

Enrolled
House Bill 2003

Sponsored by COMMITTEE ON PUBLIC EMPLOYEES RETIREMENT SYSTEM (at the request of City of Eugene, Oregon School Boards Association, Portland Business Alliance, Canby Utility Board, Rogue River Valley Irrigation District, Association of Oregon Counties, City of Huntington, Oregon Business Council, Association of Oregon Industries, Special Districts Association of Oregon, League of Oregon Cities, National Federation of Independent Businesses, Oregon Business Association)

CHAPTER

AN ACT

Relating to public employees' retirement; creating new provisions; amending ORS 238.005, 238.015, 238.062, 238.092, 238.095, 238.200, 238.205, 238.220, 238.250, 238.255, 238.260, 238.265, 238.270, 238.300, 238.320, 238.380, 238.385, 238.390, 238.425, 238.442, 243.800, 292.430 and 293.701 and section 4, chapter _____, Oregon Laws 2003 (Enrolled House Bill 2004); repealing ORS 238.667; and declaring an emergency.

Whereas it is the policy of the State of Oregon to provide career public employees adequate and secure retirement benefits at a reasonable, affordable and stable cost to taxpayers; and

Whereas since 1995 the cost to taxpayers of funding the Public Employees Retirement System (PERS) has increased dramatically, with the cost of PERS increasing when PERS investment income was good and the cost of PERS continuing to increase when PERS investment income was poor; and

Whereas PERS now has an unfunded actuarial liability of \$16.41 billion, and the burden of eliminating that deficit will fall on the taxpayers unless the causes of that unfunded liability are remedied; and

Whereas as a result of errors by the Public Employees Retirement Board, some retirees are receiving benefits that exceed the benefits provided by law, and the cost of paying for those benefits continues to increase; and

Whereas unless steps are taken to reform and stabilize PERS, the costs of paying for retirement benefits will continue to grow; and

Whereas escalating costs threaten the stability of the Public Employees Retirement Fund and the security of benefits intended for members who have not yet retired; and

Whereas in the City of Eugene et al. v. State of Oregon, Case Nos. 99C-12794, 00C-16173, 99C-12838 and 99C-20235, the Marion County Circuit Court found that the Public Employees Retirement Board paid benefits in excess of those authorized by law by: (a) Unlawfully using outdated mortality tables to calculate retirees' monthly benefits; (b) Unlawfully requiring employers to match earnings in the employees' variable accounts when those employees' pensions are calculated under the "money match formula"; and (c) Unlawfully abusing its discretion in failing to set aside adequate statutorily mandated reserves out of investment income while crediting imprudently large amounts of investment income to member accounts; and

Whereas the Public Employees Retirement Board calculated benefits, credited earnings and failed to fund reserve accounts for many years prior to 1998 using substantially the same methods as those found to be improper by the circuit court in City of Eugene et al. v. State of Oregon, and the effects of those actions have been magnified by the board's allocation of earnings in subsequent

years, but the jurisdiction of the court in *City of Eugene et al. v. State of Oregon* was limited to board actions beginning in 1998; and

Whereas the intent of the Legislative Assembly in providing that member accounts would receive earnings at the assumed interest rate was to ensure that at the time of retirement, member accounts would be credited with no less than cumulative earnings at the assumed interest rate for each year that the member account existed; and

Whereas unless immediate steps are taken to reform and stabilize PERS, escalating pension costs will undermine the financial security of PERS, force massive cutbacks in essential government services, eliminate the jobs of many public employees and destroy the public's confidence and trust in the governmental institutions of the state; and

Whereas this 2003 Act is intended to reform and stabilize PERS, remedy the effects of prior actions, ensure that future PERS benefits will be consistent with the goals and intent of the Legislative Assembly and protect the accrued benefits earned by current PERS members; and

Whereas unless the statutes governing PERS are amended, it will not be possible to make the system conform to the original intentions of the Legislative Assembly; and

Whereas the amendments to ORS chapter 238 are intended to make only those changes necessary to restore PERS to a more stable, sustainable condition, without reducing any current member's benefit to a level below the level intended by the Legislative Assembly; and

Whereas this 2003 Act shall be known as the PERS Reform and Stabilization Act of 2003; now, therefore,

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

ELIMINATION OF EMPLOYEE CONTRIBUTIONS

SECTION 1. ORS 238.200 is amended to read:

238.200. (1)(a) An active member of the **Public Employees Retirement** System shall contribute to the **Public Employees Retirement** Fund and there shall be withheld from salary of the member six percent of that salary **as an employee contribution.**

(b) Notwithstanding paragraph (a) of this subsection, an employee who is an active member of the system on August 21, 1981, shall contribute to the fund and there shall be withheld from salary of the member, as long as the employee continues to be an active member of the system, four percent of that salary if the salary for a month is less than \$500, or five percent of that salary if the salary for a month is \$500 or more and less than \$1,000. Notwithstanding subsection (2) of this section, for the purpose of computing the percentage of salary to be withheld under this paragraph from a member who is an employee of a school district or of the State Board of Higher Education whose salary is based on an annual agreement, the agreed annual salary of the member shall be divided into 12 equal installments, and each installment shall be considered as earned and paid in separate, consecutive months, commencing with the first month that payment is actually made under the terms of the salary agreement.

(2) The contributions of each member as provided in subsection (1) of this section shall be deducted by the employer from each payroll and transmitted by the employer to the **Public Employees Retirement** Board, which shall cause them to be credited to the member account of the member. Salary shall be considered earned in the month in which it is paid. The date inscribed on the paycheck or warrant shall be considered as the pay date, regardless of when the salary is actually delivered to the member.

(3) An active member who is concurrently employed by more than one participating public employer, and who is a member of or entitled to membership in the system, shall make contributions to the fund on the basis of salary paid by each employer.

(4) Notwithstanding subsections (1) to (3) of this section, a member of the system, or a participating employer acting on behalf of the member pursuant to ORS 238.205, is not permitted or required to make employee contributions to the fund on or after January 1, 2004.

SECTION 2. ORS 238.205 is amended to read:

238.205. Notwithstanding any other provision of this chapter, and subject to the provisions of this section, a public employer participating in the system may agree, by a written employment policy or agreement in effect on or after July 1, 1979, to “pick-up,” assume or pay the full amount of **employee contributions [to the fund required of] required or permitted by ORS 238.200** for all or less than all active members of the system employed by the employer **to the extent employee contributions are required or permitted by ORS 238.200**. If a public employer so agrees:

(1) The rate of contribution of each active member of the system employed by the employer who is covered by such policy or agreement shall uniformly be six percent of salary regardless of the amount of monthly salary.

(2) The full amount of required employee contributions assumed or paid by the employer on behalf of its employees shall be considered “salary,” as defined in ORS 238.005, only for the purpose of computing a member’s “final average salary,” as defined in ORS 238.005, and shall not constitute additional “salary” or “other advantages,” as defined in ORS 238.005, for any other purpose.

(3) The full amount of required employee contributions “picked-up” by the employer on behalf of its employees shall be considered “salary,” as defined in ORS 238.005, for the purpose of calculating the amount of the contribution, for the purpose of computing a member’s “final average salary,” as defined in ORS 238.005, and for all other purposes.

(4) The full amount of required employee contributions “picked-up,” assumed or paid by the employer on behalf of its employees shall be added to the member accounts of the members for their annuities and shall be considered employee contributions for all other purposes of this chapter.

(5) For the purposes of this section:

(a) Employee contributions are “picked-up” if the written employment policy or agreement described in subsection (1) of this section provides that employee compensation will be reduced to generate the funds needed to make the employee contributions; and

(b) Employee contributions are “assumed or paid” by an employer if the written employment policy or agreement described in subsection (1) of this section provides that additional amounts shall be paid by the employer for the purpose of making the employee contributions, and employee compensation will not be reduced for the purpose of generating the funds needed to make the employee contributions.

(6) A participating public employer must give written notice to the Public Employees Retirement Board at the time that a written employment policy or agreement described in subsection (1) of this section is adopted or changed. The notice must indicate whether the employer will “pick-up” or “assume or pay” the employee contributions as described in subsection (5) of this section. Any change in the manner in which employee contributions are to be paid applies only to employee contributions made on and after the date the notice is received by the board.

SECTION 3. ORS 238.260 is amended to read:

238.260. (1) The purpose of this section is to establish a well balanced, broadly diversified investment program for certain contributions and portions of the member accounts so as to provide retirement benefits for members of the system that will fluctuate as the value and earnings of the investments vary in relation to changes in the general economy. It is anticipated that investment of those contributions and portions of the member accounts in equities will result in the accumulation of larger deposit reserves for those members during their working years, tend to preserve the purchasing power of those reserves and the retirement benefits provided thereby and afford better protection in periods of economic inflation.

(2) There is established in the Public Employees Retirement Fund an account, separate and distinct from the General Fund, to be known as the Variable Annuity Account. Interest earned by the account shall be credited to the account.

(3)(a) A member **who is making contributions to the fund** may elect at any time to have 25, 50 or 75 percent of contributions by the member to the fund on and after the effective date of the election paid into the Variable Annuity Account, credited to a variable account, and reserved for the purchase of a variable annuity. A member who has elected to have a percentage of contributions so paid, credited and reserved may elect at any time thereafter to have an additional 25 or 50 percent of contributions by the member, but not to exceed a maximum of 75 percent, so paid, credited and reserved. An election shall be in writing on a form furnished by the board and be filed with the board. An election shall be effective on January 1 following the filing thereof.

(b) Notwithstanding any other provision of this section, a member may not contribute to the Variable Annuity Account after December 31, 2003.

(4) A member who has elected to have contributions paid into the Variable Annuity Account under subsection (3) of this section may thereafter cause the contributions to cease being paid into the member's variable account by filing a request in writing on a form furnished by the board and filed with the board. The contributions shall cease being paid into the member's variable account after December 31 following the filing of the request. Contributions paid into the member's variable account before the effective date of the request for cessation shall remain in the member's variable account.

(5)(a) An employee who is a member of the system on January 1, 1968, and who thereafter [*files an election under subsection (3) of this section*] **made contributions to the Variable Annuity Account**, may elect at any time to have an amount equal to 10 percent per year, for not more than five years, of the balance of the regular account of the member in the fund on the effective date of an election filed under subsection (3) of this section, transferred from the regular account of the member to the Variable Annuity Account, credited to the member's variable account, and reserved for the purchase of a variable annuity. An election shall be in writing on a form furnished by the board and be filed with the board. An election is final and irrevocable upon the filing thereof. The first transfer pursuant to an election shall be made on July 1 following the filing of the election, but may be made, in the discretion of the board, on an earlier date.

(b) If the transfers elected by a member under this subsection have not been completed at the time of retirement, a transfer equal to one annual transfer shall be made pursuant to an election by the member made and filed as provided in this subsection.

(c) No transfer shall be made under this subsection after the first payment of the service retirement allowance of the member becomes normally due.

(d) Notwithstanding paragraphs (a) to (c) of this subsection, a member may not elect to transfer funds under this subsection after December 31, 2003.

(6) Moneys in the Variable Annuity Account may be invested in investments authorized by law for investment of moneys in the Public Employees Retirement Fund; but, notwithstanding any other general or specific law, moneys in the account shall be invested primarily in equities, including common stock, securities convertible into common stock, real property and other recognized forms of equities, whether or not subject to indebtedness. Not more than five percent of the amortized value of all the investments of the Variable Annuity Account and of moneys in the account immediately available for investment may be invested in the obligations of or equities in a single, primary obligor or issuer. A pro rata share of the administrative expenses of the system shall be paid from interest earned by the Variable Annuity Account.

(7)(a) Except as provided in subsection (8) of this section, the policy-making investment authority for the Public Employees Retirement Fund shall enter into contracts with one or more persons whom the authority determines to be qualified, whereby the persons undertake to invest and reinvest moneys in the Variable Annuity Account available for investment and acquire, retain, manage and dispose of investments of the account in accordance with subsections (1) and (6) of this section and to the extent provided in the contracts.

(b) Performance of functions under contracts so entered into shall be paid for out of the gross interest or other income of the investments with respect to which the functions are performed, and

the net interest or other income of the investments after that payment shall be considered income of the Variable Annuity Account.

(c) The policy-making investment authority may require a person contracted with to give to the state a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the authority, with corporate surety authorized to do business in this state.

(d) Contracts so entered into and functions performed thereunder are not subject to the State Personnel Relations Law or ORS 279.545 to 279.746.

(e) A person contracted with shall report to the policy-making investment authority as often as the authority may require, but at least annually, the earnings of the moneys invested during the period covered by the report, the capital gains and losses of the Variable Annuity Account during the period, the changes in the market value of the investments of the account during the period and such other information as the authority may require.

(8) The policy-making investment authority for the Public Employees Retirement Fund, for and on behalf of the Public Employees Retirement System and Public Employees Retirement Board, may enter into group annuity contracts with one or more insurance companies authorized to do business in this state. In lieu of any investment of moneys in the Variable Annuity Account as provided in subsections (6) and (7) of this section, the authority may pay, from time to time under contracts so entered into, any moneys in that account available for investment purposes. Contracts so entered into:

(a) May provide that annuities purchased thereunder be payable in variable dollar amounts, but if that provision is made, provision also shall be made that a member of the system who has a variable account, upon retiring from service and before the first payment of retirement allowance becomes normally due, may elect an option to have the annuities payable to the member or the beneficiary of the member in fixed or variable dollar amounts or both.

(b) May provide that payment of annuities purchased thereunder may be made by the insurance company directly to persons entitled thereto or to the Variable Annuity Account for payment therefrom to those persons.

(c) Are not subject to ORS 279.545 to 279.746.

(9) Upon retiring from service but within 60 days after the date of the first benefit payment, a member of the system who has a variable account may elect to transfer the balance in the variable account to the regular account of the member, and by that transfer the annuity shall be based on the amount in the regular account of the member as otherwise provided in this chapter and the member shall not receive a variable annuity as provided in this section.

(10) When an annuity is payable under this chapter to a member of the system who has a variable account, or is payable to a beneficiary of that person, the portion of the annuity payable from the Variable Annuity Account shall be proportionately increased or decreased for a calendar year when, as of October 31 of the preceding calendar year, the balance of the member's variable account exceeds or is less than the current value of the annuity, determined in accordance with the rate of interest and approved actuarial tables then in effect.

(11) Notwithstanding subsection (10) of this section, the board, in the event of extraordinary fluctuation in the market value of investments of the Variable Annuity Account and in order to avoid substantial inequities, may increase or decrease the portions of annuities paid from the account for periods less than a calendar year and determined as of dates other than October 31.

(12) Notwithstanding any other provision of this chapter, the retirement allowance to which a member of the system who has a variable account or who made contributions on salary in excess of \$4,800 per year during the period January 1, 1956, through December 31, 1967, and whose effective date of retirement is January 1, 1982, or later, is otherwise entitled under this chapter shall be subject to the following adjustment:

(a) The board shall determine the difference between the member account of the member and what the member account of the member would have been had the member not participated in the variable annuity program on or after January 1, 1982, plus the contributions made on salary in excess of \$4,800 per year during the period January 1, 1956, through December 31, 1967.

(b) If the member account of the member due to participation in the variable annuity program or due to the contributions made on salary in excess of \$4,800 per year is greater, the monthly retirement allowance of the member shall be increased by the value of the difference, using the annuity tables applicable to the plan selected by the member.

(c) If the member account of the member due to participation in the variable annuity program or due to the contributions made on salary in excess of \$4,800 per year is lesser, the monthly retirement allowance of the member shall be decreased by the value of the difference, using the annuity tables applicable to the plan selected by the member.

(13) Except as otherwise specifically provided in this section, the rights and benefits under this chapter of an active or retired member of the system or of a beneficiary of the member are not affected by this section and the provisions of this chapter applicable to regular accounts of active and retired members of the system in the fund are also applicable to variable accounts.

(14)(a) In addition to the transfer provided for in subsection (9) of this section, a member of the system who has a variable account may at any time prior to retirement elect to transfer the balance in that account to the regular account of the member in the fund if:

(A) The member is other than a police officer or firefighter and has attained the age of 50;

(B) The member is a police officer or firefighter and has attained the age of 45; or

(C) The member has a combined total of 25 years or more of creditable service in the system and prior service credit.

(b) An election under paragraph (a) of this subsection is irrevocable, and a member who has so elected may not thereafter elect to make contributions to the Variable Annuity Account under subsection (3) of this section.

(c) An election under paragraph (a) of this subsection shall be in writing and shall be filed with the board. The board by rule shall prescribe a form for the purposes of application. An election so made shall be effective on January 1 of the year following the year in which the election is made, except that an election shall have no effect whatsoever unless the member account of the member as of the effective date of the election is greater than what the member account of the member would have been had the member not participated in the variable annuity program on or after January 1, 1982, not including the contributions made on salary in excess of \$4,800 per year during the period January 1, 1956, through December 31, 1967.

(d) As of the effective date of an election under this subsection, the board shall credit all earnings to the member's variable account based on the actual calendar year variable earnings rate for the year in which the election is made. This account balance shall:

(A) Be used by the board in determining whether the member's election is effective under paragraph (c) of this subsection; and

(B) Be the account balance credited by the board to the regular account of the member in the fund if the election is determined to be effective.

(e) The annuity of a member who makes an effective transfer under this subsection shall be based on the amount in the regular account of the member in the fund as otherwise provided in this chapter, and the member shall not receive a variable annuity as provided in this section.

SECTION 4. 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 nominates by written designation duly acknowledged and filed with the board or shall otherwise be paid according to the provisions of this chapter for disposal of an amount credited to the member account of a member at the time of death in the event the member desig-

nates no beneficiary to receive the amount or no such beneficiary is able to receive the amount. If death of the member occurs before the first payment is due, the member account of the member shall be treated as though death had occurred before retirement.

(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 a member of the Legislative Assembly, two percent of final average salary multiplied by the number of years of membership in the system as a member of the Legislative Assembly before the effective date of retirement.

(C) For service as other than a police officer, firefighter or member of the Legislative Assembly, 1.67 percent of final average salary multiplied by the number of years of membership in the system as other than a police officer, firefighter or member of the Legislative Assembly before the effective date of retirement.

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

(A) **For a member who first establishes membership in the system before the effective date of this 2003 Act**, the actuarial equivalent of the annuity provided by the accumulated contributions of the member. **A person establishes membership in the system before the effective date of this 2003 Act 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 the effective date of this 2003 Act; or**

(ii) **The person performed any period of service for a participating public employer before the effective date of this 2003 Act 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 plus any remaining fraction of a year for which salary was paid and contributions to the Public Employees Retirement System made. 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 the State Board of Higher Education engaged in teaching or other school activity at an institution of higher education 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 department, 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 employed 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.

CREDITING OF TIER ONE ACCOUNTS

SECTION 5. ORS 238.255, as amended by section 1, chapter 3, Oregon Laws 2003 (Enrolled House Bill 2001), is amended to read:

238.255. (1) The regular account for *[an active or inactive member of the system]* **members who established membership in the system before January 1, 1996, as described in ORS 238.430, and for alternate payees of those members,** shall be examined each year. If the regular account is credited with earnings for the previous year in an amount less than the earnings that would have been credited pursuant to the assumed interest rate for that year determined by the Public Employees Retirement Board, the amount of the difference shall be credited to the regular account and charged to a reserve account in the fund established for the purpose. *[A reserve account so established may not be maintained on a deficit basis for a period of more than five years. Earnings in excess of the assumed interest rate for]* **In years following the year for which a charge is made to the reserve account, all earnings on the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, and of alternate payees of those members, shall first be applied to reduce or eliminate the amount of a deficit. Only earnings on the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, and of alternate payees of those members, may be used to reduce or eliminate the amount of a deficit.**

(2) **Notwithstanding subsection (1) of this section, the board may not credit any earnings to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, or of alternate payees of those members, in any year in which there is a deficit in the reserve account established under subsection (1) of this section, or credit any earnings to the regular accounts of those members, or alternate payees, that would result in a deficit in that reserve account.**

(2) (3) The regular account for *[an active or inactive member]* **members who established membership in the system before January 1, 1996, as described in ORS 238.430, and for alternate payees of those members,** may not be credited with earnings in excess of the assumed interest rate until:

[(a) The reserve account established under subsection (1) of this section no longer has a deficit;]

[(b) (a) The reserve account established under subsection (1) of this section is fully funded with amounts determined by the board, after consultation with the actuary employed by the board, to be necessary to ensure a zero balance in the account when all members who established membership in the system before January 1, 1996, as described in ORS 238.430, have retired; and

[(c) (b) The reserve account established under subsection (1) of this section has been fully funded as described in paragraph [(b) (a)] of this subsection in each of the three immediately preceding calendar years.

SECTION 6. The amendments to ORS 238.255 by section 5 of this 2003 Act apply only to the crediting of earnings under ORS 238.255 for calendar years 2003 and thereafter. The amendments to ORS 238.255 by section 5 of this 2003 Act do not affect the crediting of earnings to member accounts for any member who retires before April 1, 2004, and the board shall credit the accounts of those members in the manner provided by ORS 238.255, and rules adopted by the Public Employees Retirement Board to implement ORS 238.255, as in effect immediately before the effective date of this 2003 Act.

MINIMUM ACCOUNT BALANCE

SECTION 7. Section 8 of this 2003 Act is added to and made a part of ORS chapter 238.

SECTION 8. (1) Notwithstanding any other provision of this chapter, the regular account balance of a member described in subsection (3) of this section may not be less than the amount provided for under subsection (2) of this section for the purpose of computing retirement allowances, death benefits and amounts to be paid to a withdrawing member under ORS 238.265 and for other computations under the provisions of this chapter that are based on a member's regular account balance.

(2) The minimum regular account balance for a member described in subsection (3) of this section is the amount that the regular account of a member would have contained if the regular account had been credited with earnings at the assumed interest rate in every year in which the regular account was in existence.

(3) The provisions of this section apply only to a member who establishes membership in the system before January 1, 1996, as described in ORS 238.430, and who retires on or after April 1, 2004.

RETIRED MEMBERS

SECTION 9. Section 10 of this 2003 Act is added to and made a part of ORS chapter 238.

SECTION 10. (1) Notwithstanding ORS 238.360, cost of living increases for that portion of a service retirement allowance that is not attributable to a variable annuity under ORS 238.260 and that is payable to or on account of members described in subsection (5) of this section may be made only as provided by this section.

(2) The Public Employees Retirement Board shall calculate a revised service retirement allowance for that portion of a service retirement allowance that is not attributable to a variable annuity under ORS 238.260 and that is payable to members described in subsection (5) of this section. The revised service retirement allowance shall be calculated as follows:

(a) The board shall establish a member account balance for the member as of the member's effective date of retirement, determined as though the regular member account for the member had been credited with 11.33 percent earnings in calendar year 1999.

(b) The board shall calculate a service retirement allowance for the member under ORS 238.300 as of the member's effective date of retirement, using the member account balance established under paragraph (a) of this subsection.

(c) If the member elected an optional service retirement allowance calculation under ORS 238.305, the board shall convert the service retirement allowance calculated under paragraph (b) of this subsection to the optional calculation elected by the member.

(d) The board shall adjust the revised service retirement allowance calculated under paragraph (b) or (c) of this subsection for each calendar year after the member's effective date of retirement based on the cost of living adjustment provided for in ORS 238.360.

(3) The board shall calculate a fixed service retirement allowance for members described in subsection (5) of this section. The fixed service retirement allowance shall be the amount that is not attributable to a variable annuity under ORS 238.260 and that is payable to or on account of the member on the effective date of this 2003 Act. The fixed service retirement allowance may not be adjusted under ORS 238.360.

(4) The service retirement allowance payable to or on account of members described in subsection (5) of this section shall be the greater of the revised service retirement allowance calculated under subsection (2) of this section or the fixed service retirement allowance calculated under subsection (3) of this section.

(5) The provisions of this section apply to members who:

(a) Established membership in the Public Employees Retirement System before January 1, 1996, as described in ORS 238.430;

(b) Receive a service retirement allowance calculated under ORS 238.300 (2)(b)(A); and

(c) Have an effective date of retirement that is on or after April 1, 2000, and before April 1, 2004.

INACTIVE VESTED MEMBERS

SECTION 11. ORS 238.265 is amended to read:

238.265. (1) Except as otherwise provided in this section, a member of the Public Employees Retirement System may withdraw from the Public Employees Retirement Fund the amount credited to the member account, **if any**, for the member if:

(a) The member is separated from all service with participating public employers;

(b) The member is separated from all service 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;

(c) The member has not attained earliest service retirement age; and

(d) The separation from service is not by reason of death or disability.

(2) If a member wishes to withdraw the member account, **if any**, of the member under this section, the member must transmit to the Public Employees Retirement Board a withdrawal request. The board shall deny the withdrawal, or shall take all reasonable steps to recover withdrawn amounts, if:

(a) The board determines that the separation is not a bona fide separation; or

(b) The member fails to remain absent from the service of all employers described in subsection (1) of this section for at least one calendar month following the month in which the member separates from service.

(3) If a member has contributed to the fund in each of five calendar years and has separated from all service in the manner described in subsection (1) of this section before reaching earliest service retirement age, the member may elect to withdraw the member account of the member under this section at any time before reaching earliest service retirement age. If the inactive member does not make an election to withdraw under this section, the member shall be paid the benefits or retirement allowances described in ORS 238.425.

(4) Withdrawal of a member account under this section cancels all membership rights in the system, including the right to claim credit for any employment before withdrawal.

SECTION 12. ORS 238.425 is amended to read:

238.425. In the event that an employee who is a **vested** member of the system[, *who has made contributions to the fund during each of five calendar years as established by this chapter,*] and who has not attained earliest service retirement age[,] is separated, for any reason other than death or disability, from all service entitling the employee to membership in the system, the member account, **if any**, of the member shall remain to the member's credit in the fund unless the member elects to withdraw it and there shall be paid such death benefits as this chapter provides; or a disability retirement allowance or, after attaining earliest service retirement age, a service retirement allowance, either of which shall consist of **the allowance provided in ORS 238.300, but actuarially reduced and computed on the member's then attained age.**[.]

[(1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions and interest thereon credited to the member;]

[(2) A pension provided by the contributions of employers as provided in ORS 238.300 (2), but actuarially reduced and computed on the member's then attained age; and]

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

TRANSITION ACCOUNTS

SECTION 13. (1) An active member of the Public Employees Retirement System, as defined by ORS 238.005, shall make payments to a transition account established for the member under the provisions of this section. Payments must be in the amount of six percent of the salary, as defined by ORS 238.005, of the employee.

(2) A public employer, as defined by ORS 238.005, that participates in the system may agree to make all or part of the transition payments on behalf of employees of the public employer who are active members of the system. An agreement may be made by a collective bargaining agreement or by policy of the employer.

(3) A public employer, as defined by ORS 238.005, that participates in the system and that is paying employee contributions on behalf of employees of the public employer under the provisions of ORS 238.205 on December 31, 2003, whether by reason of having agreed to “pick-up” or by reason of having agreed to assume or pay those contributions, must make the employee payments required by subsection (1) of this section until December 31, 2005.

(4) Payments to a transition account under this section may not be considered employee contributions to the system for any purpose.

(5)(a) The Public Employees Retirement Board shall establish a transition account program for payments made under this section. All assets of the program are held in trust for the exclusive benefit of the members of the system. Except as otherwise provided by law, the board is declared to be the trustee of the assets of the transition account program.

(b) The board shall keep a separate transition account for each member of the system that makes payments under the provisions of this section. Except as provided in subsection (9) of this section, all earnings and losses on a transition account shall be credited by the board to the transition account. If the membership of the employee in the system is terminated under the provisions of ORS 238.095, the board shall cease crediting of earnings and losses to the transition account of the member.

(6) Amounts held in a transition account under this section must be distributed to the member within 90 days after the member’s effective date of retirement under ORS chapter 238, or within 90 days after termination of the person’s membership in the system under ORS 238.095.

(7) Distribution from a member’s transition account shall be made in a single lump sum payment.

(8) The board shall adopt rules and establish procedures for transition payments and accounts.

(9) The board shall by rule establish a maintenance fee for transition accounts established under this section. The fee may be collected out of earnings on transition accounts or, if there are no earnings, from the principal amounts paid into the transition accounts. The fee shall be in an amount determined by the board to be adequate to pay the full cost to the system of maintaining transition accounts under this section.

(10) The board shall take all actions necessary to qualify the transition account program as a tax-qualified governmental retirement plan and trust under the Internal Revenue Code.

(11) Nothing in this section creates a contract between members of the Public Employees Retirement System and participating public employers.

SECTION 13a. (1) The Transition Account Fund is created as a trust fund, separate and distinct from the General Fund, for the purpose of holding and investing moneys in transition accounts created under section 13 of this 2003 Act. Interest and any other earnings of the Transition Account Fund shall be credited to the fund. Moneys in the fund may be used only as provided in section 13 of this 2003 Act.

(2) The assets of the Transition Account Fund may be invested in the same manner as the assets of the Public Employees Retirement Fund.

SECTION 13b. Sections 13 and 13a of this 2003 Act become operative January 1, 2004.

BOARD COUNSEL

SECTION 14. Section 14a of this 2003 Act is added to and made a part of ORS chapter 238.

SECTION 14a. The Attorney General shall consult with the Governor on appointment of separate counsel pursuant to ORS 180.235 to represent the Public Employees Retirement Board in any matter or in any class of matters in which the benefits payable under the Public Employees Retirement System are at issue, including but not limited to defending the provisions of this 2003 Act in any proceeding commenced under section 37 of this 2003 Act.

REMEDY IN CITY OF EUGENE V. STATE OF OREGON

SECTION 14b. (1) If the Public Employees Retirement Board is required to correct one or more of the erroneous benefit calculation methods identified in City of Eugene et al. v. State of Oregon, Case Nos. 99C-12794, 00C-16173, 99C-12838 and 99C-20235, the board shall recover the cost of benefits erroneously paid to retired members as a result of those erroneous benefit calculations by one or both of the following methods:

(a) The board may withhold cost of living increases under ORS 238.360 from a retired member whose benefit is greater than the correctly calculated benefit of the member until such time as the member's benefit is equal to the correctly calculated benefit.

(b) The board may treat all or part of the present value of the benefits erroneously paid and payable to retired members as a result of the erroneous benefit calculations as an administrative expense of the Public Employees Retirement System, to be paid exclusively from future income of the Public Employees Retirement Fund, and to be amortized over an actuarially reasonable period not to exceed 15 years.

(2) In no event may the cost of erroneous benefit calculation methods identified in City of Eugene et al. v. State of Oregon be considered an employer liability or charged to employers through employer contributions.

EMPLOYER CONTRIBUTION RATES

SECTION 15. The Public Employees Retirement Board shall recalculate the contribution rates of all participating public employers, pursuant to ORS 238.225, to reflect the provisions of this 2003 Act and shall issue corrected contribution rate orders to participating public employers within 90 days after the effective date of this 2003 Act. The corrected rates are effective July 1, 2003.

CONFORMING AMENDMENTS

SECTION 16. ORS 238.005 is amended to read:

238.005. For purposes of this chapter:

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

(2) "Board" means the Public Employees Retirement Board.

(3) "Calendar year" means 12 calendar months commencing on January 1 and ending on December 31 following.

(4) "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.

(5) "Creditable service" means any period of time during which an active member is being paid a salary by a participating public employer and contributions are being made to the system either by or on behalf of the member. 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.

(6) "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.

(7) "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 employer or public employers do not total 600 hours in any calendar year.

(c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, 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 the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other 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 employees, 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.

(8) "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, 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 employee 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) 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.

(9) "Firefighter" does not include a volunteer firefighter [*as defined in subsection (23) of this section*], 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.

(10) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 following.

(11) "Fund" means the Public Employees Retirement Fund.

(12)(a) "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.

(b) "Active member" means a member who is presently employed by a participating public employer in a position that meets the requirements of ORS 238.015 (4), and who has completed the six-month period of service required by ORS 238.015.

(c) "Inactive member" means a member who is absent from the service of all employers participating in the system, whose membership has not been terminated in the manner described by ORS

238.095, and who is not retired for service or disability. "Inactive member" includes a member who would be an active member except that the person's only employment with a participating public employer is in a position that does not meet the requirements of ORS 238.015 (4).

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

(13)(a) "Member account" means the regular account and the variable account.

(b) "Regular account" means the account established for each active and inactive member under ORS 238.250.

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

(14) "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.

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

(16) "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 enforcement officers 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) 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 181.610, 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.

(g) Police officers appointed under ORS 276.021 or 276.023.

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

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

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

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

(L) Corrections officers as defined in ORS 181.610.

(m) 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.

(n) The Director of the Department of Corrections.

(o) 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.

(p) 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.

(q) 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.

(r) Employees at the MacLaren School, Hillcrest School of Oregon and other 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.

(s) 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.

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

(17) "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.

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

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

(20)(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; and

(C) Retroactive payments made to an employee to correct a clerical error or pursuant to an award by a court or by order of or a conciliation agreement with an administration agency charged with enforcing federal or state law protecting the employee's rights to employment or wages, which shall be allocated to and deemed paid in the periods in which the work was done or in which it would have been done.

(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 institutions of the Department of Higher Education 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; or
- (I) Payments made by an employer for insurance coverage provided to a domestic partner of an employee.

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

(22) "System" means the Public Employees Retirement System.

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

[(23)] **(24) "Volunteer firefighter" means a firefighter whose position normally requires less than 600 hours of service per year.**

SECTION 17. ORS 238.015 is amended to read:

238.015. (1) No person may become a member of the system unless that person is in the service of a public employer and has completed six months' service uninterrupted by more than 30 consecutive working days during the six months' period. Every employee of a participating employer shall become a member of the system at the beginning of the first full pay period of the employee following the six months' period. [Employee and employer] Contributions for new members shall first be made for those wages that are attributable to services performed by the employee during the first full pay period following the six months' period, without regard to when those wages are considered earned for other purposes under this chapter. All public employers participating in the Public Employees Retirement System established by chapter 401, Oregon Laws 1945, as amended, at the time of repeal of that chapter, and all school districts of the state, shall participate in, and their employees shall be members of, the system, except as otherwise specifically provided by law.

(2) Any active member of the Public Employees Retirement System who, through the annexation of a political subdivision employing the member or by change of employment, becomes the employee of another political subdivision which is participating in the Public Employees Retirement System and has also a separate retirement system for its employees, shall remain an active member of the Public Employees Retirement System unless, within 60 days after the effective date of the annexation or change of employment or April 8, 1953, the member shall by written notice to the Public Employees Retirement Board and to the administrative body of the new public employer elect to relinquish membership in the Public Employees Retirement System and become a member of the separate retirement system of the employer, if eligible for membership in that retirement system, and the member shall be so carried by the new employer. Immediately upon such annexation of any political subdivision or such change of employment, the new public employer shall inform such employee in writing of the right of the employee to exercise an election as in this section provided.

(3) A political subdivision (other than a school district) not participating in the retirement system established by chapter 401, Oregon Laws 1945, as amended, which employs one or more employees, each of whose position requires 600 hours of service per year, or an agency created by two or more political subdivisions to provide themselves governmental services, which employs one or more employees, each of whose position requires 600 hours of service per year, may, through its governing body, notify the board in writing, that it elects to include its employees in the system hereby established. Such public employer may request the board to make a study and estimate of the cost of including it and its eligible employees, other than volunteer firefighters, in the system, which the board thereupon shall cause to be made and the cost of which the employer shall bear.

Upon completion of the study and estimate the employer may apply for admission to the system, whereupon it shall begin to participate therein and its eligible employees other than volunteer firefighters shall become members of the system. If the employer is an agency created by two or more political subdivisions to provide themselves governmental services and ceases thereafter to transmit to the board contributions for any of its eligible employees, the benefits based upon employer contributions to which such employees would otherwise be entitled shall be reduced accordingly.

(4) Except as subsection (7) of this section provides otherwise with reference to volunteer firefighters, no employee whose position with one public employer or concurrent positions with two or more public employers normally require less than 600 hours of service per year may become a member of the system.

(5) No inmate of a state institution or an alien on a training or educational visa working for any participating employer, even though the inmate or alien received compensation from a participating employer, shall be eligible to become a member of the system. No person employed by a participating employer and defined by such employer as a student employee is eligible to become a member of the system for such student employment.

(6) A person holding an elective office or an appointive office with a fixed term or an office as head of a department to which the person is appointed by the Governor may become a member of the system by giving the board written notice of desire to do so within 30 days after taking the office or, in the event that the officer is not eligible to become a member of the system at the time of taking the office, within 30 days after becoming so eligible. Membership so established shall not be discontinued during the appointive or elective term of the officer except upon separation of the officer from service.

(7) A public employer employing volunteer firefighters may apply to the board at any time for them to become members of the system. Upon receiving the application the board shall fix a wage at which, for purposes of this chapter only, they shall be considered to be employed and which shall be the basis for computing the amounts of the contributions, **if any**, which they pay into, and of the benefits which they and their beneficiaries receive from, the fund; and if the wage so fixed is satisfactory to the employer, shall include the firefighters in the system.

(8)(a) In the event that an employee enters the service of a public employer which is participating in or later begins to participate in the system and in the event that at the time of entering that service or at the time that the employer begins to participate in the system the employee has commenced to purchase and is continuing to purchase a retirement annuity, if the employer deems the annuity adequate for the purposes of this chapter, it may enter into an agreement with the employee and the board pursuant to which the employee may be exempted from contributing to the Public Employees Retirement Fund, and, if no public funds are being used to purchase the annuity or a corresponding pension, the employer, in lieu of the contributions which it otherwise would make to the fund on account of the employee, may make contributions toward the cost of purchasing the annuity. Such employee otherwise shall be subject to the provisions of this chapter, except that neither the employee nor any person claiming under the employee shall receive any payments from the retirement fund as service or disability allowance.

(b) An employee who enters into an agreement under paragraph (a) of this subsection may elect at any time thereafter to start to participate in the system by giving written notice of desire to participate to the board and to the employer. The employee shall receive no retirement credit for the period during which the employee was exempted from contributing to the fund under the agreement, but the employee shall be considered to have completed the six months' service required for membership in the system. When the employee starts to participate in the system the employer shall start to contribute to the fund on account of the employee in the same manner as the employer contributes on account of other employees who are active members of the system and the employer shall stop making contributions toward the cost of purchasing the retirement annuity.

(9)(a) All new appointees in the Federal Cooperative Extension Service or in any other service in which participation in the Federal Civil Service retirement program is mandatory, who receive

a federal appointment on or after July 1, 1955, may participate in the Public Employees Retirement System only by giving written notice of their election to so participate to the Public Employees Retirement Board within six months after the effective date of their appointment.

(b) All persons employed by the Federal Cooperative Extension Service or by any other service in which participation in the Federal Civil Service retirement program is mandatory, who are under federal appointment as of July 1, 1955, and who are members of the state retirement system, shall continue such membership unless, prior to February 1, 1956, they give written notice to the Public Employees Retirement Board of their desire to cancel their membership.

(c) Any person who is an active member of the Public Employees Retirement System, who, on or after July 1, 1955, is employed by the Federal Cooperative Extension Service or by any other service in which participation in the Federal Civil Service retirement program is mandatory, and who is given a federal appointment, shall continue such membership in the Public Employees Retirement System unless, within six months after the effective date of the appointment, the person gives written notice to the Public Employees Retirement Board of the desire to cancel membership.

(d) A cancellation of membership under paragraph (b) or (c) of this subsection terminates membership in the Public Employees Retirement System and cancels the right to any benefits from, or claims against, that system. Such cancellation prevents the withdrawing member from claiming thereafter any retirement credit for any period of employment before the cancellation. Upon receipt of a notice of cancellation, the Public Employees Retirement Board shall refund the member account of the withdrawing member, regardless of the age of the withdrawing member.

(10) Employees, including managers, of foreign trade offices of the Economic and Community Development Department who live and perform services in foreign countries under the provisions of ORS 285A.090 (13) shall not be members of the system. However, any person who is an active member of the system immediately before becoming an employee of a foreign trade office shall continue to be a member of the system during the period of time the person serves as an employee of the foreign trade office.

(11) An employee who is an employee of the Oregon Health and Science University may not be an active member of the Public Employees Retirement System if that employee is participating in an alternative retirement program established by the university pursuant to ORS 353.250.

SECTION 18. ORS 238.062 is amended to read:

238.062. Any deputy district attorney receiving any compensation from the state or from a county participating in the Public Employees Retirement System shall establish membership in the system after service for six months without having been absent 30 working days. **Any contributions required to be paid** by any such deputy district attorney shall be [*due from*] **based on** salary paid by the state, by a county participating in the system or by both. The application of this chapter to any such deputy district attorney made prior to the effective date of this section by the Public Employees Retirement Board hereby is confirmed and ratified.

SECTION 19. ORS 238.092 is amended to read:

238.092. (1) Notwithstanding any other provision of this chapter:

(a) A retired member of the system who has retired as other than a member of the Legislative Assembly and who thereafter becomes a member of the Legislative Assembly and elects to become an active member of the system as a member of the Legislative Assembly may also elect, by giving the board written notice of desire to do so, to receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and be an active member of the system as a member of the Legislative Assembly for the period the member holds office as a member of the Legislative Assembly. The notice provided for in this paragraph shall be given within 30 days after the retired member takes office as a member of the Legislative Assembly.

(b) A member of the Legislative Assembly who is a member of the system as a member of the Legislative Assembly and who becomes eligible to retire by reason of service as other than a member of the Legislative Assembly, without regard to when that service was performed, may elect, by giving the board written notice of desire to do so, to retire and receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and to

continue, for the period the member holds office as a member of the Legislative Assembly, as an active member of the system as a member of the Legislative Assembly.

(c) Upon receipt of the notice provided for in paragraphs (a) and (b) of this subsection, the board shall determine that portion of the accumulated contributions, **if any**, of the member and interest thereon attributable to service as other than a member of the Legislative Assembly, which shall be used in determining the amount of the annuity the member shall receive for that service. The portion of the accumulated contributions, **if any**, of the member and interest thereon attributable to service as a member of the Legislative Assembly shall remain in the member account of the member and, together with **any** subsequent contributions and interest thereon, be used in determining the amount of the additional annuity the member shall receive for that service upon ceasing to hold office as a member of the Legislative Assembly. **If the member does not have a member account, the board shall determine the member's retirement allowance for nonlegislative service based on the number of years of nonlegislative service, and shall determine any additional benefit to be received after the member ceases to hold office as a member of the Legislative Assembly based on the number of years of service in the Legislative Assembly.**

(2) Notwithstanding any other provision of this chapter, a person who has reached the age of 65 years, whether or not previously employed by a public employer and whether or not a retired member of the system, may be employed by the Legislative Assembly, either house thereof or the Oregon State Police for all or any part of a regular or special session of the Legislative Assembly. A person employed under this subsection:

(a) Unless an active member of the system continuing in employment past the age of 65 years, [*shall not be permitted to make contributions to the retirement fund, nor shall the employer make contributions on behalf of the person*] **does not accrue any retirement benefits, and contributions may not be made by or on behalf of the person.**

(b) If a retired member of the system, is entitled, during the period of such employment, to any pension or annuity provided by this chapter.

SECTION 20. ORS 238.095 is amended to read:

238.095. (1) An employee shall cease to be a member of the Public Employees Retirement System if the employee withdraws the member account, **if any**, of the member in the manner provided by ORS 238.265.

(2) Except as provided in subsection (3) of this section, an employee shall cease to be a member of the system if the employee is absent from the service of all employers participating in the system for a total of more than five consecutive years after the employee becomes a member of the system.

(3) A school district employee shall not cease to be a member of the system under subsection (2) of this section if:

(a) After completing a school year, the member is absent from the service of all employers participating in the system for the next following five school years; and

(b) The member either returns to school employment at the beginning of the sixth school year, or reaches earliest service retirement age before the beginning of the sixth school year.

(4) Interest shall not accrue on the amount in the member account of the former member from the date that membership is terminated under subsection (2) of this section. The Public Employees Retirement Board shall pay the amount in a member account to a former member upon the termination of the membership of the former member under subsection (2) of this section if the former member is separated from all service 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.

NOTE: Section 21 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 22. ORS 238.250 is amended to read:

238.250. The board shall provide for a regular account for each active and inactive member of the system **who has made contributions to the fund**. The regular account **of the member** shall show the amount of the member's contributions to the fund and the interest which they have earned.

The board shall furnish a written statement thereof upon request by any member or beneficiary of the system.

SECTION 23. ORS 238.270 is amended to read:

238.270. Whenever a person who is past the earliest service retirement age separates from the service of a public employer participating in the Public Employees Retirement System and who thereafter, but before applying to the Public Employees Retirement Board for retirement benefits, is employed in a position that entitles the person to membership in another public employees retirement system, either within or without this state, the board, upon the written request of the person and if in conformance with the provisions of law governing the other public employees retirement system, may transfer the member account, **if any**, of the person in the fund to the other public employees retirement system. Such transfer shall cancel the right of the person to claim any future benefits under the Public Employees Retirement System for service rendered to a public employer in this state prior to the date of the transfer.

SECTION 24. ORS 238.320 is amended to read:

238.320. (1) Whenever an employee who is a member of the system is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, the member shall receive a disability retirement allowance consisting of:

(a) A disability retirement refund annuity based on the contributions, **if any**, credited to the member account of the member.

(b) A current service pension provided by the contributions of employers equal to:

(A) For a police officer or firefighter, the pension to which the member would have been entitled if the member had worked continuously until attaining the age of 55, or if the member has attained the age of 55, the pension which the member would receive were the member to retire for service, as provided in this chapter.

(B) For a member other than a police officer or firefighter, the pension to which the member would have been entitled if the member had worked continuously until attaining the age of 58, or if the member has attained the age of 58, the pension which the member would receive were the member to retire for service, as provided in this chapter.

(c) The same prior service pension the member would have received had the member worked until normal retirement age.

(2) As used in subsection (1) of this section, "injury" means bodily injury causing the disability directly and independently of all other causes and effected solely through accidental means.

(3) Whenever an employee who is a member of the system and who has been an employee for 10 years or more of an employer participating in the system is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which qualified, from cause other than injury or disease sustained while in actual performance of duty or intentionally self-inflicted, the member shall receive a disability retirement allowance as provided in subsection (1) of this section.

(4) Payments under a disability retirement allowance provided for in subsection (1) or (3) of this section for the first 90-day period of incapacity shall be withheld until such 90-day period has elapsed.

(5) An inactive member is not eligible for disability benefits referred to in subsection (1) or (3) of this section unless the member applies for such disability benefits within five calendar years after the date of separation from service with a participating public employer if the disability is continuous from such separation date or within six months after the date of such separation from service if disability occurs after such separation date.

(6) In computing years of employment for the purpose of subsection (3) of this section, the following schedule shall be used: For employment before the employee established membership in the Public Employees Retirement System, a member shall be considered to have been employed for one

year for each year of prior service credit allowed, and for any minor fraction of a year of continuous service as certified by the employer for which no prior service credit was granted. After having established membership in the Public Employees Retirement System a member shall be considered to have been employed one year for each 12-month period or major fraction thereof during which time the member received compensation for employment which entitled the member to membership in the system, as evidenced by payroll records. For the purpose of determining a member's eligibility for disability benefits, no leave of absence after a member ceases to work for any participating employer shall be considered other than accumulated sick leave not in excess of 90 days. The effective date of the disability shall not in any event be determined by the board as prior to the last day for which the disabled member performed services for a participating employer. No benefits may be paid for any month in which the member received salary or sick leave benefits from the participating employer.

(7) For the purposes of subsections (1) and (3) of this section, a member of the system shall be considered to be mentally or physically incapacitated for an extended duration if the mental or physical incapacity can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 90 days.

SECTION 25. ORS 238.390 is amended to read:

238.390. (1) In the event that a member of the system dies before retiring, the amount of money, **if any**, credited at the time of death to the member account of the member in the fund shall be paid to the beneficiaries designated by the member. For this purpose a member may designate as a beneficiary any person or the executor or administrator of the estate of the member or a trustee named by the member to execute an express trust in regard to such amount. The withdrawal from the fund of the amount in the member account of a member pursuant to ORS 238.265 shall not invalidate a prior designation of beneficiary in the event a member returns to covered employment, regardless of whether the sum is repaid to the fund pursuant to ORS 238.105.

(2)(a) In the event that a member of the system dies before retiring and has not designated a beneficiary under subsection (1) of this section, the amount of money, **if any**, credited at the time of death to the member account of the member in the fund shall be paid to the deceased's estate if it is to be probated and, if not, then it shall be paid directly without probate to the surviving next of kin of the deceased or the guardian of the survivor's estate, share and share alike, payment to be made to survivors in the following groups in the order listed:

- (A) Husband or wife.
- (B) Children.
- (C) Father and mother.
- (D) Grandchildren.
- (E) Brothers and sisters.
- (F) Nieces and nephews.

(b) Payment shall not be made to persons included in any of the groups listed in paragraph (a) of this subsection should there be living at the date of payment persons in any of the groups preceding it as listed. Payment to the persons in any group, upon receipt from them of an affidavit upon a form supplied by the board, that there are no living individuals in a group preceding it, that the estate of the deceased will not be probated and that the amount of money, to the full extent thereof if necessary, will be used to pay the expenses of last illness and funeral of the deceased, shall completely discharge the board and system on account of the death.

(3) The beneficiary designated under subsection (1) of this section may elect to receive the amount payable in actuarially determined monthly payments for the life of such beneficiary as long as such monthly payments are at least \$30.

(4)(a) In the event that a member of the system dies before retiring, has not designated a beneficiary under subsection (1) of this section, has no surviving next of kin referred to in subsection (2) of this section and whose estate will not be probated, the amount of money, **if any**, credited at the time of death to the member account of the member in the fund shall be paid directly without probate for the following purposes in the order listed:

- (A) Expenses of the funeral of the deceased.
- (B) Medical expenses of the last illness of the deceased.
- (C) Hospital expenses of the last illness of the deceased.

(b) Claims for payment of expenses under this subsection shall be filed with the board within six months after the date of death of the deceased. If no claims are filed within the six-month period, the amount shall be credited to the fund as are employer contributions. If a balance of the amount remains after payment of valid claims filed within the six-month period, the balance shall be credited to the fund as are employer contributions. Payments under this subsection shall completely discharge the board and system on account of the death.

(5) Accrued benefits due a retired member at the time of death are payable to the designated beneficiary and, if none, to the administrator or executor of the estate of the member. If the estate will not be probated, they may be paid, upon receipt by the board of the affidavit referred to in subsection (2)(b) of this section, to the next of kin in the order listed in subsection (2)(a) of this section. If the estate will not be probated and if there is no beneficiary or next of kin, accrued benefits or a balance due under a refund annuity option shall be paid or credited for the purposes and in the manner provided in subsection (4) of this section. For the purpose of determining accrued benefits due a retired member at the time of death, accrued benefits are considered to have ceased as of the last day of the month preceding the month in which the retired member dies; but if Option 2 or Option 3 under ORS 238.305 has been elected as provided in this chapter and the beneficiary survives the retired member, the benefits to the beneficiary shall commence as of the first day of the month in which the retired member dies, and payment of benefits under Option 2 or Option 3 shall cease with the payment for the month preceding the month in which the beneficiary dies.

(6) Interest upon the member account of the member shall accrue until the date that the amount in the member account is distributed. Any balance in the variable account of the deceased member is considered to be transferred to the regular account of the member as of the date of death. The board shall establish procedures for computing and crediting interest on the balance in the member account for the period between the date of death and date of distribution.

(7) Payments by the Public Employees Retirement Board of credits or accrued benefits pursuant to the beneficiary designation on file with the board or any affidavit referred to in subsection (2)(b) of this section shall completely discharge the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment.

NOTE: Sections 26 through 28 were deleted by amendment. Subsequent sections were not re-numbered.

SECTION 29. ORS 238.220 is amended to read:

238.220. (1) The Public Employees Retirement Board may, at its discretion, accept rollover contributions from an active member. The board may accept rollover contributions under this section only if the amounts contributed qualify for pretax rollover treatment under the federal income tax laws governing qualified retirement plans.

(2) If the board accepts a rollover contribution under this section, the contribution shall be paid into the Public Employees Retirement Fund and credited to an individual rollover account in the name of the member who made the contribution. The rollover account must be kept separate from the member account of the member and must be invested separately from all other moneys in the Public Employees Retirement Fund. All earnings on the rollover account shall be credited by the board to the rollover account. If the membership of the employee in the Public Employees Retirement System is terminated under the provisions of ORS 238.095, the board shall cease investment of the amounts in the rollover account and, after the effective date of the termination, shall no longer credit earnings and losses to the rollover account.

(3) Except as provided in subsection (2) of this section, amounts in a rollover account established under this section shall be invested in the same manner as funds in regular accounts. However, ORS 238.255 does not apply to rollover accounts.

[(4) Rollover contributions shall not be considered in determining whether a member has contributed in each of five calendar years for purposes of ORS 238.265 and 238.425 or for the purpose of any other provision in this chapter relating to employee contributions.]

[(5)] (4) Amounts held in a rollover account under this section shall be distributed to the member within 90 days after the member's effective date of retirement under this chapter, or within 90 days after termination of the person's membership in the system under ORS 238.095.

[(6)] (5) Distribution from a member's rollover account shall be made in a single lump sum payment. Distribution from a member's rollover account shall not affect the calculation of any other service or disability retirement allowance, death benefit or other benefit payable to a member under this chapter.

[(7)] (6) The board shall adopt rules and establish procedures for determining whether a member will be allowed to make a rollover contribution under this section. Rules and procedures adopted by the board must ensure that the rollover contributions do not adversely affect the status of the system and the Public Employees Retirement Fund as a qualified governmental plan and trust under federal income tax law.

[(8)] (7) The board shall by rule establish a maintenance fee for rollover accounts established under this section. The fee may be collected out of earnings on rollover accounts or, if there are no earnings, from the principal amounts paid into the rollover accounts. The fee shall be in an amount determined by the board to be adequate to pay the full cost to the system of maintaining rollover accounts under this section.

SECTION 30. ORS 238.380 is amended to read:

238.380. (1)(a) Upon retirement of an employee who is a member of the Public Employees Retirement System and computation of that member's service retirement allowance under ORS 238.300, 238.305 or 238.425, or computation of any disability retirement allowance under ORS 238.320, 238.325, 238.330, 238.345 or 238.425, the Public Employees Retirement Board shall add to the amount of the allowance, including amounts attributable to prior service credit and the amount of any refund of accumulated employee contributions, the greater of the percentage increase calculated under ORS 238.385 or a percentage increase calculated under subsection (4) of this section. No benefit shall be paid to a member or beneficiary under ORS 238.385 if the benefit payable to the member or beneficiary under this section is larger than the benefit payable under ORS 238.385.

(b) The percentage increase provided for in this section shall be adjusted by the board to reflect increases or decreases in a member's retirement allowance that are attributable to the member's participation in the Variable Annuity Account established by ORS 238.260, that are attributable to a change in the member's beneficiary or payment option under ORS 238.305 or 238.325, or that are attributable to corrections to the member's retirement allowance calculation.

(c) The percentage increase provided for in this section shall be applied to any lump sum payment made to a member or a beneficiary of a member on or after January 1, 1991, that is attributable to a retroactive correction or adjustment of the amount payable to the member or beneficiary as a retirement allowance or that is attributable to a retroactive correction or adjustment to any other benefit that entitles a member or beneficiary to an increased benefit under this section. The percentage increase payable under this paragraph applies only to the principal amounts included in the lump sum payment as a retroactive correction or adjustment and does not apply to any interest on the retroactive correction or adjustment paid as part of the lump sum payment.

(2) The amount of any death benefit under ORS 238.390, 238.395, 238.400 or 238.405, including the amount of any monthly payments, shall be increased by the greater of the percentage provided for in ORS 238.385 or the percentage calculated under subsection (4) of this section.

(3)(a) A member of the system who elects to receive a lump sum in lieu of a retirement allowance or other benefit under ORS 238.315 shall receive an increase based on the greater of the percentage provided for in ORS 238.385 or the percentage calculated under subsection (4) of this section.

(b) A member of the system who withdraws the amount credited to the member account, **if any**, of the member in the fund under the provisions of ORS 238.265, or whose member account is re-

turned to the employee after the membership of the employee is terminated under the provisions of ORS 238.095, shall receive an additional amount calculated by multiplying the amount of the member account of the member by the greater of the percentage provided for in ORS 238.385 or the percentage calculated under subsection (4) of this section. If a member thereafter elects to obtain restoration of creditable service by repaying the amount of the withdrawn member account pursuant to the provisions of ORS 238.105, the member must also repay all amounts paid under this section, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.105. If a member repays only part of the withdrawn member account pursuant to the provisions of ORS 238.115, the member must repay that part of the amount paid under this section that is proportionate to the portion of the withdrawn member account that is repaid under ORS 238.115, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.115. All amounts paid to the member that are subsequently repaid under ORS 238.105 or 238.115 shall be deposited by the board to the employer reserve for pension accounts in the fund.

(4)(a) The Public Employees Retirement Board shall calculate a multiplier for the purposes of this section equal to the percentage produced by the following formula:

1

1 – the maximum Oregon
personal income tax rate

(b) Upon the retirement or death of a member of the system, the board shall determine the fraction of the member's retirement allowance or death benefit, including any refund or lump sum payment, that is attributable to service rendered by the member before October 1, 1991. The board shall then calculate a percentage that is equal to that fraction multiplied by the multiplier determined by the board under paragraph (a) of this subsection. The percentage so calculated shall be used to determine the amount of the increase in benefits provided to a member, if any, under this section.

(5) For the purpose of determining that portion of a retirement allowance or death benefit attributable to service rendered before October 1, 1991, the board shall divide the number of years of creditable service performed before October 1, 1991, by the total number of years of creditable service during which the pension income was earned. For the purposes of this subsection:

(a) The number of years of creditable service does not include any period of employment for which a benefit is paid for prior service credit.

(b) Except as provided in subsection (8)(a) of this section, the number of years of creditable service includes all retirement credit of the member, and any retirement credit of a member that is attributable to periods of service, employment or other activity performed before October 1, 1991, shall be considered creditable service performed before October 1, 1991.

(6) The increased benefits provided for in this section shall be funded by employer contributions.

(7) If the maximum Oregon income tax rate is changed for any taxable year, the board shall utilize the new rate for the purposes of calculating the benefit provided for in this section for all members of the system who retire or die after the change in rates takes effect. In addition, the board shall recalculate the benefits payable to all retired members of the Public Employees Retirement System, or to the beneficiaries of those members, using the new tax rate. The benefit so recalculated shall be applicable to the first full month after the recalculation is made, and be payable the first day of the month immediately following. If by reason of the calculation or recalculation of the benefit under this subsection the amount of the benefit provided for in this section is decreased, any benefits paid after the change in the tax rate takes effect and before the calculation or recalculation is made shall not be recoverable by the system, but the Public Employees Retirement Board shall ensure that only the amount of the benefit so calculated or recalculated shall be paid after the calculation or recalculation is made.

(8)(a) The increased benefits provided by this section apply only to members who establish membership in the Public Employees Retirement System before July 14, 1995, and whose effective

date of retirement or date of death is on or after January 1, 1991. The increased benefits provided by this section do not apply to any creditable service or prior service credit acquired by a member under the terms of a contract of integration entered into pursuant to ORS 238.035, 238.680 or 238.690 on or after October 1, 1991.

(b) The recalculation of benefits provided for in subsection (7) of this section applies to all retired members, without regard to the date of the member's retirement or death.

(9) If a member is entitled to receive an increased benefit under the provisions of this section, and any portion of the member's retirement allowance or other benefit payable under the system is payable to an alternate payee under the provisions of ORS 238.465, the increased benefits payable under this section shall be divided between the member and the alternate payee in proportion to the share of the total benefit received by each person. If an alternate payee elects to begin receiving benefits under ORS 238.465 (1) before the member's effective date of retirement, the alternate payee may not begin receiving the increased benefit provided for in this section until benefits are first paid from the system on behalf of the member.

(10) A person establishes membership in the system before July 14, 1995, for the purposes of subsection (8) of this section if:

(a) The person is a member of the system, or a judge member of the system, on July 14, 1995;

(b) The person was a member of the system before July 14, 1995, ceased to be a member of the system under the provisions of ORS 238.095, 238.265 or 238.545 before July 14, 1995, but restores part or all of the forfeited creditable service from before July 14, 1995, under the provisions of ORS 238.105 or 238.115 after July 14, 1995; or

(c) The person performed any period of service for a participating public employer before July 14, 1995, 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.

SECTION 31. ORS 238.385 is amended to read:

238.385. (1)(a) Upon retirement of an employee who is a member of the Public Employees Retirement System and computation of that member's service retirement allowance under ORS 238.300, 238.305 or 238.425, or computation of any disability retirement allowance under ORS 238.320, 238.325, 238.330, 238.345 or 238.425, the Public Employees Retirement Board shall add to the amount of the allowance, including amounts attributable to prior service credit and the amount of any refund of accumulated member contributions, an additional amount equal to the percentage increase provided in subsection (4) of this section.

(b) The percentage increase provided for in this section shall be adjusted by the board to reflect increases or decreases in a member's retirement allowance that are attributable to the member's participation in the Variable Annuity Account established by ORS 238.260, that are attributable to a change in the member's beneficiary or payment option under ORS 238.305 or 238.325, or that are attributable to corrections to the member's retirement allowance calculation.

(c) The percentage increase provided for in this section shall be applied to any lump sum payment made to a member or a beneficiary of a member on or after January 1, 1991, that is attributable to a retroactive correction or adjustment of the amount payable to the member or beneficiary as a retirement allowance or that is attributable to a retroactive correction or adjustment to any other benefit that entitles a member or beneficiary to an increased benefit under this section. The percentage increase payable under this paragraph applies only to the principal amounts included in the lump sum payment as a retroactive correction or adjustment and does not apply to any interest on the retroactive correction or adjustment paid as part of the lump sum payment.

(2) The amount of any death benefit under ORS 238.390, 238.395, 238.400 or 238.405, including the amount of any monthly payments, shall be increased by an amount equal to the percentage increase provided in subsection (4) of this section.

(3)(a) A member of the system who receives a lump sum under ORS 238.315 in lieu of a retirement allowance or other benefit shall receive an additional amount equal to the percentage increase provided in subsection (4) of this section.

(b) A member of the system who withdraws the amount credited to the member account, **if any**, of the member under the provisions of ORS 238.265, or whose member account is returned to the employee after the membership of the employee is terminated under the provisions of ORS 238.095, shall receive an additional amount calculated by multiplying the amount of the member account of the member by the percentage increase provided for under subsection (4) of this section. If a member thereafter elects to obtain restoration of creditable service by repaying the amount of the withdrawn member account pursuant to the provisions of ORS 238.105, the member must also repay all amounts paid under this section, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.105. If a member repays only part of the withdrawn member account pursuant to the provisions of ORS 238.115, the member must repay that part of the amount paid under this section that is proportionate to the portion of the withdrawn member account that is repaid under ORS 238.115, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.115. All amounts paid to the member that are subsequently repaid under ORS 238.105 or 238.115 shall be deposited by the board to the employer reserve for pension accounts in the fund.

(4)(a) The percentage increases provided for in this section to the benefits payable to or on account of a member of the system who is serving as other than a police officer or firefighter at the time of death or retirement shall be:

(A) For a member with a combined total of 10 or more years of creditable service in the system and prior service credit but less than a combined total of 20 years, one percent.

(B) For a member with a combined total of 20 or more years of creditable service in the system and prior service credit but less than a combined total of 25 years, two percent.

(C) For a member with a combined total of 25 or more years of creditable service in the system and prior service credit but less than a combined total of 30 years, three percent.

(D) For a member with a combined total of 30 or more years of creditable service in the system and prior service credit, four percent.

(b) The percentage increases provided for in this section to the benefits payable to or on account of a member of the system who is serving as a police officer or firefighter at the time of death or retirement shall be:

(A) For a member with a combined total of 10 or more years of creditable service in the system and prior service credit but less than a combined total of 20 years, one percent.

(B) For a member with a combined total of 20 or more years of creditable service in the system and prior service credit but less than a combined total of 25 years, two and one-half percent.

(C) For a member with a combined total of 25 or more years of creditable service in the system and prior service credit, four percent.

(c) The benefits payable to or on account of a member with less than a combined total of 10 years of creditable service in the system and prior service credit at the time of death or retirement shall not be increased under the provisions of this section.

(5) The increased benefits provided for in this section shall be funded by employer contributions.

(6) This section applies only to a member who establishes membership in the Public Employees Retirement System before July 14, 1995, as described in ORS 238.380 (10), and whose effective date of retirement or date of death is on or after January 1, 1991. The increased benefits provided by this section do not apply to any creditable service or prior service credit acquired by a member under the terms of a contract of integration entered into pursuant to ORS 238.035, 238.680 or 238.690 on or after October 1, 1991.

(7) If a member is entitled to receive an increased benefit under the provisions of this section, and any portion of the member's retirement allowance or other benefit payable under the system is payable to an alternate payee under the provisions of ORS 238.465, the increased benefits payable under this section shall be divided between the member and the alternate payee in proportion to the share of the total benefit received by each person. If an alternate payee elects to begin receiving benefits under ORS 238.465 (1) before the member's effective date of retirement, the alternate payee

may not begin receiving the increased benefit provided for in this section until benefits are first paid from the system on behalf of the member.

SECTION 32. ORS 238.442 is amended to read:

238.442. (1) Subject to the rules of the Public Employees Retirement Board, upon commencing participation in the system a public employer that is not a school district may elect to provide prior service credit for employees of the employer who are employees of the employer on the date on which the employer commences participation. Prior service credit may be provided only for employees who are members of the system. Prior service credit under this section may be provided for continuous service by the employee to the public employer before the public employer commenced participation in the system and for any accumulated seasonal employment by an employee before the public employer commenced participation in the system. The public employer and the board shall enter into an agreement that will specify the number of years of prior service credit that employees of the employer will receive. Prior service credit under this section shall be equal to \$4 for each year of prior service or major fraction of a year.

(2) If a public employer elects to provide prior service credit under this section, the board shall issue a certificate to each employee entitled to receive prior service credit. The certificate shall show the amount of prior service credit that the employee is entitled to receive under the agreement between the board and the public employer. The certificate shall be final unless the board, upon the motion of the member or upon the board's own motion, modifies the certificate for cause.

(3) Prior service credit under this section shall be funded by employer contributions in the manner provided by ORS 238.225.

(4) A public employer who agrees to provide prior service credit under this section may elect to treat any year, or part of a year, for which prior service credit is granted as a year in which the employee [*has made contributions to the Public Employees Retirement Fund for the purposes of ORS 238.265 (3) and 238.425*] **is an active member for the purpose of becoming vested.** An election under this subsection must be made at the time the public employer enters into the agreement providing for prior service credit.

NOTE: Section 33 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 34. ORS 243.800 is amended to read:

243.800. (1) Notwithstanding any provision of ORS chapter 238 or ORS 243.910 to 243.945, the State Board of Higher Education may establish and administer an optional retirement plan for administrative and academic employees of the Oregon University System who are eligible for membership in the Public Employees Retirement System. 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) The State Board of Higher Education shall select at least two life insurance companies providing fixed and variable annuities and at least two investment companies providing mutual funds, but not more than five companies in total, for the purpose of providing benefits under the optional retirement plan authorized by this section. The State Board of Higher Education shall establish selection criteria for the purpose of this subsection.

(3) An administrative or academic employee may elect to participate in an optional retirement plan offered under the provisions of this section in the following manner:

(a) An administrative or academic employee who is an active member of the Public Employees Retirement System may make an irrevocable election to participate in the plan within 180 days after the plan's implementation date, effective as of the date of election.

(b) An employee, as defined in ORS 243.910 (2), who is an active member of the Public Employees Retirement System and who has elected, and not canceled that election, to be assisted by the State Board of Higher Education under ORS 243.940 may make an irrevocable election to participate in the plan within 180 days of the plan's implementation date, effective as of the date of election.

(c) An administrative or academic employee who is hired after the plan's implementation date may make an irrevocable election to participate in the plan within the first six months of employment, effective on the first of the month following six full months of employment.

(4) Administrative or academic employees who do not elect to participate in an optional retirement plan:

(a) Remain members of the Public Employees Retirement System if they are members on the date the plan is implemented;

(b) Continue to be assisted by the State Board of Higher Education under ORS 243.920 if they are being so assisted; or

(c) Become members of the Public Employees Retirement System in accordance with ORS chapter 238, if they commence employment after the optional plan is implemented.

(5) Except as provided in subsection (6) of this section, employees who elect to participate in the plan are ineligible for active membership in the Public Employees Retirement System or for any assistance by the State Board of Higher Education under ORS 243.920 as long as those employees are employed in the Oregon University System and the plan is in effect.

(6)(a) An administrative or academic employee who elects to participate in the optional retirement plan authorized by this section and who [*has not made contributions to the Public Employees Retirement System during each of five calendar years*] **is not vested** shall be considered by the Public Employees Retirement Board to be a terminated member under the provisions of ORS 238.095 effective as of the effective date of the election, and the amount credited to the member account of the member 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 authorized by this section and who [*has made contributions to the Public Employees Retirement System during each of five calendar years*] **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 withdraws the amounts credited to the member account, **if any**, of the member pursuant to ORS 238.265.

(7) Any withdrawals from the Public Employees Retirement Fund under subsection (6) of this section, whether by termination under subsection (6)(a) of this section or by elective withdrawal under subsection (6)(b) 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.

(8) An employee participating in the optional retirement plan authorized by this section 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) The State Board of Higher Education shall contribute monthly to the optional retirement plan authorized under this section the percentage of salary of each employee participating in the plan 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 if the employee had not elected to participate in the optional retirement plan.

(10) Both employee and employer contributions to an optional retirement plan authorized under this section shall be remitted directly to the companies that have issued annuity contracts to the participating employees or directly to the mutual funds.

(11) Benefits under the optional retirement plan authorized under this section 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 plan agree that benefits payable under the plan are not obligations of the State of Oregon or of the Public Employees Retirement System.

SECTION 35. ORS 292.430 is amended to read:

292.430. (1) In addition to the annual salaries set forth in ORS 171.072 and 292.313, the Oregon Department of Administrative Services may “pick-up,” assume and pay to the Public Employees Retirement Fund [the] **any** employee contributions, otherwise required by ORS 238.200, for the Governor, Secretary of State, State Treasurer, Attorney General, Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries and members of the Legislative Assembly.

(2) The department may provide health, dental, life and long-term disability insurance without cost to the officers referred to in subsection (1) of this section and to judges of the Supreme Court, Court of Appeals, Oregon Tax Court and circuit courts in such amounts as are provided from time to time to employees in the unclassified service of the state.

SECTION 35a. ORS 293.701, as amended by section 9, chapter 6, Oregon Laws 2002 (third special session), is amended to read:

293.701. As used in ORS 293.701 to 293.820, unless the context requires otherwise:

- (1) “Council” means the Oregon Investment Council.
- (2) “Investment funds” means:
 - (a) Public Employees Retirement Fund referred to in ORS 238.660;
 - (b) Industrial Accident Fund referred to in ORS 656.632;
 - (c) Consumer and Business Services Fund referred to in ORS 705.145;
 - (d) Employment Department Special Administrative Fund referred to in ORS 657.822;
 - (e) Insurance Fund referred to in ORS 278.425;
 - (f) Funds under the control and administration of the Division of State Lands;
 - (g) Oregon Student Assistance Fund referred to in ORS 348.570;
 - (h) Moneys made available to the Commission for the Blind under ORS 346.270 and 346.540 or rules adopted thereunder;
 - (i) Forest rehabilitation bonds sinking fund referred to in ORS 530.280;
 - (j) Oregon War Veterans’ Fund referred to in ORS 407.495;
 - (k) Oregon War Veterans’ Bond Sinking Account referred to in ORS 407.515;
 - (l) World War II Veterans’ Compensation Fund;
 - (m) World War II Veterans’ Bond Sinking Fund;
 - (n) Savings and loan association funds in the hands of the Director of the Department of Consumer and Business Services;
 - (o) Funds in the hands of the State Treasurer that are not required to meet current demands;
 - (p) State funds that are not subject to the control and administration of officers or bodies specifically designated by law;
 - (q) Funds derived from the sale of state bonds;
 - (r) Social Security Revolving Account referred to in ORS 237.490;
 - (s) Investment funds of the State Board of Higher Education lawfully available for investment or reinvestment;
 - (t) Local Government Employer Benefit Trust Fund referred to in ORS 657.513;
 - (u) Elderly and Disabled Special Transportation Fund established by ORS 391.800;
 - (v) Education Stability Fund established by ORS 348.696;
 - (w) Deferred Compensation Fund established under ORS 243.411; and
 - (x) Trust for Cultural Development Account established under ORS 359.405.
- (y) **Transition Account Fund established by section 13a of this 2003 Act.**
- (3) “Investment officer” means the State Treasurer in the capacity as investment officer for the council.

SEVERABILITY

SECTION 36. It is the intent of the Legislative Assembly that all parts of this 2003 Act are independent and that if any part of this 2003 Act be held unconstitutional, all remaining parts shall remain in force.

EXPEDITED JUDICIAL REVIEW

SECTION 37. (1) Jurisdiction is conferred on the Supreme Court to determine in the manner provided by this section whether the provisions of this 2003 Act breach any contract between members of the Public Employees Retirement System and their employers or violate any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under section 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the United States Constitution.

(2) A person who is adversely affected by this 2003 Act or who will be adversely affected by this 2003 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 2003 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) 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.

MISCELLANEOUS

SECTION 38. ORS 238.667 is repealed.

SECTION 39. The unit captions used in this 2003 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 2003 Act.

SECTION 40. If House Bill 2004 becomes law, section 4, chapter _____, Oregon Laws 2003 (Enrolled House Bill 2004), is amended to read:

Sec. 4. (1) Subject to subsections (2) and (3) of this section, for the purpose of computing the retirement allowance of members and alternate payees with effective dates of retirement on or after July 1, 2003, and before January 1, 2005, the Public Employees Retirement Board shall use actuarial equivalency factor tables that are based on the mortality assumptions adopted by the board on September 10, 2002.

(2) The retirement allowance of any member or alternate payee who has an effective date of retirement on or after July 1, 2003, shall be the higher of the following amounts:

(a) The amount calculated for the retirement allowance selected by the member under ORS 238.300, 238.305, 238.320 or 238.325 determined as of the member's or alternate payee's effective date of retirement using actuarial equivalency factor tables in effect on the effective date of retirement for the purpose of all calculations using actuarial equivalency factor tables; or

(b) The amount calculated under subsection (3) of this section.

(3) For each member or alternate payee described in subsection (2) of this section, the board shall establish **years of service**, an account balance **and a final average salary** as of June 30, 2003. **Years of service for the member as of June 30, 2003, shall include all creditable service of the member determined as of June 30, 2003, including any retirement credit acquired by the member under ORS 238.105 to 238.175 before July 1, 2003.** The account balance shall include all employee contributions made by or on behalf of the member as of June 30, 2003, and earnings

on those contributions as of June 30, 2003, credited in the manner provided by board rules in effect on the effective date of this 2003 Act governing crediting of earnings upon retirement of a member. The board shall then calculate the retirement allowance selected by the member under ORS 238.300, 238.305, 238.320 or 238.325, except that:

(a) The board shall use the actuarial equivalency factor tables in effect on June 30, 2003, for the purpose of all calculations using actuarial equivalency factor tables; and

(b) The board shall use the **years of service**, account balance **and final average salary** established by the board under this subsection for the member as of June 30, 2003.

(4) The board need not perform the calculations described in subsections (2) and (3) of this section for a member if the board actuarially determines that one of the calculations described in subsection (2) or (3) of this section necessarily provides the highest amount.

(5) Any monthly payments to be made to a death beneficiary under ORS 238.390, 238.395 or 238.405 for a member who dies on or after the effective date of this 2003 Act shall be calculated using the actuarial equivalency factor tables that are in effect on the date that the first payment is due to the death beneficiary.

SECTION 41. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect July 1, 2003.

Passed by House May 2, 2003

Received by Governor:

Repassed by House May 9, 2003

.....M,....., 2003

Approved:

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Chief Clerk of House

.....M,....., 2003

.....
Speaker of House

.....
Governor

Passed by Senate May 8, 2003

Filed in Office of Secretary of State:

.....M,....., 2003

.....
President of Senate

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Secretary of State