

Senate Bill 446

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**.

Changes calculation of final average salary for purposes of Public Employees Retirement System to use five years of salary instead of three years, for salary paid on and after January 1, 2022.

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.

A BILL FOR AN ACT

1
2 Relating to the calculation of final average salary under the Public Employees Retirement System;
3 creating new provisions; and amending ORS 238.005, 238.350, 238.435 and 238A.130.

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

5 **SECTION 1.** ORS 238.005 is amended to read:

6 238.005. For purposes of this chapter:

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

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

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

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

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

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

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

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

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

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

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

4 (a) Persons engaged as independent contractors.

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

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

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

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

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

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

19 (a) The average salary per calendar year paid by one or more participating public employers to
20 an employee who is an active member of the system in three of the calendar years of membership
21 before the effective date of retirement of the employee **and before January 1, 2022**, in which three
22 years the employee was paid the highest salary. The three calendar years in which the employee
23 was paid the largest total salary may include calendar years in which the employee was employed
24 for less than a full calendar year. If the number of calendar years of active membership before the
25 effective date of retirement of the employee is three or fewer, the final average salary for the em-
26 ployee is the average salary per calendar year paid by one or more participating public employers
27 to the employee in all of those years, without regard to whether the employee was employed for the
28 full calendar year.

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

39 [(b)] (c) One-third of the total salary paid by a participating public employer to an employee
40 who is an active member of the system in the last 36 calendar months of active membership before
41 the effective date of retirement of the employee **and before January 1, 2022**.

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

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

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

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

4 (c) An employee of the Oregon Military Department whose primary duties include fighting
5 structural, aircraft, wildland or other fires.

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

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

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

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

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

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

18 (17) "Normal retirement age" means:

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

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

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

28 (19) "Police officer" includes:

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

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

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

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

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

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

44 (g) Parole and probation officers employed by the Department of Corrections, parole and pro-
45 bation officers who are transferred to county employment under ORS 423.549 and adult parole and

1 probation officers, as defined in ORS 181A.355, who are classified as police officers for the purposes
2 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
3 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
4 ented by a labor organization, any proposal by the county to change that classification or to cease
5 to classify adult parole and probation officers as police officers for the purposes of this chapter is
6 a mandatory subject of bargaining.

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

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

10 (j) Employees of the State Department of Agriculture who are classified as livestock police of-
11 ficers by the Director of Agriculture.

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

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

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

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

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

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

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

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

30 (s) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,
31 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who
32 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the
33 Department of Corrections or the Oregon Youth Authority.

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

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

39 (v) Employees of the Department of Human Services who are prohibited from striking under ORS
40 243.726 and whose duties include the care of residents of residential facilities, as defined in ORS
41 443.400, that house individuals with intellectual or developmental disabilities.

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

44 (21) "Public employer" means the state, one of its agencies, any city, county, or municipal or
45 public corporation, any political subdivision of the state or any instrumentality thereof, or an agency

1 created by one or more such governmental organizations to provide governmental services. For
2 purposes of this chapter, such agency created by one or more governmental organizations is a gov-
3 ernmental instrumentality and a legal entity with power to enter into contracts, hold property and
4 sue and be sued.

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

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

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

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

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

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

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

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

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

24 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
25 652.190.

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

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

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

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

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

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

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

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

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

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

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

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

5 (L) Compensation described and authorized under ORS 353.270 that is not paid by Oregon Health
6 and Science University; or

7 (M) For years beginning on or after January 1, 2020, any amount in excess of \$195,000 for a
8 calendar year. If any period over which salary is determined is less than 12 months, the \$195,000
9 limitation for that period shall be multiplied by a fraction, the numerator of which is the number
10 of months in the determination period and the denominator of which is 12. On January 1 of each
11 year, the board shall adjust the dollar limit provided by this subparagraph to reflect any percentage
12 changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as pub-
13 lished by the Bureau of Labor Statistics of the United States Department of Labor.

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

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

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

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

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

21 **SECTION 2.** ORS 238.435 is amended to read:

22 238.435. (1) Notwithstanding the definition of "salary" or "other advantages" provided by ORS
23 238.005, for the purpose of calculating the retirement allowance of a person who establishes mem-
24 bership in the system on or after January 1, 1996, as described in ORS 238.430, the Public Employees
25 Retirement Board shall not include any lump sum payment for accrued vacation pay made to the
26 member during *[the last 36 calendar months of membership before the effective date of retirement of the*
27 *member, or during any period of time taken into account for purposes of determining the three years*
28 *in which the member was paid the highest salary for the purposes of]* **any period of time taken into**
29 **account in** determining the member's final average salary.

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

35 (a) The average salary per calendar year paid to a public employee who is an active member
36 of the system in three of the calendar years of membership before the effective date of retirement
37 of the employee **and before January 1, 2022**, in which three years the employee was paid the
38 highest salary. The three calendar years in which the employee was paid the largest total salary
39 may include calendar years in which the employee was employed for less than a full calendar year.
40 If the number of calendar years of active membership before the effective date of retirement of the
41 employee is three or less, the final average salary for the employee is the average salary per cal-
42 endar year paid to the public employee in all of those years, without regard to whether the employee
43 was employed for full calendar years.

44 (b) **The average salary per calendar year paid to a public employee who is an active**
45 **member of the system in five of the calendar years of membership before the effective date**

1 **of retirement of the employee, in which five years the employee was paid the highest salary.**
 2 **The five calendar years in which the employee was paid the largest total salary may include**
 3 **calendar years in which the employee was employed for less than a full calendar year. If the**
 4 **number of calendar years of active membership before the effective date of retirement of the**
 5 **employee is five or less, the final average salary for the employee is the average salary per**
 6 **calendar year paid to the public employee in all of those years, without regard to whether**
 7 **the employee was employed for full calendar years.**

8 [(b)] (c) One-third of the total salary paid to a public employee who is an active member of the
 9 system in the last 36 calendar months of membership before the effective date of retirement of the
 10 employee **and before January 1, 2022.**

11 **(d) One-fifth of the total salary paid to a public employee who is an active member of the**
 12 **system in the last 60 calendar months of membership before the effective date of retirement**
 13 **of the employee.**

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

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

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

21 (c) Exclude any salary for any pay period before the first full pay period that is included in the
 22 last 36 calendar months of membership under subsection [(2)(b)] (2)(c) of this section **or the last**
 23 **60 calendar months of membership under subsection (2)(d) of this section.**

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

29 (a) The average salary per calendar year earned by a public employee who is an active member
 30 of the system in three of the calendar years of membership before the effective date of retirement
 31 of the employee **and before January 1, 2022**, in which three years the employee earned the highest
 32 salary. The three calendar years in which the employee earned the largest total salary may include
 33 calendar years in which the employee was employed for less than a full calendar year. If the number
 34 of calendar years of active membership before the effective date of retirement of the employee is
 35 three or less, the final average salary for the employee is the average salary per calendar year
 36 earned by the public employee in all of those years, without regard to whether the employee was
 37 employed for full calendar years.

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

1 **the employee was employed for full calendar years.**

2 [(b)] (c) One-third of the total salary earned by a public employee who is an active member of
3 the system in the last 36 calendar months of membership before the effective date of retirement of
4 the employee **and before January 1, 2022.**

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

8 (5) The normal retirement age is 60 years of age for a member who establishes membership in
9 the system on or after January 1, 1996, as described in ORS 238.430, and who retires as other than
10 a police officer or firefighter.

11 (6) ORS 238.255 does not apply to any person who establishes membership in the Public Em-
12 ployees Retirement System on or after January 1, 1996, as described in ORS 238.430.

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

15 **SECTION 3.** ORS 238A.130 is amended to read:

16 238A.130. (1) Except as provided in subsection (3) of this section, for purposes of the computa-
17 tion of pension program benefits under ORS 238A.125, "final average salary" means whichever of the
18 following is greater:

19 (a) The average salary per calendar year paid to an active member in the three consecutive
20 calendar years of membership **before January 1, 2022**, that produce the highest average salary,
21 including calendar years in which the member was employed for less than a full calendar year. If
22 the number of consecutive calendar years of active membership before the effective date of retire-
23 ment of the member is three or less, the final average salary for the member is the average salary
24 per calendar year paid to the member in all of those years, without regard to whether the member
25 was employed for full calendar years.

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

33 [(b)] (c) One-third of the total salary paid to an active member in the last 36 calendar months
34 of membership before the effective date of retirement of the member **and before January 1, 2022.**

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

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

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

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

43 (c) Exclude any salary for any pay period before the first full pay period that is included in the
44 last 36 calendar months of membership under subsection [(1)(b)] (1)(c) of this section **or the last**
45 **60 calendar months of membership under subsection (1)(d) of this section.**

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

4 (a) The average salary per calendar year earned by an active member in the three consecutive
 5 calendar years of membership **before January 1, 2022**, that produce the highest average salary,
 6 including calendar years in which the member was employed for less than a full calendar year. If
 7 the number of consecutive calendar years of active membership before the effective date of retire-
 8 ment of the member is three or less, the final average salary for the member is the average salary
 9 per calendar year earned by the member in all of those years, without regard to whether the mem-
 10 ber was employed for full calendar years.

11 **(b) The average salary per calendar year earned by an active member in the five con-**
 12 **secutive calendar years of membership that produce the highest average salary, including**
 13 **calendar years in which the member was employed for less than a full calendar year. If the**
 14 **number of consecutive calendar years of active membership before the effective date of re-**
 15 **irement of the member is five or less, the final average salary for the member is the aver-**
 16 **age salary per calendar year earned by the member in all of those years, without regard to**
 17 **whether the member was employed for full calendar years.**

18 [(b)] (c) One-third of the total salary earned by an active member in the last 36 calendar months
 19 of membership before the effective date of retirement of the member **and before January 1, 2022**.

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

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

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

28 (b) Any increases in salary during the last [36] **60** calendar months of membership before the
 29 effective date of retirement of the member that:

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

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

34 **SECTION 4.** ORS 238.350 is amended to read:

35 238.350. (1)(a) Upon the request by a public employer that its employees be compensated for
 36 accumulated unused sick leave with pay in the form of increased retirement benefits upon service
 37 or disability retirement, the board shall establish a procedure for adding to the gross amount of
 38 salary used in determining final average salary the monetary value of one-half of the accumulated
 39 unused sick leave with pay of each retiring employee of the requesting public employer and shall
 40 establish benefits of the retiring employee on the basis of a final average salary reflecting that ad-
 41 dition.

42 (b) For employees of a common school district, a union high school district, an education service
 43 district or an institution of higher education engaged in teaching or other school activity, or em-
 44 ployees of the school operated under ORS 346.010 engaged in teaching or other school activity, who
 45 are employed under contract for a period of less than 12 consecutive months and who are entitled

1 to sick leave with pay of less than 96 hours for a year, each hour of accumulated unused sick leave
2 with pay shall be valued on the basis of the actual number of contract hours of employment during
3 the last year of contributing membership of an employee before retiring and the salary of the em-
4 ployee during the same period. This paragraph does not apply to any employee who is employed
5 under contract for 12 consecutive months in [*any of the three or less years*] **the period or periods**
6 used in determining the final average salary of the employee.

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

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

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

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

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

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

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

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

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

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

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

1 (g) The written certification of a member or former member of the Legislative Assembly shall
2 constitute a formal record of accumulation and use in determining the amount of accumulated un-
3 used sick leave of an employee of the Legislative Assembly, either of its houses or any of its com-
4 mittees or officers for periods of employment before July 1, 1981. Sick leave accumulated on and
5 after July 1, 1981, by employees of the Legislative Assembly, either of its houses or any of its com-
6 mittees or officers may be considered only to the extent it is supported by records of accumulation
7 and use maintained by the Legislative Administration Committee, or any statutory, standing, special
8 or interim committee of the Legislative Assembly or either house thereof, or any constitutional or
9 statutory office of the Legislative Assembly or either house thereof, pursuant to a plan adopted
10 formally by the committee or officer.

11 (3)(a) As used in this subsection, "legislative employee" means any person employed by the
12 Legislative Assembly, either of its houses or any of its committees or officers, but does not include
13 a regular employee of a statutory committee or statutory office of the Legislative Assembly de-
14 scribed in ORS 173.005 (1).

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

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

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

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

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

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

40 **SECTION 5. The amendments to ORS 238.005, 238.350, 238.435 and 238A.130 by sections 1**
41 **to 4 of this 2021 Act apply only to a member of the Public Employees Retirement System**
42 **whose effective date of retirement is on or after January 1, 2022.**

43 **SECTION 6. (1) As soon as practicable after the effective date of this 2021 Act, the Public**
44 **Employees Retirement Board shall:**

45 (a) **Determine the amount of savings in employer contributions that are attributable to**

1 the provisions of this 2021 Act; and

2 (b) Recalculate the contribution rates of all employers, pursuant to ORS 238.225, to re-
3 flect the provisions of this 2021 Act.

4 (2) The board shall issue corrected contribution rate orders to employers affected by
5 rates recalculated under this section as soon as is practicable after the effective date of this
6 2021 Act. The corrected rates are effective July 1, 2021.

7 **SECTION 7.** (1) Jurisdiction is conferred on the Supreme Court to determine in the
8 manner provided by this section whether this 2021 Act breaches any contract between
9 members of the Public Employees Retirement System and their employers or violates any
10 provision of the Oregon Constitution or of the United States Constitution, including but not
11 limited to impairment of contract rights of members of the Public Employees Retirement
12 System under Article I, section 21, of the Oregon Constitution, or Article I, section 10, clause
13 1, of the United States Constitution.

14 (2) A person who is adversely affected by this 2021 Act or who will be adversely affected
15 by this 2021 Act may institute a proceeding for review by filing with the Supreme Court a
16 petition that meets the following requirements:

17 (a) The petition must be filed within 60 days after the effective date of this 2021 Act.

18 (b) The petition must include the following:

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

20 (B) A statement and supporting affidavit showing how the petitioner is adversely af-
21 fected.

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

24 (4) Proceedings for review under this section shall be given priority over all other mat-
25 ters before the Supreme Court.

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

28 (6)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene
29 in any proceeding relating to this 2021 Act. After a member intervenes in a proceeding re-
30 lating to this 2021 Act, the member has standing to participate in the proceeding even if the
31 member ceases to be a member of the Legislative Assembly.

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

35 (7) In the event the Supreme Court determines that there are factual issues in the peti-
36 tion, the Supreme Court may appoint a special master to hear evidence and to prepare re-
37 commended findings of fact.

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

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