overtime average for a class of state employees based on the geographic placement of the employees.

(b) Any increases in salary during the last 36 calendar months of membership before the effective date of retirement of the member that:

(A) Are made by an employer to pay for insurance coverage previously paid for by the employer; and

(B) Are not offered to all employees in the same class of employees as established by rule of the board under paragraph (a) of this subsection.

SECTION 13. ORS 238.350 is amended to read:

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

(b) For employees of a common school district, a union high school district, an education service district or an institution of higher education engaged in teaching or other school activity, or employees of the school operated under ORS 346.010 engaged in teaching or other school activity, who are employed under contract for a period of less than 12 consecutive months and who are entitled to sick leave with pay of less than 96 hours for a year, each hour of accumulated unused sick leave with pay shall be valued on the basis of the actual number of contract hours of employment during the last year of contributing membership of an employee before retiring and the salary of the employee during the same period. This paragraph does not apply to any employee who is employed under contract for 12 consecutive months in any of the [three or less years] period or periods used in determining the final average salary of the employee.

(c) For the purpose of this subsection, accumulated unused sick leave with pay includes unused sick leave with pay accumulated by an active member of the system while in the service of any public employer participating in the system that has the request described in paragraph (a) of this subsection in effect at the time of the member's separation from the service of the employer, whether
that employer is or is not the employer of the member at the time of the member’s retirement.

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

(2) Accumulated unused sick leave with pay may be considered for the purpose of subsection (1) of this section only in accordance with the following requirements:

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

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

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

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

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

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

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

(B) Where the public employer provided sick leave before July 1, 1973, but formal records of accumulation and use were not required or if required, are unavailable or incomplete, or the sick leave was subject to administrative limitations on total accumulation or transfer between public employers, accumulated unused sick leave for periods before July 1, 1973, may be considered as equal to 2.675 hours for each full month worked or an amount per month equal to the average monthly accumulation by an employee during the period beginning July 1, 1973, and ending at the time of retirement, whichever amount is greater, but reduced by the amount of any accumulated unused sick leave credited to the employee on July 1, 1973.

(g) The written certification of a member or former member of the Legislative Assembly shall constitute a formal record of accumulation and use in determining the amount of accumulated unused sick leave of an employee of the Legislative Assembly, either of its houses or any of its committees or officers for periods of employment before July 1, 1981. Sick leave accumulated on and after July 1, 1981, by employees of the Legislative Assembly, either of its houses or any of its committees or officers may be considered only to the extent it is supported by records of accumulation and use maintained by the Legislative Administration Committee, or any statutory, standing, special or interim committee of the Legislative Assembly or either house thereof, or any constitutional or statutory office of the Legislative Assembly or either house thereof, pursuant to a plan adopted formally by the committee or officer.
(3)(a) As used in this subsection, “legislative employee” means any person employed by the Legislative Assembly, either of its houses or any of its committees or officers, but does not include a regular employee of a statutory committee or statutory office of the Legislative Assembly described in ORS 173.005 (1).

(b) Upon the request of a retiring legislative employee who is a member of the system, and the request of the public employer of the legislative employee, that the legislative employee be compensated for accumulated unused vacation with pay for periods of legislative employment in the form of increased retirement benefits upon service or disability retirement, the board shall add to the gross amount of salary used in determining final average salary of the legislative employee the monetary value of one-half of the accumulated unused vacation with pay of the legislative employee and shall establish the benefits of the legislative employee on the basis of a final average salary reflecting that addition.

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

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

(B) Amounts of vacation exceeding amounts creditable to employees in the classified service of the state service pursuant to ORS 240.515 (1), and rules adopted pursuant thereto, in effect on June 30, 1981, shall not be considered.

(C) Vacation accumulated before, on and after July 1, 1981, may be considered only to the extent it is supported by records of accumulation and use pursuant to a plan adopted formally by the public employer. However, the written certification of a member or former member of the Legislative Assembly shall constitute a formal record of accumulation and use in determining the amount of accumulated unused vacation of a legislative employee for periods of legislative employment before July 1, 1981.

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

SECTION 14. ORS 238.580 is amended to read:

238.580. (1) Except as provided in subsection (3) of this section, ORS 238.005 (4) and (26), 238.025, 238.078, 238.082, 238.092, 238.115 (1), 238.250, 238.255, 238.260, 238.350, 238.364, 238.410, 238.415, 238.420, 238.445, 238.458, 238.460, 238.465, 238.475, 238.600, 238.605, 238.610, 238.618, 238.630, 238.635, 238.645, 238.650, 238.655, 238.660, 238.665, 238.670 and 238.705 and the increases provided by ORS 238.366 for members of the system who are serving as other than police officers or firefighters apply in respect to service as a judge member.

(2) This chapter applies in respect to persons described in ORS 238.505 (1) and in respect to service as a judge member only as specifically provided in ORS 238.500 to 238.585.

(3) ORS 238.005 (26)(c)(M) does not apply in respect to service as a judge member.

PENSION FACTOR

SECTION 15. ORS 238.300 is amended to read:

238.300. Upon retiring from service at normal retirement age or thereafter, a member of the system shall receive a service retirement allowance which shall consist of the following annuity and
pensions:

(1) A refund annuity which shall be the actuarial equivalent of accumulated contributions, if any, by the member and interest thereon credited at the time of retirement, which annuity shall provide an allowance payable during the life of the member and at death a lump sum equal in amount to the difference between accumulated contributions at the time of retirement and the sum of the annuity payments actually made to the member during life shall be paid to such person, if any, as the member nomi

(2)(a) A life pension (nonrefund) for current service provided by the contributions of employers, which pension, subject to paragraph (b) of this subsection, shall be an amount which, when added to the sum of the annuity, if any, under subsection (1) of this section and the annuity, if any, provided on the same basis and payable from the Variable Annuity Account, both annuities considered on a refund basis, results in a total of:

(A) For service as a police officer or firefighter, two percent of final average salary multiplied by the number of years of membership in the system as a police officer or firefighter before the effective date of retirement.

(B) For service as other than a police officer or firefighter, including service as a member of the Legislative Assembly[;]

(i) 1.67 percent of final average salary multiplied by the number of years of membership in the system as other than a police officer or firefighter before the effective date of retirement[;] and

(ii) 1.2 percent of final average salary multiplied by the number of years of membership in the system as other than a police officer or firefighter before the effective date of retirement and on and after January 1, 2020.

(b) A pension under this subsection shall be at least:

(A) For a member who first establishes membership in the system before July 1, 2003, the actuarial equivalent of the annuity provided by the accumulated contributions of the member. A person establishes membership in the system before July 1, 2003, for the purposes of this subparagraph if:

(i) The person is a member of the system, or a judge member of the system, on the day immediately before July 1, 2003; or

(ii) The person performed any period of service for a participating public employer before July 1, 2003, that is credited to the six-month period of employment required of an employee under ORS 238.015 before an employee may become a member of the system.

(B) For a member who made contributions before August 21, 1981, the equivalent of a pension computed pursuant to this subsection as it existed immediately before that date.

(c) As used in this subsection, “number of years of membership” means the number of full years of creditable service plus any remaining fraction of a year of creditable service. Except as otherwise provided in this paragraph, in determining a remaining fraction a full month shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as a full month. Membership of a school district employee, an employee of an institution of higher education engaged
in teaching or other school activity or an employee of the Department of Human Services, the
Oregon Youth Authority, the Department of Corrections or the State Board of Education engaged
in teaching or other school activity at an institution supervised by the authority, board or depart-
ment, for all portions of a school year in a calendar year in which the district school, institution
of higher education or school activity at an institution so supervised in which the member is em-
ployed is normally in session shall be considered as a full one-half year of membership. The number
of years of membership of a member who received a refund of contributions as provided in ORS
237.976 (2) is limited to the number of years after the day before the date on which the refund was
received. The number of years of membership of a member who is separated, for any reason other
than death or disability, from all service entitling the member to membership in the system, who
withdraws the amount credited to the member account of the member in the fund during absence
from such service and who thereafter reenters the service of an employer participating in the system
but does not repay the amount so withdrawn as provided in this chapter, is limited to the number
of years after the day before the date of so reentering.

(3) An additional life pension (nonrefund) for prior service credit, including military service,
credited to the member at the time of first becoming a member of the system, as elsewhere provided
in this chapter, which pension shall be provided by the contributions of the employer.

SECTION 16. ORS 238A.125, as amended by section 3, chapter 101, Oregon Laws 2018, is
amended to read:

238A.125. (1) Upon retiring at normal retirement age, a vested pension program member shall
be paid an annual pension for the life of the member as follows:

(a) For service as a police officer or firefighter, 1.8 percent of final average salary multiplied
by the number of years of retirement credit attributable to service as a police officer or firefighter.

(b) For service as other than a police officer or firefighter, a total of:

(i) 1.5 percent of final average salary multiplied by the number of years of retirement credit
attributable to service as other than a police officer or firefighter. before January 1, 2020; and

(ii) One percent of final average salary multiplied by the number of years of retirement
credit attributable to service as other than a police officer or firefighter on and after January
1, 2020.

(2) Notwithstanding any provision of ORS 238A.100 to 238A.250, the annual benefit payable to
a member under the pension program and under any other tax-qualified defined benefit plan main-
tained by the participating public employer may not exceed the applicable limitations set forth in
26 U.S.C. 415(b), as in effect on December 31, 2017. The Public Employees Retirement Board shall
adopt rules for the administration of this limitation, including adjustments in the annual dollar lim-
itation to reflect cost-of-living adjustments authorized by the Internal Revenue Service.

(3) The board shall make no actuarial adjustment in a member's pension calculated under this
section by reason of the member's retirement after normal retirement age.

RECALCULATION OF EMPLOYER RATES

SECTION 17. (1) As soon as practicable after the effective date of this 2019 Act, the
Public Employees Retirement Board shall:

(a) Determine the amount of savings in employer contributions that are attributable to
the provisions of this 2019 Act; and

(b) Recalculate the contribution rates of all employers, pursuant to ORS 238.225, to re-
flect the provisions of this 2019 Act.

(2) The board shall issue corrected contribution rate orders to employers affected by rates recalculated under this section as soon as is practicable after the effective date of this 2019 Act. The corrected rates are effective July 1, 2019.

REVIEW BY SUPREME COURT

SECTION 18. (1) Jurisdiction is conferred upon the Supreme Court to determine in the manner provided by this section whether this 2019 Act breaches any contract between members of the Public Employees Retirement System and their employers or violates any provision of the Oregon Constitution or of the United States Constitution, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under Article I, section 21, of the Oregon Constitution, or Article I, section 10, clause 1, of the United States Constitution.

(2) A person who is adversely affected by this 2019 Act or who will be adversely affected by this 2019 Act may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:

(a) The petition must be filed within 60 days after the effective date of this 2019 Act.

(b) The petition must include the following:

(A) A statement of the basis of the challenge; and

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

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

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

(5) The Supreme Court shall allow public employers participating in the Public Employees Retirement System to intervene in any proceeding under this section.

(6)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene in any proceeding relating to this 2019 Act. After a member intervenes in a proceeding relating to this 2019 Act, the member has standing to participate in the proceeding even if the member ceases to be a member of the Legislative Assembly.

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

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

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

CAPTIONS

SECTION 19. The unit captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any
legislative intent in the enactment of this 2019 Act.

EMERGENCY CLAUSE

SECTION 20. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.