

House Bill 2149

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Labor Commissioner Val Hoyle)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides for persons in management service of state government to be employed on annual contract basis.

Provides that persons in management service may not participate in Public Employees Retirement System. Allows persons in management service to participate in state deferred compensation plan as management service members.

A BILL FOR AN ACT

1
2 Relating to management service in state employment; creating new provisions; and amending ORS
3 240.011, 240.086, 240.250, 240.316 and 240.570.

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

5 **SECTION 1.** ORS 240.011 is amended to read:

6 240.011. (1) The Legislative Assembly declares that the interests of the state are best served by
7 a system that goes beyond consideration of mere short-term cost to encompass other benefits, such
8 as efficiency, continuity of operations, public protection and avoidance of the spoils system. The
9 state has a basic obligation to protect the public by attempting to assure the orderly and uninter-
10 rupted operations, services and functions of all public agencies, **and appropriate accountability**
11 **for all decisions and actions undertaken on behalf of Oregonians.**

12 (2) It is the policy of the state that contracts for public services entered into by any public
13 agency be entered with full knowledge of costs and benefits to the public and that contracts be
14 subject to ongoing review to insure accountability of the contractor for the quantity and quality of
15 contracted services.

16 **SECTION 2.** ORS 240.086 is amended to read:

17 240.086. The duties of the Employment Relations Board shall be to:

18 (1) Review any personnel action affecting an employee, who is not in a certified or recognized
19 appropriate collective bargaining unit **and who is not in management service as provided in**
20 **ORS 240.212**, that is alleged to be arbitrary or contrary to law or rule, or taken for political reason,
21 and set aside such action if it finds these allegations to be correct.

22 (2) Review and enforce arbitration awards involving employees in certified or recognized ap-
23 propriate collective bargaining units. The awards shall be enforced unless the party against whom
24 the award is made files written exceptions thereto for any of the following causes:

25 (a) The award was procured by corruption, fraud or undue means.

26 (b) There was evident partiality or corruption on the part of the arbitrator.

27 (c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient
28 cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any
29 other misbehavior by which the rights of any party were prejudiced.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final
2 and definite award upon the subject matter submitted was not made.

3 (e) There was an evident material miscalculation of figures or an evident material mistake in
4 the description of any person, thing or property referred to in the award.

5 (f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not
6 affecting the merits of the decision upon the matters submitted.

7 (g) The award is in violation of law.

8 (3) Adopt such rules or hold such hearings as it finds necessary to perform the duties, functions
9 and powers imposed on or vested in it by law.

10 **SECTION 3.** ORS 240.250 is amended to read:

11 240.250. The Personnel Division shall adopt rules, policies and procedures necessary for the
12 management service. **The rules must provide for persons in management service positions to**
13 **work under individual renewable employment contracts of not more than one year in dura-**
14 **tion, commencing on July 1, or date of hire, and expiring on the following June 30. The rules**
15 **must require an employer to notify a management service employee of contract renewal or**
16 **nonrenewal in writing no later than March 31 of each year. Individual contract renewal is**
17 **entirely at will and not subject to challenge or appeal under this chapter.** The rules may cover
18 any wages, hours, terms and conditions of employment addressed by this chapter, even if, absent the
19 rule, those wages, hours, terms and conditions would not otherwise apply to the management ser-
20 vice. The rules *[shall]* **must** further merit principles in the examination, selection and promotion of
21 individuals for the management service.

22 **SECTION 4.** ORS 240.316 is amended to read:

23 240.316. (1)(a) **Except as provided in paragraph (b) of this subsection,** persons initially ap-
24 pointed to or promoted to a permanent or seasonal position in state service **not in the manage-**
25 **ment service** shall be subject to a trial service period.

26 (b) An appointing authority has the discretion to subject an employee to a trial service period
27 when:

28 (A) *[A management service employee or]* A classified, unrepresented employee transfers to a dif-
29 ferent agency;

30 (B) *[A management service employee or]* A classified, unrepresented employee transfers back to
31 the same agency after an absence of more than one year;

32 (C) A former management service employee or former classified, unrepresented employee is re-
33 employed by the same agency after an absence of more than one year; or

34 (D) A former management service employee or former classified, unrepresented employee is re-
35 employed by a different agency.

36 (c) Any employee who serves the trial service period designated by the Personnel Division or
37 a delegated operating agency for a given classification or as described in paragraph (b) of this sub-
38 section shall be given regular employee status.

39 (2) Employees who have acquired regular status will not be subject to separation except for
40 cause as defined by ORS 240.555 or lack of work, curtailment of funds, or reorganization requiring
41 a reduction in force.

42 (3) Procedures shall be established by the division to provide for the layoff and opportunity for
43 reemployment of employees separated for reasons other than cause, which shall take into account
44 the needs of the service, qualifications, quality of performance, relative merit and length of service.

45 (4) Procedures shall also be established by the division for the transfer, discipline or demotion

1 of employees for the good of the service or separation of employees whose conduct or performance
 2 continues to be improper or inadequate after reasonable attempts have been made to correct it,
 3 where appropriate.

4 **SECTION 5.** ORS 240.570 is amended to read:

5 240.570. (1) Positions in the unclassified, management and exempt services may be filled by
 6 classified employees. After an employee is terminated from the unclassified or exempt service or
 7 removed from the management service, for reasons other than those specified in ORS 240.555, the
 8 state agency that employed the employee before the appointment to the unclassified, exempt or
 9 management service may, at the agency's sole discretion, restore the employee to a position held in
 10 the agency before the appointment if the employee meets the position requirements. If an employee
 11 is restored to a former position, the employee is subject to any applicable agency collective bar-
 12 gaining agreement.

13 (2) An appointing authority may assign, reassign and transfer management service employees for
 14 the good of the service and may remove employees from the management service due to reorgan-
 15 ization or lack of work.

16 *[(3) A management service employee is subject to a trial service period established pursuant to*
 17 *rules of the Personnel Division under ORS 240.250. Thereafter, the management service employee may*
 18 *be disciplined by reprimand, salary reduction, suspension or demotion or may be removed or dismissed*
 19 *from the management service if the employee is unable or unwilling to fully and faithfully perform the*
 20 *duties of the position satisfactorily.]*

21 *[(4) Management service employees who are assigned, reassigned, transferred or removed, as pro-*
 22 *vided in subsection (2) of this section, and employees who are disciplined, removed or dismissed from*
 23 *the management service as authorized in subsection (3) of this section may appeal to the Employment*
 24 *Relations Board in the manner provided by ORS 240.560.]*

25 *[(5)(a) Management service employees with immediate prior former regular status in the classified*
 26 *service who are removed from trial service pursuant to ORS 240.410 have a right to be restored to their*
 27 *former positions.]*

28 **(3)(a) A management service employee with immediate prior former regular status in the**
 29 **classified service who is appointed to temporarily fill a position for a period not to exceed a**
 30 **one-year contract term, at the end of which the contract is not renewed, has the right of**
 31 **restoration to the employee's former position. A management service employee appointed**
 32 **under this paragraph whose contract is renewed at the end of the one-year term does not**
 33 **retain the right to restoration to a former position.**

34 (b) Except as provided in paragraph (a) of this subsection, management service employees with
 35 immediate prior former regular status in the classified service who are appointed to the management
 36 service and who have not been dismissed from the management service for a reason specified in ORS
 37 240.555:

38 (A) Prior to January 1, 2015, have the right to restoration to the classified service for three
 39 years from the date of appointment to the management service.

40 (B) After December 31, 2014, have no right to restoration to the classified service.

41 **SECTION 6.** (1) **On or after July 1, 2022, a person in the management service as provided**
 42 **in ORS 240.212 may not become a member of the Public Employees Retirement System.**

43 (2) **On or after July 1, 2022, a person in the management service is not employed in a**
 44 **qualifying position, as defined in ORS 238.005, for purposes of ORS chapter 238 or 238A.**

45 (3) **A person in the management service who has performed any period of service for a**

1 participating public employer before July 1, 2022, that is credited to the period of active
 2 membership required to be vested, as defined in ORS 238.005, is vested for purposes of ORS
 3 chapter 238 on July 1, 2022.

4 (4) A person in the management service may elect to become a management service
 5 member of the state deferred compensation plan under section 7 of this 2021 Act for the
 6 purpose of service in the management service on or after July 1, 2022.

7 (5) An election under this section does not affect the ability of a person in the manage-
 8 ment service to participate in the state deferred compensation plan in the manner provided
 9 by ORS 243.401 to 243.507 as other than a management service member under section 7 of
 10 this 2021 Act.

11 **SECTION 7.** (1)(a) If a person in the management service as provided in ORS 240.212
 12 elects under section 6 of this 2021 Act to become a management service member of the state
 13 deferred compensation plan for the purpose of service in the management service, the state
 14 shall make employer contributions to the plan in an amount that is equal to six percent of
 15 the person's salary, as defined in ORS 238.005, plus the percentage of the person's salary that
 16 would have been contributed to the Public Employees Retirement Board for the person's
 17 normal cost under ORS 238A.220, as determined by the actuary under ORS 238.605.

18 (b) Notwithstanding paragraph (a) of this subsection, contributions made to the plan by
 19 the state under this subsection may not exceed the maximum allowed by federal law.

20 (2) If a person in the management service elects under section 6 of this 2021 Act to be-
 21 come a management service member of the state deferred compensation plan for the purpose
 22 of service in the management service, and the person also participates in the state deferred
 23 compensation plan in the manner provided by ORS 243.401 to 243.507 as other than a man-
 24 agement service member, the total contributions made to the plan by the person and by the
 25 state under subsection (1) of this section may not exceed the maximum allowed by federal
 26 law governing the plan's tax qualification.

27 (3) Except for the contributions required by subsection (1) of this section, the state may
 28 not pick-up, assume or pay any contributions on behalf of a management service member
 29 of the state deferred compensation plan.

30 **SECTION 8.** (1) Sections 6 and 7 of this 2021 Act and the amendments to ORS 240.011,
 31 240.086, 240.250, 240.316 and 240.570 by sections 1 to 5 of this 2021 Act become operative on
 32 July 1, 2022.

33 (2) The Oregon Department of Administrative Services may take any action before the
 34 operative date specified in subsection (1) of this section that is necessary to enable the de-
 35 partment to exercise, on and after the operative date specified in subsection (1) of this sec-
 36 tion, all of the duties, functions and powers conferred on the department by sections 6 and
 37 7 of this 2021 Act and the amendments to ORS 240.011, 240.086, 240.250, 240.316 and 240.570
 38 by sections 1 to 5 of this 2021 Act.