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# Chapter 237

## 2009 EDITION

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**237.001** [1953 c.200 §1; renumbered 238.750 in 1995]

**237.002** [Repealed by 1953 c.180 §18]

**237.003** [1953 c.200 §2; 1955 c.131 §3; 1957 c.630 §5; 1959 c.333 §1; 1961 c.430 §1; 1963 c.608 §11; 1967 c.160 §1; 1967 c.622 §1; 1969 c.240 §1; 1971 c.738 §1; 1973 c.19 §1; 1974 s.s. c.28 §3; 1975 c.289 §1; 1977 c.425 §1; 1979 c.446 §2; 1979 c.656 §5; 1979 c.741 §1; 1981 c.479 §2; 1981 c.760 §1; 1983 c.740 §59; 1983 c.830 §1; 1985 c.118 §13; 1985 c.302 §10; 1985 c.565 §37; 1985 c.823 §1; 1987 c.320 §147; 1987 c.617 §1; 1987 c.898 §13; 1989 c.606 §1; 1989 c.614 §1; 1989 c.888 §1; 1990 c.4 §1; 1990 c.5 §1; 1991 c.675 §5; 1993 c.33 §320; 1993 c.118 §1; 1993 c.177 §1; 1993 c.185 §23; 1993 c.623 §5; 1993 c.766 §7; 1995 c.162 §63; 1995 c.203 §1; 1995 c.291 §2; 1995 c.654 §4; renumbered 238.005 in 1995]

**237.004** [Repealed by 1953 c.180 §18]

**237.005** [1953 c.200 §3; renumbered 238.600 in 1995]

**237.006** [Repealed by 1953 c.180 §18]

**237.007** [1989 c.906 §9; see note following]

**Note:** Chapter 906, Oregon Laws 1989 [enacting 237.007 and amending 237.201 and 237.233], was referred by the electors to the November 1990 General Election, at which it was defeated.

**237.008** [Repealed by 1953 c.180 §18]

**237.010** [Repealed by 1953 c.180 §18]

**237.011** [1953 c.200 §8; 1955 c.131 §4; 1961 c.331 §1; 1963 c.608 §12; 1967 c.622 §2; 1969 c.435 §1; 1971 c.270 §1; 1975 c.744 §1; 1979 c.861 §1; 1983 c.830 §3; 1987 c.617 §2; 1987 c.898 §14; 1989 c.799 §1; 1991 c.149 §5; 1993 c.177 §2; 1995 c.162 §64; renumbered 238.015 in 1995]

**237.012** [Repealed by 1953 c.180 §18]

**237.013** [1959 c.559 §8; 1969 c.332 §16; 1991 c.815 §4; 1995 c.658 §95; renumbered 238.045 in 1995]

**237.014** [Repealed by 1953 c.180 §18]

**237.015** [1969 c.54 §1; repealed by 1989 c.888 §3 and 1991 c.776 §3]

**237.016** [Repealed by 1953 c.180 §18]

**237.017** [1969 c.458 §2; 1977 c.860 §1; 1981 c.772 §2; 1987 c.617 §3; 1991 c.813 §14; subsection (1) renumbered 238.355 in 1995; subsection (2) renumbered 238.230 in 1995; subsection (3) renumbered 238.074 in 1995]

**237.018** [Repealed by 1953 c.180 §18]

**237.019** [1969 c.92 §2; renumbered 238.072 in 1995]

**237.020** [Repealed by 1953 c.180 §18]

**237.021** [1969 c.435 §2; renumbered 238.170 in 1995]

**237.022** [Repealed by 1953 c.180 §18]

**237.024** [Repealed by 1953 c.180 §18]

**237.025** [1957 c.630 §2; renumbered 238.062 in 1995]

**237.026** [Repealed by 1953 c.180 §18]

**237.027** [1963 c.153 §10; 1983 c.338 §904; repealed by 1985 c.62 §1]

**237.028** [Repealed by 1953 c.180 §18]

**237.029** [1975 c.137 §2; 1975 c.449 §15; 1979 c.658 §3; 1981 c.762 §7; 1987 c.617 §16; 1989 c.871 §2; 1993 c.177 §3; renumbered 238.068 in 1995]

**237.030** [Repealed by 1953 c.180 §18]

**237.031** [1991 c.767 §2; 1993 c.177 §4; renumbered 238.035 in 1995]

**237.032** [Repealed by 1953 c.180 §18]

**237.033** [1961 c.189 §2; repealed by 1969 c.367 §3]

**237.034** [Repealed by 1953 c.180 §18]

**237.035** [1961 c.189 §3; repealed by 1969 c.367 §3]

**237.036** [Repealed by 1953 c.180 §18]

**237.037** [1991 c.776 §2; renumbered 238.690 in 1995]

**237.038** [Repealed by 1953 c.180 §18]

**237.039** [1991 c.815 §1; renumbered 238.055 in 1995]

**237.040** [Repealed by 1953 c.180 §18]

**237.041** [Formerly 237.056; repealed by 1967 c.622 §25]

**237.042** [Repealed by 1953 c.180 §18]

**237.044** [Repealed by 1953 c.180 §18]

**237.046** [Repealed by 1953 c.180 §18]

**237.048** [Repealed by 1953 c.180 §18]

**237.050** [Repealed by 1953 c.180 §18]

**237.051** [1953 c.200 §9; 1985 c.823 §2; 1991 c.767 §3; renumbered 238.680 in 1995]

**237.052** [Repealed by 1953 c.180 §18]

**237.053** [1981 c.689 §2; 1983 c.589 §3; 1985 c.784 §1; renumbered 238.685 in 1995]

**237.054** [Repealed by 1953 c.180 §18]

**237.056** [Amended by 1953 c.522 §3; renumbered 237.041]

**237.058** [Repealed by 1953 c.180 §18]

**237.060** [1971 c.738 §11; 1973 c.695 §1; 1989 c.799 §2; renumbered 238.360 in 1995]

**237.061** [1953 c.200 §8; repealed by 1955 c.131 §21]

**237.062** [Repealed by 1953 c.180 §18]

**237.064** [Repealed by 1953 c.180 §18]

**237.065** [1957 c.630 §4; 1967 c.622 §3; 1981 c.541 §3; repealed by 1981 c.761 §12]

**237.066** [Repealed by 1953 c.180 §18]

**237.068** [Repealed by 1953 c.180 §18]

**237.070** [Repealed by 1953 c.180 §18]

**237.071** [1953 c.200 §13; 1955 c.131 §5; 1957 c.630 §6; 1959 c.334 §1; 1963 c.608 §1; 1967 c.622 §4; 1969 c.107 §1; 1973 c.695 §2; 1981 c.541 §5; 1981 c.761 §1; 1993 c.177 §5; subsections (1) to (3) renumbered 238.200 in 1995; subsection (4) renumbered 238.440 in 1995]

**237.072** [Repealed by 1953 c.180 §18]

**237.073** [1965 c.297 §5; 1967 c.622 §5; 1969 c.640 §3; 1977 c.624 §1; 1987 c.617 §4; 1987 c.898 §15; 1993 c.177 §6; renumbered 238.215 in 1995]

**237.074** [Repealed by 1953 c.180 §18]

**237.075** [1979 c.538 §3; 1981 c.373 §1; 1993 c.177 §7; renumbered 238.205 in 1995]

**237.076** [Repealed by 1953 c.180 §18]

**237.078** [Repealed by 1953 c.180 §18]

**237.079** [1987 c.625 §8; 1995 c.658 §96; renumbered 238.210 in 1995]

**237.081** [1953 c.200 §14; 1955 c.131 §6; 1957 c.299 §1; 1959 c.334 §2; 1959 c.623 §3; 1961 c.331 §2; 1963 c.608 §13; 1967 c.622 §6; 1969 c.640 §5; 1993 c.177 §8; renumbered 238.225 in 1995]

**237.082** [Repealed by 1953 c.180 §18]

**237.084** [Repealed by 1953 c.180 §18]

**237.085** [1961 c.342 §2; 1965 c.533 §1; renumbered 238.150 in 1995]

**237.086** [Repealed by 1953 c.180 §18]

**237.088** [Repealed by 1953 c.180 §18]

**237.090** [Repealed by 1953 c.180 §18]

**237.091** [1953 c.200 §16; renumbered 238.025 in 1995]

**237.093** [1953 c.200 §16; 1957 c.630 §13; 1967 c.140 §1; 1975 c.200 §2; 1981 c.762 §8; 1987 c.617 §6; 1991 c.813 §1; 1993 c.177 §9; renumbered 238.155 in 1995]

**237.094** [Repealed by 1953 c.180 §18]

**237.095** [1973 c.735 §§2,3,4,5,6,7; renumbered 238.165 in 1995]

**237.096** [Repealed by 1953 c.180 §18]

**237.097** [1953 c.200 §16; 1993 c.177 §10; renumbered 238.160 in 1995]

**237.098** [Repealed by 1953 c.180 §18]

**237.099** [1991 c.675 §2; 1993 c.177 §11; renumbered 238.145 in 1995]

**237.101** [1953 c.200 §15; renumbered 238.475 in 1995]

**237.102** [Repealed by 1953 c.180 §18]

**237.103** [1969 c.640 §2; repealed by 1995 c.452 §24]

**237.104** [Repealed by 1953 c.180 §18]

**237.105** [1953 c.200 §15; repealed by 1967 c.622 §25]

**237.106** [Repealed by 1953 c.180 §18]

**237.107** [1955 c.131 §2; renumbered 238.480 in 1995]

**237.108** [1983 c.647 §2; 1987 c.617 §7; 1991 c.917 §1; 1993 c.177 §12; renumbered 238.115 in 1995]

**237.109** [1953 c.200 §15; 1955 c.131 §7; 1957 c.630 §7; renumbered 238.095 in 1995]

**237.110** [Repealed by 1953 c.180 §18]

**237.111** [1953 c.200 §15; 1955 c.131 §8; 1957 c.630 §8; 1959 c.225 §1; 1963 c.608 §2; 1967 c.622 §7; 1969 c.640 §6; 1971 c.160 §1; 1973 c.704 §4; 1975 c.449 §1; 1983 c.830 §4; 1991 c.815 §5; 1993 c.118 §2; subsection (1) renumbered 238.425 in 1995; subsection (2) renumbered 238.265 in 1995; subsection (3) renumbered 238.105 in 1995]

**237.112** [Repealed by 1953 c.180 §18]

**237.113** [1959 c.663 §2; 1971 c.496 §1; 1979 c.727 §2; 1987 c.898 §16; repealed by 1991 c.815 §21]

**237.114** [Repealed by 1953 c.180 §18]

**237.115** [1957 c.630 §3; renumbered 238.270 in 1995]

**237.116** [Repealed by 1953 c.180 §18]

**237.117** [1985 c.625 §2; 1987 c.617 §8; 1993 c.177 §13; renumbered 238.125 in 1995]

**237.118** [Repealed by 1953 c.180 §18]

**237.119** [1991 c.917 §5; 1993 c.177 §14; renumbered 238.135 in 1995]

**237.120** [Repealed by 1953 c.180 §18]

**237.121** [1953 c.200 §17; 1967 c.622 §8; 1973 c.695 §3; 1975 c.449 §2; 1979 c.812 §1; 1981 c.768 §1; 1987 c.617 §9; 1987 c.898 §17a; 1989 c.871 §1; 1993 c.177 §15; renumbered 238.280 in 1995]

**237.122** [Repealed by 1953 c.180 §18]

**237.124** [Repealed by 1953 c.180 §18]

**237.125** [1953 c.200 §17; 1955 c.131 §9; 1967 c.622 §9; 1979 c.861 §2; 1981 c.761 §3; 1983 c.830 §5; 1987 c.898 §§11,18; renumbered 238.078 in 1995]

**237.126** [Repealed by 1953 c.180 §18]

**237.128** [Repealed by 1953 c.108 §18]

**237.129** [1953 c.200 §17; 1957 c.630 §9; 1967 c.622 §10; 1979 c.861 §3; 1983 c.641 §1; 1987 c.898 §19; repealed by 1993 c.120 §1]

**237.130** [Repealed by 1953 c.180 §18]

**237.131** [1969 c.226 §2; 1975 c.473 §1; 1979 c.861 §4; repealed by 1987 c.898 §28]

**237.132** [Repealed by 1953 c.180 §18]

**237.133** [1953 c.200 §17; 1955 c.131 §10; 1957 c.630 §10; 1959 c.333 §3; 1961 c.331 §3; 1967 c.622 §11; 1969 c.650 §1; 1971 c.317 §1; 1975 c.137 §4; 1975 c.200 §3; 1979 c.214 §1; 1987 c.898 §20; renumbered 238.088 in 1995]

**237.134** [Repealed by 1953 c.180 §18]

**237.135** [1955 c.283 §2; repealed by 1987 c.898 §28]

**237.136** [Repealed by 1953 c.180 §18]

**237.137** [1963 c.387 §2; 1967 c.622 §12; repealed by 1969 c.597 §281]

**237.138** [Repealed by 1953 c.180 §18]

**237.139** [1957 c.366 §2; repealed by 1993 c.120 §1]

**237.140** [Repealed by 1953 c.180 §18]

**237.141** [1953 c.200 §17; 1955 c.131 §11; repealed by 1959 c.400 §1 (237.143 enacted in lieu of 237.141)]

**237.142** [Repealed by 1953 c.180 §18]

**237.143** [1959 c.400 §2 (enacted in lieu of 237.141); 1973 c.704 §5; 1979 c.214 §2; 1991 c.917 §3; 1995 c.494 §3; renumbered 238.082 in 1995]

**237.144** [Repealed by 1953 c.180 §18]

**237.145** [1967 c.214 §2; 1973 c.30 §1; 1975 c.200 §4; 1977 c.548 §1; 1981 c.541 §8; 1991 c.813 §15; 1993 c.177 §16; renumbered 238.092 in 1995]

**237.146** [Repealed by 1953 c.180 §18]

**237.147** [1953 c.200 §18; 1955 c.131 §12; 1967 c.622 §13; 1969 c.597 §140; 1969 c.640 §7; 1971 c.738 §2; 1973 c.695 §4; 1975 c.137 §3; 1975 c.200 §5; 1975 c.449 §3; 1981 c.541 §6; 1981 c.761 §4; 1987 c.320 §148; 1987 c.617 §10; 1987 c.898 §21; renumbered 238.300 in 1995]

**237.148** [Repealed by 1953 c.180 §18]

**237.149** [1967 c.622 §23; 1969 c.640 §14; 1977 c.740 §2; repealed by 1981 c.761 §12]

**237.150** [Repealed by 1953 c.180 §18]

**237.151** [1953 c.200 §15; 1963 c.608 §16; 1967 c.622 §14; 1987 c.898 §§9,22; renumbered 238.315 in 1995]

**237.152** [Repealed by 1953 c.180 §18]

**237.153** [1973 c.646 §2; 1975 c.203 §1; 1981 c.772 §1; 1981 c.567 §10; 1981 c.849 §2; 1983 c.830 §6; 1987 c.819 §1; 1989 c.799 §3; 1993 c.177 §17; renumbered 238.350 in 1995]

**237.154** [Repealed by 1953 c.180 §18]

**237.155** [1953 c.200 §19; 1955 c.131 §13; 1967 c.622 §15; 1971 c.738 §3; 1973 c.704 §6; 1977 c.740 §1; 1979 c.658 §5; 1981 c.761 §5; 1985 c.692 §1; 1987 c.898 §3; 1989 c.799 §4; 1989 c.900 §1; 1991 c.813 §3; 1993 c.121 §1; renumbered 238.305 in 1995]

**237.156** [Repealed by 1953 c.180 §18]

**237.157** [1959 c.256 §2; renumbered 238.460 in 1995]

**237.158** [Repealed by 1953 c.180 §18]

**237.159** [1989 c.995 §2; 1991 c.813 §2; renumbered 238.455 in 1995]

**237.160** [Repealed by 1953 c.180 §18]

**237.162** [Repealed by 1953 c.180 §18]

**237.163** [Formerly 237.640; renumbered 238.405 in 1995]

**237.164** [Repealed by 1953 c.180 §18]

**237.165** [1953 c.200 §20; 1963 c.608 §18; 1969 c.640 §9; 1971 c.738 §4; 1981 c.541 §7; 1983 c.830 §7; 1985 c.823 §3; 1987 c.898 §1; 1989 c.799 §5; 1993 c.121 §2; renumbered 238.390 in 1995]

**237.166** [Repealed by 1953 c.180 §18]

**237.167** [1957 c.367 §2; 1987 c.898 §23; renumbered 238.400 in 1995]

**237.168** [Repealed by 1953 c.180 §18]

**237.169** [1959 c.623 §2; 1961 c.331 §4; 1963 c.608 §3; 1969 c.621 §1; 1971 c.738 §5; 1973 c.704 §8; 1983 c.740 §61; 1983 c.830 §8; 1985 c.823 §4; 1987 c.898 §2; 1989 c.799 §6; 1993 c.121 §3; 1993 c.177 §18; renumbered 238.395 in 1995]

**237.170** [Repealed by 1953 c.180 §18]

**237.171** [1953 c.200 §21; 1955 c.131 §14; 1959 c.334 §4; 1963 c.608 §4; 1967 c.622 §16; 1975 c.449 §5; 1983 c.641 §2; 1987 c.898 §24; 1991 c.60 §1; 1993 c.177 §19; renumbered 238.320 in 1995]

**237.172** [Amended by 1953 c.523 §6; renumbered 237.305]

**237.173** [Formerly 237.630; renumbered 238.345 in 1995]

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**237.176** [Renumbered 237.315]

**237.181** [1953 c.200 §21; 1955 c.131 §15; 1957 c.630 §11; 1961 c.27 §1; 1967 c.622 §17; 1969 c.640 §10; 1971 c.738 §6; 1975 c.449 §6; 1987 c.898 §4; 1989 c.799 §7; renumbered 238.325 in 1995]

**237.187** [1953 c.200 §21; 1955 c.131 §16; 1963 c.608 §5; subsection (2) enacted as 1963 c.608 §7; 1967 c.622 §18; 1969 c.640 §11; 1987 c.898 §25; 1993 c.177 §20; renumbered 238.330 in 1995]

**237.191** [1953 c.200 §21; renumbered 238.335 in 1995]

**237.195** [1953 c.200 §21; 1957 c.630 §12; 1967 c.622 §19; renumbered 238.340 in 1995]

**237.197** [1967 c.622 §24; 1969 c.538 §1; 1971 c.738 §7; 1973 c.695 §§5, 5a; 1981 c.761 §6; 1989 c.799 §8; 1989 c.966 §8; 1991 c.59 §1; 1993 c.177 §21; renumbered 238.260 in 1995]

**237.198** [1963 c.608 §9; 1967 c.622 §20; repealed by 1971 c.738 §8 (237.199 enacted in lieu of 237.198)]

**237.199** [1971 c.738 §9 (enacted in lieu of 237.198); 1973 c.695 §6; 1977 c.627 §1; renumbered 238.370 in 1995]

**237.200** [1973 c.695 §8; 1979 c.861 §5; 1981 c.541 §9; 1993 c.177 §22; renumbered 238.310 in 1995]

**237.201** [1953 c.200 §22; 1969 c.640 §13; 1971 c.732 §3; 1979 c.85 §2; 1985 c.671 §9; 1987 c.617 §11; 1989 c.726 §6; 1991 c.823 §1; 1993 c.33 §321; 1993 c.798 §46; 1995 c.608 §37; renumbered 238.445 in 1995; see note under 237.007]

**237.202** [1993 c.121 §5; renumbered 238.470 in 1995]

**237.205** [1979 c.607 §2; 1993 c.715 §1; renumbered 238.465 in 1995]

**237.208** [1991 c.796 §2; 1993 c.177 §23; 1995 c.494 §1; 1995 c.569 §4; renumbered 238.385 in 1995]

**237.209** [1981 c.776 §2; 1985 c.821 §1; 1989 c.757 §1; 1991 c.796 §3; 1993 c.177 §24; 1995 c.569 §5; renumbered 238.365 in 1995]

**237.210** [1987 c.898 §7; renumbered 238.450 in 1995]

**237.211** [1983 c.770 §2; 1993 c.177 §25; 1995 c.658 §97; renumbered 238.500 in 1995]

**237.215** [1983 c.770 §3; 1987 c.625 §1; 1991 c.815 §6; 1995 c.658 §98; renumbered 238.505 in 1995]

**237.217** [1983 c.770 §4; 1991 c.815 §7; renumbered 238.515 in 1995]

**237.219** [1983 c.770 §5; renumbered 238.525 in 1995]

**237.220** [1983 c.770 §6; 1987 c.625 §2; 1991 c.815 §§8,11; 1993 c.170 §1; 1993 c.177 §26; 1995 c.658 §131; renumbered 238.535 in 1995]

**237.223** [1983 c.770 §7; 1991 c.815 §14; 1995 c.658 §132; renumbered 238.545 in 1995]

**237.225** [1983 c.770 §8; 1991 c.815 §16; renumbered 238.555 in 1995]

**237.227** [1983 c.770 §9; 1991 c.815 §§12,13; renumbered 238.565 in 1995]

**237.230** [1983 c.770 §10; 1989 c.757 §3; 1991 c.796 §4; 1995 c.569 §6; renumbered 238.575 in 1995]

**237.233** [1983 c.770 §11; 1987 c.616 §5; 1991 c.796 §5; 1991 c.815 §15; 1993 c.120 §2; 1993 c.177 §27; 1993 c.588 §1; 1995 c.296 §4; 1995 c.569 §7; 1995 c.600 §5; 1995 c.658 §134; renumbered 238.580 in 1995; see note under 237.007]

**237.247** [1991 c.969 §4; 1993 c.18 §42; 1993 c.117 §1; 1993 c.118 §3; 1993 c.177 §28; renumbered 238.415 in 1995]

**237.248** [Formerly 237.325; 1991 c.814 §1; 1993 c.18 §43; 1993 c.177 §29; renumbered 238.420 in 1995]

**237.251** [1953 c.200 §§4, 10; 1955 c.131 §17; 1963 c.608 §10; 1971 c.418 §10; 1983 c.740 §62; 1985 c.823 §7; 1987 c.93 §1; 1993 c.783 §2; 1995 c.296 §5; 1995 c.653 §1; renumbered 238.630 in 1995]

**237.253** [1979 c.552 §3; renumbered 238.635 in 1995]

**237.255** [1953 c.200 §§4,5; 1969 c.314 §15; 1987 c.93 §2; 1995 c.286 §24a; 1995 c.653 §2; renumbered 238.640 in 1995]

**237.259** [1953 c.200 §7; 1973 c.704 §11; renumbered 238.645 in 1995]

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**237.273** [1959 c.556 §3; 1961 c.124 §1; 1961 c.508 §2; subsection (3) enacted as 1963 c.569 §26; repealed by 1967 c.335 §60]

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**237.275** [1953 c.200 §10; 1993 c.177 §30; renumbered 238.250 in 1995]

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**237.285** [1953 c.200 §12; 1955 c.131 §20; 1987 c.849 §3; renumbered 238.605 in 1995]

**237.291** [1953 c.200 §11; renumbered 238.610 in 1995]

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**237.300** [1953 c.523 §1; renumbered 238.700 in 1995]

**237.301** [1953 c.523 §4; 1981 c.541 §1; 1989 c.799 §9; 1991 c.249 §19; renumbered 238.705 in 1995]

**237.303** [1959 c.556 §4; 1975 c.614 §5; repealed by 1989 c.799 §14]

**237.305** [Formerly 237.172; 1963 c.608 §14; 1987 c.617 §12; repealed by 1989 c.799 §14]

**237.311** [Formerly 237.174; 1979 c.562 §8; 1989 c.799 §10; renumbered 238.710 in 1995]

**237.312** [1993 c.119 §2; renumbered 238.715 in 1995]

**237.315** [Formerly 237.176; 1989 c.980 §10b; renumbered 238.655 in 1995]

**237.320** [1959 c.319 §2; 1967 c.359 §685; 1981 c.195 §1; 1987 c.616 §3; 1987 c.617 §13; 1989 c.597 §1; 1989 c.799 §11a; 1991 c.814 §2; 1991 c.815 §29; 1993 c.117 §3; 1993 c.148 §1; renumbered 238.410 in 1995]

**237.325** [1987 c.616 §2; 1989 c.597 §2; 1989 c.799 §12a; 1989 c.826 §1a; 1989 c.966 §10a; renumbered 237.248 in 1989]

## MUNICIPAL RETIREMENT SYSTEMS

**237.350 Definitions for ORS 237.350 to 237.380.** As used in ORS 237.350 to 237.380 unless the context requires otherwise:

(1) "City" means any city with a population of 100,000 or more in which a retirement system may be established under the charter.

(2) "Actuarial reserve basis" means the accumulation of a reserve, in equal annual installments from the date on which an officer or employee of the city first became a member of a retirement plan created under ORS 237.355 to the retirement date specified in the plan, sufficient in amount to provide the retirement benefits required to be provided to the officer or employee under the plan.

(3) "Retirement plan" or "retirement system" means a plan or system created or established pursuant to ORS 237.350 to 237.380. [Formerly 238.510]

**237.355 Establishment of retirement system.** A city in which any pension system may be established by charter, may establish a retirement system pursuant to ORS 237.350 to 237.380. The council of the city may enact such ordinances as are necessary to put the system into effect and may supplement or change the ordinances from time to time. [Formerly 238.520]

**237.360 Features of retirement plan.** The retirement plan may provide for retirement benefits measured on the basis of services rendered or to be rendered by an officer or employee, either before or after the date on which such officer or employee first becomes a member of the retirement plan. The retirement plan may provide for a minimum of years of service and a minimum and maximum age of retirement for the officer or employee. [Formerly 238.530]

**237.365 Contribution to fund by city.** The city may budget and provide by ordinance for payment into the fund of the retirement system an amount sufficient:

(1) To provide, on an actuarial reserve basis, the amortized level premium cost of the retirement benefits which, under the provision of the retirement system, are to be provided by the city to its officers or employees who attain the retirement age or retire in accordance with the terms of the retirement plan.

(2) To meet the actuarially computed costs of retirement benefits measured on the basis of services rendered or to be rendered by an officer or employee before or after the date on which such officer or employee becomes a member of the retirement plan. [Formerly 238.540]

**237.370 Collection of contribution from employees.** The city may collect, as a contribution from any officer or employee of any department or bureau for which a retirement system is established, that percentage of the salary received by the officer or employee, which is necessary to fund on an actuarial reserve basis the cost of retirement benefits which the officer or employee is required to provide pursuant to the provisions of a retirement plan. [Formerly 238.550]

**237.375 Limitations on payments and contributions.** Nothing in ORS 237.350 to 237.380 authorizes the city to budget, provide for payments or collect contributions to fund retirement benefits for an individual who is not in the employment of the city at the time of the creation of a membership status under a retirement plan. [Formerly 238.560]

**237.380 Revenues from which city may make payments to fund.** The payments made by the city under ORS 237.365 may be made out of any revenues collected by the city under any law of the state or the charter or ordinances of the city. [Formerly 238.570]

## COVERAGE OF EMPLOYEES UNDER FEDERAL SOCIAL SECURITY ACT

**237.410 Definitions for ORS 237.420 to 237.515.** As used in ORS 237.420 to 237.515, unless the context requires otherwise:

(1) "Public agency" or "political subdivision" means the State of Oregon, any city, county, municipal or public corporation or any political subdivision of the State of Oregon or any instrumentality thereof, or any school district, or any agency created by two or more political subdivisions to provide themselves governmental services, the employees of which constitute a coverage group. For purposes of ORS 237.420 to 237.515, such agency created by two or more political subdivisions is a governmental instrumentality and a legal entity with power to enter into contracts, hold property and sue and be sued.

(2) "Coverage group" has the meaning given that term by the provisions of section 218 of title 2 of the federal Social Security Act, and amendments thereto, and applicable federal regulations adopted pursuant thereto. [Amended by 1953 c.192 §1; 1963 c.608 §15; 1993 c.177 §32; 2001 c.945 §28]

**237.411 Construction of ORS 237.412 to 237.418 as supplemental to ORS 237.420 to 237.515.** The provisions of ORS 237.412 to 237.418 relating to Old Age and Survivors Insurance coverage are supplemental to ORS 237.420 to 237.515, and shall be so construed. [1953 c.180 §8]

**237.412 Declaration of policy regarding federal Social Security protection for employees of state and political subdivisions.** In order to extend to employees of the State of Oregon, all the school districts and all the political subdivisions of the state participating in the Public Employees Retirement System immediately prior to March 27, 1953, and to the dependents and survivors of such employees, the basic protection accorded to others by the Old Age and Survivors Insurance system embodied in title 2 for the federal Social Security Act, it hereby is declared to be the policy of this state, subject to the limitations of ORS 237.412 to 237.418, that such action be taken, and hereby it is expressly authorized, as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under applicable federal law. [1953 c.180 §1]

**237.414 Extension of federal Social Security benefits to employees of state and certain political subdivisions.** (1) The Public Employees Retirement Board hereby is authorized and directed to enter into an agreement or modification of such agreement with the Federal Security Administrator (United States Secretary of Health and Human Services) on behalf of the State of Oregon, consistent with the terms and provisions of ORS 237.412 to 237.418, for the purpose of extending the benefits of the Federal Old Age and Survivors Insurance system to employees of the state and the political subdivisions which at the time of repeal of chapter 401, Oregon Laws 1945, were participating in the Public Employees Retirement System established by that chapter. The board may authorize its director, on behalf of and in the name of the board, to sign modifications of the agreement including within the agreement legally qualified eligible public agencies.

(2) The agreement shall provide benefits for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of title 2 of the Social Security Act.

(3) The duties and obligations of the state and its political subdivisions as employers, in relation to such agreement, shall be as provided by ORS 237.420 to 237.515.

(4) Such agreement or modification thereof shall be effective with respect to services performed after an effective date specified in such agreement or modification, but in no case prior to January 1, 1951.

(5) All services which:

(a) Constitute employment within the meaning of title 2 of the Social Security Act;

(b) Are performed in the employ of the state or a political subdivision or in the employ of an instrumentality of either the state or a political subdivision, or both; and

(c) Are covered by a plan which is in conformity with the terms of the agreement and which has been approved by the board, shall be covered by the agreement.

(6) The Public Employees Retirement Board hereby is authorized and directed to include in the agreement for Old Age and Survivors Insurance coverage to be executed by the board with the Federal Security Administrator (United States Secretary of Health and Human Services) in conformance with this section, the elective officers of the political subdivisions described in subsection (1) of this section, and the elective officers of the State of Oregon. [1953 c.180 §12; 1953 c.193 §1; 1957 c.261 §1; 1967 c.38 §4; 1973 c.704 §14; 1981 c.683 §1; 1991 c.67 §51 and 1991 c.813 §6; 2001 c.104 §73]

**237.418 Authority of interstate agencies to extend federal Social Security benefits to their employees.** (1) Any instrumentality jointly created by this state and any other state or states hereby is authorized, to the extent that this state may confer authority, upon the granting of like authority by such other state or states:

(a) To enter into an agreement with the Federal Security Administrator (United States Secretary of Health and Human Services) whereby the benefits of the Federal Old Age and Survivors Insurance system shall be extended to employees of such instrumentality;

(b) To require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay if they were covered by an agreement made pursuant to ORS 237.414; and

(c) To make payments to the Secretary of the Treasury of the United States in accordance with such agreement, including payment from its own funds, and otherwise to comply with such agreement.

(2) Such agreement shall, to the extent practicable, be consistent with the terms and provisions of ORS 237.412 and 237.414. [1953 c.180 §13; 1991 c.67 §52 and 1991 c.813 §7]

**237.420 Agreements to extend federal Social Security coverage to employees of public agencies not covered by ORS 237.414.** The Public Employees Retirement Board established by ORS 237.952 shall, for the purposes of administration of this law, after March 27, 1953, succeed to the powers and duties of the Public Employees Retirement Board established by chapter 401, Oregon Laws 1945, as amended, and shall, upon application by any public agency in accordance with ORS 237.430 and 237.440, execute on behalf of the state an agreement or modification of such agreement, with the Federal Security Administrator (United States Secretary of Health and Human Services), or the designated agent or successor, for the coverage of employees of such public agency under the insurance system established by title 2 of the federal Social Security Act in conformity with the provisions of section 218 thereof and amendments thereto, and applicable federal regulations adopted pursuant thereto. [Amended by 1953 c.192 §2; 1991 c.67 §53 and 1991 c.813 §8]

**237.430 Public agencies to be included in the agreement.** The agreement shall include each coverage group as to which formal request for inclusion is made by the legislative or governing body of the employing public agency pursuant to ORS 237.440, prior to the effective date of the agreement, or any modification thereof. However, the

board shall not be required to include in any agreement or modification any public agency which is not entitled by law to share in any apportionment of state revenue or funds and has at any time within the 10 years next preceding the date of its application been insolvent or failed to pay when due, the principal or interest of its bonds, warrants or other obligations. [Amended by 1953 c.192 §3(1)]

**237.440 Application by political subdivision for inclusion.** The legislative or governing body of every political subdivision may make formal application to the Public Employees Retirement Board for inclusion of the eligible employees of such political subdivision in the agreement or any modification thereof. [Amended by 1953 c.192 §3(2); 1955 c.278 §1]

**237.450 Starting date for contributions.** Every public agency included in the agreement pursuant to ORS 237.430 and 237.440 shall be liable for the contributions required to be remitted by an employer under the provisions of sections 3101 and 3111 of the federal Internal Revenue Code and amendments thereto, except that no contributions required by ORS 237.460 shall be withheld or remitted prior to July 1, 1951, or prior to the approval of the agreement by the Federal Security Administrator (United States Secretary of Health and Human Services). [Amended by 1953 c.192 §4; 1991 c.67 §54; 1991 c.813 §9]

**237.460 Withholding and remitting of employees' contributions.** (1) Every public agency included in the agreement shall withhold from wages and salaries paid by it to officers and employees covered by the agreement, and remit to the retirement board, that portion required to be withheld from the salaries and wages of employees under the provisions of section 3101 of the federal Internal Revenue Code of 1954 and amendments thereto as required by section 218(e) of title 2 of the federal Social Security Act.

(2) The provisions of subsection (1) of this section requiring remission to the retirement board of amounts withheld from wages and salaries apply only to amounts withheld from wages and salaries that were paid on or before December 31, 1986. Amounts withheld from wages and salaries that were paid after December 31, 1986, shall be remitted to the Internal Revenue Service. [Amended by 1981 c.849 §1; 1991 c.813 §10]

**237.465 Employees required to contribute.** All employees of the state, all employees of the school districts of the state and all employees of political subdivisions of the state subject to the agreement for Old Age and Survivors Insurance coverage, other than employees specifically excluded by that agreement, shall make contributions for such coverage as required by ORS 237.460. [1955 c.278 §2]

**237.470 Retirement board to promulgate regulations.** The Public Employees Retirement Board shall promulgate regulations, not inconsistent with ORS 237.410 to 237.515, necessary to provide proper procedures to assure conformity with section 218 of title 2 of the federal Social Security Act and amendments thereto, and federal regulations adopted pursuant thereto. Such regulations shall include provisions governing application procedures, requiring an applicant to present proof satisfactory to the board of its ability to discharge its obligations under ORS 237.410 to 237.515, determining the extent of coverage within separate coverage groups, and provisions prescribing the time and manner of filing reports and making any payment required by ORS 237.410 to 237.515.

**237.480 Procedure against employer failing to comply with regulations.** If an employer fails to report or remit to the retirement board in the manner and within the time prescribed in the regulations adopted by the board, the board, without notice, may send an auditor to the office of the employer to examine its records and to obtain the necessary reports or remittances, the entire cost of such audit to be paid by the delinquent employer.

**237.490 Deposit investment and payment of funds.** (1) All employer and employee contributions and other moneys received or collected by the Public Employees Retirement Board under ORS 237.410 to 237.515 shall be deposited into the State Treasury to the credit of an account, separate and distinct from the General Fund, to be known as the Social Security Revolving Account, and the moneys in the account are continuously appropriated for the purposes of ORS 237.410 to 237.515.

(2) All moneys in the account shall be held in trust and invested as provided in ORS 293.701 to 293.820. Interest from such investments shall be used first for paying the administrative expenses described in ORS 237.500 and not later than the 15th day of February, May, August and November, after paying the administrative expenses, as determined by the Public Employees Retirement Board, for the preceding calendar quarter, the balance of the interest remaining shall be available for general governmental expenses.

(3) The Oregon Department of Administrative Services may review all duly approved claims certified by the Public Employees Retirement Board for the payment of amounts required to be paid to the Secre-

tary of the Treasury pursuant to agreements entered into under ORS 237.410 to 237.515, and for the payment of necessary refunds and may issue warrants therefor payable out of the Social Security Revolving Account. [Amended by 1953 c.192 §5(1); 1967 c.399 §§2, 6; 1975 c.614 §6; 1989 c.966 §11; 2001 c.716 §22]

**237.500 Administrative expenses.** All expenses of the Public Employees Retirement Board in excess of those paid under ORS 237.490 (2) incurred in administering the provisions of ORS 237.410 to 237.515, including such proportion of the salary of the director, counsel, professional consultants and employees of the retirement board, as the time required of them for the administration of ORS 237.410 to 237.515 shall bear to the time required for the administration of both ORS 237.410 to 237.515 and the public employees retirement law, shall be paid in the manner provided by law, out of the Social Security Revolving Account. For such purpose, the board may make monthly withdrawals from said account in lump sums. The board may, under such rules as it promulgates, collect from each public agency its respective pro rata share of the expenses incurred in administering ORS 237.410 to 237.515. Each public agency included in the agreement pursuant to ORS 237.430 is required to pay its pro rata share of the expenses incurred by the board in administering ORS 237.410 to 237.515. In order to facilitate financing the administration of the system the board may designate fiscal periods and may provide that extraordinary expenses incurred during one such period, such as expenses for equipment, may, for purposes of equitably distributing part of the burden of the expenses, be apportioned to subsequent fiscal periods in such manner as to the board seems equitable. [Amended by 1953 c.192 §5(2); 1967 c.399 §3; 1973 c.704 §15]

**237.510 Collection of delinquent contributions.** (1) Upon failure of any public agency to remit contributions to the retirement board as provided by ORS 237.460 or pay its pro rata share as provided by ORS 237.500 and determined by the board, the board may recover by action in a court of competent jurisdiction the amount due and unpaid.

(2) Any public agency delinquent in submitting remittances to the retirement board as provided in ORS 237.460 shall be charged interest on the total amount of remittance due from it at the rate of one percent per month or fraction thereof during which the agency is delinquent. Interest so paid shall be deposited in the Social Security Revolving Account and shall be used by the board in paying the expenses of administration and any penalties which the board may incur.

(3) In order to obtain prompt remittance of contributions and payment of obligations due under ORS 237.410 to 237.515, the board, in the event of delinquency of any public agency entitled by law to share in the apportionment of any state revenues or funds, shall certify the amount of such delinquency to the Oregon Department of Administrative Services, which shall pay the claim out of any revenues or funds in the State Treasury apportioned to the delinquent public agency.

(4) In addition to the remedies otherwise provided under this section, the board may, by petition in usual form, apply to the circuit court for the county in which is located the public agency concerned, or the principal office or place of business of such public agency, for, and if warranted, to have issued, writs of mandamus to compel such public agency to supply to the board a true and complete list and employment records of such agency's employees and all information concerning such employees that reasonably may be required and sought by the board in such petition. Such writs, among other things, shall direct the defendant therein to make such remittances as may appear, from records and information concerning such defendant's employees, to be required by law. Either or both parties thereby aggrieved may appeal to the Court of Appeals from, or from any part of, the judgment of the circuit court given and made in such proceeding, as in ordinary mandamus proceedings. If the court allows the issuance of a peremptory writ, the court shall award reasonable attorney fees, costs and disbursements to the board. [Amended by 1953 c.192 §5(3); 1975 c.614 §7; 1981 c.541 §2; 1991 c.813 §11]

**237.515 Exclusion of contributions from biennial budget.** Contributions required by ORS 237.410 to 237.515 to be placed in the Social Security Revolving Account and thereafter remitted to the Secretary of the Treasury of the United States shall not be included in the biennial budget of the Public Employees Retirement Board as income or expenses of such board. [1953 c.192 §5(4)]

**237.520** [Repealed by 2005 c.755 §59]

## PAYMENT OF PUBLIC PENSION TO ALTERNATE PAYEE AFTER MARITAL DISSOLUTION, ANNULMENT OR SEPARATION

**237.600 Payment to alternate payee; provisions of judgment, order or settlement; administrative expenses.** (1) Notwithstanding any other provision of law, payment of any pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit under any public employer retirement plan other than the Public Employees Retirement System

that would otherwise be made to a person entitled to benefits under the plan shall be paid, in whole or in part, to an alternate payee if and to the extent expressly provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the total value of benefits payable to a member and to an alternate payee under this section may not be greater than the value of the benefits the member would otherwise be eligible to receive. Any payment under this subsection to an alternate payee bars recovery by any other person.

(2) A judgment, order or settlement providing for payment to an alternate payee under subsection (1) of this section may also provide:

(a) That payments to the alternate payee may commence, at the election of the alternate payee, at any time after the earlier of:

(A) The earliest date the member would be eligible to receive retirement benefits if the member separates from service; or

(B) The date the member actually separates from service due to death, disability, retirement or termination of employment.

(b) That the alternate payee may elect to receive payment in any form of pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit in the form of a joint and survivor annuity, available to the member under the public employer retirement plan, or that would be available to the member if the member retired or separated from service at the time of election by the alternate payee, without regard to the form of benefit elected by the member.

(c) That the alternate payee's life is the measuring life for the purposes of measuring payments to the alternate payee under the form of benefit selected by the alternate payee.

(3) Subsection (1) of this section applies only to payments made by the public employer retirement plan after the date of receipt by the administrators of the plan of written notice of the judgment, order or agreement and such additional information and documentation as the plan administrators may prescribe.

(4)(a) A judgment, order or agreement providing for payment to an alternate payee under subsection (1) of this section may not provide for payment to an alternate payee of:

(A) Any disability payments provided to a member of a public employer retirement plan in lieu of workers' compensation benefits pursuant to ORS 656.027 (6), to the extent those payments are to be made before the member attains 55 years of age; or

(B) Any medical or hospital benefits payable to a member as part of a disability benefit provided to a member of a public employer retirement plan in lieu of workers' compensation benefits pursuant to ORS 656.027 (6), regardless of the member's age.

(b) Paragraph (a) of this subsection does not prevent a court from considering the disability payments described in that paragraph in making a division of property pursuant to ORS 107.105 or an award of support.

(5) Any public employer or public employer retirement plan that is required by the provisions of this section to make a payment to some person other than a member of the retirement plan offered by the public employer shall charge and collect out of the benefits payable to the member and the other person actual and reasonable administrative expenses and related costs incurred by the public employer or public employer retirement plan in obtaining data and making calculations that are necessary by reason of the provisions of this section. A public employer or public employer retirement plan may not charge more than $300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. A public employer or public employer retirement plan that charges and collects administrative expenses and related costs under the provisions of this subsection shall allocate those expenses between the member of the retirement plan and any other person receiving a benefit from the plan based on the fraction of the benefit received by the member or person.

(6) As used in this section:

(a) "Court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia.

(b) "Member" means a person entitled to a benefit from a public employer retirement plan.

(c) "Public employer" means the state, one of its agencies, any city, county, municipal or public corporation, any political subdivision of the state or any instrumentality thereof, or an agency created by two or more such political subdivisions to provide themselves governmental services.

(d) "Public employer retirement plan" means any system, program, annuity, contract or other plan established by a public employer for the purpose of providing a pension, annuity, retirement allowance or disa-

bility benefit to officers or employees of the public employer. [1993 c.715 §2; 2003 c.576 §403]

## COVERAGE FOR POLICE OFFICERS AND FIREFIGHTERS

**237.610 Definitions for ORS 237.610 and 237.620.** As used in this section and ORS 237.620:

(1) "Firefighter" means:

(a) Persons employed by a city, county or district whose duties involve firefighting, but does not include volunteer firefighters; and

(b) The State Fire Marshal and the chief deputy fire marshal and deputy state fire marshals appointed under ORS 476.040.

(2)(a) "Police officer" includes:

(A) Police chiefs and police officers of a city who are classified as police officers by the council or other governing body of the city;

(B) Sheriffs and those deputy sheriffs whose duties, as classified by the county governing body, are the regular duties of police officers;

(C) County adult parole and probation officers, as defined in ORS 181.610, who are classified by the county governing body for purposes of this section and ORS 237.620;

(D) Corrections officers as defined in ORS 181.610;

(E) Employees of districts whose duties, as classified by the governing body of the district, are the regular duties of police officers; and

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

(b) "Police officer" does not include volunteer or reserve police officers or persons considered by the respective governing bodies to be civil deputies or clerical personnel.

(3) "Public employer" means any city, county or district that employs police officers or firefighters. [1971 c.692 §2; 1973 c.19 §2; 1979 c.656 §6; 1981 c.479 §1; 1989 c.614 §2; 1991 c.67 §55; 2005 c.22 §175]

**237.620 Membership of police officers and firefighters in Public Employees Retirement System.** (1) Except as provided in this section, all public employers of police officers or firefighters shall provide retirement benefits to those employees under the Public Employees Retirement System.

(2) Notwithstanding subsection (1) of this section, a public employer of police officers or firefighters need not provide retirement benefits to those employees under the Public Employees Retirement System if the Public Employees Retirement Board determines that the public employer provides retirement benefits to each of the following classes of employees that are equal to or better than the retirement benefits that would be provided to the equivalent classes of employees under the Public Employees Retirement System:

(a) Police officers or firefighters who are entitled to receive benefits only under ORS chapter 238 and who established membership in the system before January 1, 1996, as described in ORS 238.430 (2);

(b) Police officers or firefighters who are entitled to receive benefits only under ORS chapter 238 and who established membership in the system on or after January 1, 1996, and before August 29, 2003, as described in ORS 238A.025 (4); and

(c) Police officers or firefighters who establish membership in the system on or after August 29, 2003, and are entitled to benefits only under the Oregon Public Service Retirement Plan.

(3) At such times as may be established by board rule, the Public Employees Retirement Board shall review the retirement benefits provided by a public employer of police officers or firefighters that does not provide retirement benefits for those employees under the Public Employees Retirement System. The review must be conducted at the expense of the public employer. Based on the review, the board shall determine whether the public employer complies with the requirements of subsection (2) of this section. If the board determines that the public employer does not comply with the requirements of subsection (2) of this section for any class of employees described in subsection (2) of this section, the public employer must provide that class of employees with retirement benefits adequate to meet the requirements of subsection (2) of this section. If the public employer fails to provide those benefits, any employee within the class may bring an action in circuit court to compel compliance with the requirements of this section. [1971 c.692 §3; 1973 c.704 §16; 1975 c.449 §13; 1989 c.888 §2; 1991 c.67 §56; 2001 c.945 §76; 2003 c.625 §33; 2007 c.622 §1]

**237.630** [1971 c.692 §4; 1975 c.449 §7; renumbered 237.173 in 1991]

**237.635 Mandated increase in benefits payable under systems other than Public Employees Retirement System; limitation.** (1) Any public employer that provides retirement benefits to its police officers and firefighters other than by participation in the Public Employees Retirement System pursuant to the provisions of ORS 237.620 shall provide increases to the police officers and firefighters of the public employer, both active and retired, that are equal to the increases in retirement benefits that are provided for in this 1991 Act for active and retired police officers or firefighters who are

members of the Public Employees Retirement System, or shall provide to those police officers and firefighters increases in retirement benefits that are the actuarial equivalent of the increases in retirement benefits that are provided for in this 1991 Act for police officers or firefighters who are members of the Public Employees Retirement System. No other retirement benefit or other benefit provided by those public employers shall be decreased by the employer by reason of the increases mandated by this section.

(2) The increased benefits provided for in this section apply only to police officers or firefighters who establish membership before July 14, 1995, in a retirement plan or system offered by a public employer in lieu of membership in the Public Employees Retirement System pursuant to the provisions of ORS 237.620. [1991 c.796 §11; 1995 c.569 §12; 2007 c.622 §3]

**Note:** Pursuant to 173.160, Legislative Counsel has not substituted specific ORS references for the words "this 1991 Act" in section 11, chapter 796, Oregon Laws 1991, compiled as 237.635. The sections for which substitution otherwise would be made may be determined by referring to the 1991 Comparative Section Table located in Volume 20 of ORS.

**237.637 Additional mandated increase in benefits payable under systems other than Public Employees Retirement System.** Any public employer that provides retirement benefits to its police officers and firefighters other than by participation in the Public Employees Retirement System pursuant to the provisions of ORS 237.620 shall provide increases to the police officers and firefighters of the public employer, both active and retired, that are equal to the increases in retirement benefits that are provided for in chapter 569, Oregon Laws 1995, for active and retired police officers or firefighters who are members of the Public Employees Retirement System, or the public employer shall provide to those police officers and firefighters increases in retirement benefits that are the actuarial equivalent of the increases in retirement benefits that are provided for in chapter 569, Oregon Laws 1995, for police officers or firefighters who are members of the Public Employees Retirement System. Increases provided under this section shall be reduced by the amount of any benefit increase provided by ORS 237.635 in the same manner that increases in retirement benefits that are provided for in chapter 569, Oregon Laws 1995, for active and retired police officers or firefighters who are members of the Public Employees Retirement System are reduced to reflect amounts paid to those members under the provisions of chapter 796, Oregon Laws 1991. No other retirement benefit or other benefit provided by those public employers shall be decreased by the employer by reason of the increases mandated by this section. [1995 c.569 §11; 2007 c.622 §4]

**Note:** Legislative Counsel has substituted "chapter 569, Oregon Laws 1995," for the words "this Act" in section 11, chapter 569, Oregon Laws 1995, compiled as 237.637. Specific ORS references have not been substituted pursuant to 173.160. These sections may be determined by referring to the 1995 Comparative Section Table located in Volume 20 of ORS.

**237.640** [1971 c.692 §5; 1973 c.704 §17; 1975 c.449 §8; 1991 c.813 §12; renumbered 237.163 in 1991]

## LEGISLATOR RETIREMENT PLANS

**237.650 Retirement plan election.** (1) A person appointed or elected as a member of the Legislative Assembly must elect within 30 days after taking office if the person will:

(a) Become a member of the Oregon Public Service Retirement Plan established under ORS chapter 238A;

(b) Become a legislator member of the state deferred compensation plan under ORS 237.655; or

(c) Decline to become a member of the Oregon Public Service Retirement Plan, or to become a legislator member of the state deferred compensation plan, for service as a member of the Legislative Assembly.

(2) Written notice of a person's election under this section must be given to the Public Employees Retirement Board. If the board does not receive written notice within 30 days after the person takes office, the person shall be conclusively deemed to have elected to become a legislator member of the state deferred compensation plan under ORS 237.655.

(3) Any member of the Legislative Assembly who elects to become a member of the Oregon Public Service Retirement Plan may request that the Public Employees Retirement Board roll over the amount in the regular account maintained for the member under ORS 238.250 into the individual account maintained for the member under the individual account program.

(4) An election under this section does not affect the ability of a person appointed or elected as a member of the Legislative Assembly to participate in the state deferred compensation plan in the manner provided by ORS 243.401 to 243.507. [2003 c.733 §46a]

**Note:** 237.650 to 237.660 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 237 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 46b, chapter 733, Oregon Laws 2003, provides:

**Sec. 46b. Application; temporary provision for current members of Legislative Assembly.** (1) Except as provided in subsection (2) of this section, ORS 237.650 applies to all members of the Legislative Assembly who take office on or after August 29, 2003.

(2) In addition to the options provided by ORS 237.650, any person who is a member of the Legislative Assembly on August 29, 2003, and who is a member of the Public Employees Retirement System on August 29, 2003, may elect to remain a member of the system under ORS chapter 238 for so long as the member remains in continuous service as a member of the Legislative Assembly. An election under this subsection must be made in the manner provided by ORS 237.650 (2).

(3) A member of the Legislative Assembly remains in continuous service as a member of the Legislative Assembly for the purposes of subsection (2) of this section until the person resigns or otherwise leaves office. [2003 c.733 §46b; 2007 c.769 §4]

**237.655 Legislator members of state deferred compensation plan.** (1) If a person appointed or elected as a member of the Legislative Assembly elects under ORS 237.650 to participate in the state deferred compensation plan as a legislator member, the Legislative Assembly shall make employer contributions to the plan in an amount that is equal to six percent of the member's salary. A legislator member may make contributions to the plan in any amount that does not exceed the maximum allowed by federal law governing the plan's tax qualification.

(2) Any member of the Legislative Assembly who elects to become a legislator member of the state deferred compensation plan may request that the Public Employees Retirement Board roll over the amount in the regular account maintained for the member under ORS 238.250 into the state deferred compensation plan.

(3) Except for the contributions required by subsection (1) of this section, the Legislative Assembly may not "pick-up," assume or pay any contributions on behalf of a legislator member of the state deferred compensation plan. [2003 c.733 §46c]

**Note:** See first note under 237.650.

**237.660 Special rule for public employees elected or appointed to Legislative Assembly.** (1) A person who is serving with a participating public employer, who will receive benefits under ORS chapter 238 by reason of that service, who is elected or appointed to the Legislative Assembly, and who does not leave employment with the participating public employer by reason of that election or appointment, must elect one of the options provided by ORS 237.650 for the purposes of service by the person during sessions of the Legislative Assembly. A person described in this subsection shall receive benefits under ORS chapter 238 for all hours of service that are not performed during a session of the Legislative Assembly.

(2) A person who is serving with a participating public employer, who is a member of the pension program or the individual account program, and who is elected or appointed to the Legislative Assembly may not make an election under ORS 237.650 and shall continue membership in the pension program or individual account program for the purposes of all service by the person as a member of the Legislative Assembly. [2003 c.733 §46d]

**Note:** See first note under 237.650.

## LIQUIDATION OF PRE-1953 RETIREMENT SYSTEM

**237.950 Pre-1953 Public Employees Retirement System abolished.** The Public Employees Retirement System of the State of Oregon, established by chapter 401, Oregon Laws 1945, as amended, hereby is abolished, subject to the provisions of ORS 237.950 to 237.980. [1953 c.180 §2]

**237.952 Public Employees Retirement Board; rules.** (1) There hereby is established and created the Public Employees Retirement Board, which shall administer the provisions of ORS 237.414 and 237.950 to 237.980, shall have powers and duties herein provided, and shall be comprised of five persons appointed by the Governor. The term of each appointee shall be four years.

(2) The board shall have the powers and privileges of a corporation, including the right to sue and be sued in its own name.

(3) Members of the board shall be citizens of the United States and residents of the State of Oregon for at least two years immediately preceding their appointment to the board. Two members shall not be employed by a public employer during their respective terms of office on the board or have been so employed during the two years immediately preceding appointment to the board. The other three members of the board shall be employees of public employers under Social Security coverage and so employed throughout the respective terms of their appointment. Any vacancy on the board shall be filled by appointment for the unexpired term of the member replaced.

(4) The successor of a board member in either group shall have the qualifications herein prescribed for such group.

(5) The board shall, at its first meeting of each fiscal year, designate one of its members to serve as chairperson of the board for the ensuing year and until a successor is designated and takes that office. The board shall hold meetings as frequently as may be necessary for the performance of its duties.

(6) Within the limitations of ORS 237.414 and 237.950 to 237.980, the board shall have the power to establish and enforce rules and regulations for transacting its business and administering ORS 237.414 and 237.950 to 237.980.

(7) Members of the board shall serve without compensation but shall be reimbursed for their necessary expenses incurred in the performance of their duties as such members. [1953 c.180 §9; 1953 c.521 §3; 1991 c.67 §57]

**237.956 Director and staff.** The board shall employ a director whose duties shall be as hereinafter provided. All ministerial duties required in the administration of ORS 237.414 and 237.950 to 237.980 shall be performed by the director and by employees under the direction of the director. The director shall hold the position during the pleasure of the board and shall furnish such bond as required by the board. The board shall also designate an employee to perform duties in the absence of the director. [1953 c.180 §10; 1973 c.704 §18]

**237.960 Transfer of assets and administration of retirement fund.** (1) All assets of the previously existing Public Employees Retirement System, as of March 27, 1953, including moneys and securities, accounts receivable, office equipment and all personal property of any description, hereby are transferred to the Public Employees Retirement Board created and established by ORS 237.952, which board shall have control thereof for the purpose of liquidating the obligations of the Public Employees Retirement System and otherwise applying such assets as herein directed.

(2) During the period of liquidation the board may invest and reinvest moneys, purchase, sell and exchange securities as in its judgment to the best interest of beneficiaries.

(3) The board shall succeed to all the duties and prerogatives of the Public Employees Retirement Board created by chapter 401, Oregon Laws 1945, as amended, in relation to the Public Employees Retirement Fund. Said fund shall be and remain a trust fund for the purpose of liquidating the obligations of the abolished retirement system, and the Public Employees Retirement Board created by ORS 237.952 hereby is declared to be the trustee of said fund.

(4) From the current service account of the State of Oregon in the Public Employees Retirement Fund there shall be transferred to the Social Security Revolving Account an amount of $60,000 which shall be recovered from the participating employers in the manner prescribed by ORS 237.520 (2003 Edition), and upon recovery shall be repaid to the Public Employees Retirement Board. [1953 c.180 §3; 2005 c.755 §60]

**237.964 Collection of accrued liabilities.** In order to liquidate accrued liabilities with respect to prior service credit and delinquent contributions, each public employer which at any time prior to March 27, 1953, has participated in the Public Employees Retirement System shall continue to remit payments to the Public Employees Retirement Board at the rate and in the time and manner prescribed by chapter 401, Oregon Laws 1945, as amended. The board shall have a right of action against any such public employer for the enforcement of the provisions of this section. [1953 c.180 §5]

**237.968 Continuation of retirement benefits of certain members.** The board shall pay all retirement benefits to which members of the Public Employees Retirement System who retired prior to March 27, 1953, may be entitled under the provisions of chapter 401, Oregon Laws 1945, as amended, and shall give full recognition to all rights to which such members are entitled under said law. The board also shall determine and pay in accordance with the provisions of that law retirement benefits to which members of the Public Employees Retirement System are entitled by the provisions of said law. [1953 c.180 §4]

**237.972 Continuation of abolished system with regard to certain members.** Notwithstanding any other provision of chapter 180, Oregon Laws 1953, chapter 401, Oregon Laws 1945, as amended, shall remain in full force and effect with respect to any employee of a public employer which heretofore withdrew from the Public Employees Retirement System pursuant to subsection (5) of section 8 of said law, as amended by section 1, chapter 322, Oregon Laws 1951, who did not sign the petition for such withdrawal. Such employee shall be and remain a member of the Public Employees Retirement System with full rights and benefits thereunder as if chapter 180, Oregon Laws 1953, had not been passed; and until the entire obligation of the public employer with respect to all such employees, as provided in chapter 401, Oregon Laws 1945, as amended, shall have been paid in full, such public employer shall continue to deduct from payrolls and transmit the contributions thereby required and make the matching contributions thereby required to the Public Employees Retirement Board created by ORS 237.952 and such public employer shall remain liable to such Public Employees Retirement Board for all contributions required by such law together with interest thereon at the legal rate from the date of any delinquency. [1953 c.180 §11]

**237.976 Disposition of contributions made under abolished system.** (1) From contributions of each employee and the matching contributions of the employer, respectively, due and paid to the Public Employees Retirement Fund for services performed after January 1, 1951, there shall be deducted as much thereof as necessary to constitute an amount equal to the total sum

of the tax which would have been imposed upon the employee and the employer, respectively, by sections 1400 and 1410 of the Internal Revenue Code, if the services of the employee subsequent to January 1, 1951, had constituted employment as defined by section 1426 of such Code; provided, however, that no such deductions shall be made from the contributions of the employees referred to in ORS 237.972 or from the matching contributions of their employers, heretofore or hereafter paid into the Public Employees Retirement Fund. A sum equal to the total of the amounts deducted as provided in the preceding sentence hereby is transferred from the Public Employees Retirement Fund to the Social Security Revolving Account in the General Fund created by ORS 237.490, and shall be expended by the Public Employees Retirement Board in payment of the contributions required to secure coverage under the system of Old Age and Survivors Insurance established by title 2 of the Social Security Act, effective from January 1, 1951, for all employees with respect to whom such deductions were made.

(2) Each member of the Public Employees Retirement System shall have the right to a refund of all contributions heretofore paid by the member into the fund after deducting therefrom the amount herein specified for Social Security coverage, providing that within 60 days after March 27, 1953, the member signs and files a written request therefor with the Public Employees Retirement Board, in which event such contribution shall be paid to the member by the Public Employees Retirement Board as soon thereafter as practicable and in no case later than October 1, 1953. The refund of all contributions paid by the member, as by this section authorized, in the case of each applicant who receives such refund shall extinguish all the rights of membership in the Public Employees Retirement System established by chapter 401, Oregon Laws 1945, including the right to claim credit for any time whatever spent in public employment prior to the receipt of such refund. Unless an employee shall have filed such request for refund within said 60 days the balance of contributions of the employee remaining after such deduction, together with an equal amount contributed by the employer, and the contributions of the employers based on the prior service credit of the employee, shall be used to purchase retirement benefits for such employee in accordance with ORS chapter 238. If, pending such disposition of employees' contributions, any employee should die, the accumulated contributions of the employee shall be paid as the employee shall have directed in writing. In the absence of such written direction, the accumulated contributions shall be paid in accordance with the provisions of chapter 401, Oregon Laws 1945, as amended.

(3) There shall be no refund made to any participating employer until such time as all liabilities against such employer have been fully liquidated and discharged. [1953 c.180 §6; 1953 c.521 §1]

**237.980 Rights and moneys exempt from taxation, execution and bankruptcy and are unassignable.** During the entire period of liquidation of the Public Employees Retirement System, the right of a person to a pension, annuity or a retirement allowance, to the return of contributions upon separation from service with a public employer, the refund of contributions authorized by ORS 237.976, the payment of annuity, or retirement allowance itself, any optional benefit or death benefit, or any right accrued or accruing to any person under the provisions of the repealed Public Employes' Retirement Act [chapter 401, Oregon Laws 1945] or ORS 237.412 to 237.418 or 237.950 to 237.980, shall be exempt from all state, county and municipal taxes, and shall not be subject to execution, garnishment, attachment or any other process or to the operation of any bankruptcy or insolvency law, and shall not be assignable. [1953 c.180 §7; 1953 c.521 §2]

TOC INDEX

# Chapter 238

## 2009 EDITION

# Public Employees Retirement System


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## GENERAL PROVISIONS

**238.005 Definitions.** 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 for which benefits under this chapter are funded by employer contributions and earnings on the fund. For purposes of computing years of "creditable service," full months and major fractions of a month shall be considered to be one-twelfth of a year and shall be added to all full years. "Creditable service" includes all retirement credit received by a member.

(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, 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 qualifying position and who has completed the six-month period of service required by ORS 238.015.

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

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

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

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

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

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

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

(C) Retroactive payments 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; and

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

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

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

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

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

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

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

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

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

(H) Payments for instructional services rendered to institutions of the Oregon University System 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.

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

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

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

(25) "Volunteer firefighter" means a firefighter whose position normally requires less than 600 hours of service per year. [Formerly 237.003; 1997 c.249 §64; 1997 c.853 §36; 1999 c.317 §24; 1999 c.407 §3; 1999 c.971 §1; 2001 c.295 §9; 2001 c.874 §1; 2001 c.945 §29a; 2001 c.968 §1; 2003 c.14 §112; 2003 c.67 §16; 2003 c.625 §20; 2005 c.152 §5; 2005 c.332 §1; 2009 c.762 §47]

**Note:** Section 2, chapter 971, Oregon Laws 1999, provides:

**Sec. 2.** (1) The amendments to ORS 238.005 by section 1 of this 1999 Act apply only to persons specified in ORS 238.005 (16)(b) who are employed by the State Forestry Department on the effective date of this 1999 Act [October 23, 1999] or who become employed by the State Forestry Department after the effective date of this 1999 Act.

(2) Except as provided in subsection (3) of this section, the amendments to ORS 238.005 by section 1 of this 1999 Act apply only to service rendered to a participating public employer on or after the effective date of this 1999 Act.

(3) Any employee who is employed by the State Forestry Department in a position described in ORS 238.005 (16)(b) on the effective date of this 1999 Act may acquire creditable service in the Public Employees Retirement System as a firefighter for service performed by the employee in a position described in ORS 238.005 (16)(b) before the effective date of this 1999 Act by paying to the Public Employees Retirement Board an amount determined by the board to represent the full cost to the system of providing credit as a firefighter to the member. The member may acquire credit as a firefighter for all or part of the service in a position described in ORS 238.005 (16)(b) performed before the effective date of this 1999 Act. All amounts required for acquisition of credit as a firefighter under this subsection must be paid at least 90 days before a member's effective date of retirement. The board may by rule allow members to pay amounts required under this subsection in installments in lieu of requiring a single lump sum payment. [1999 c.971 §2]

**238.010** [Repealed by 1981 c.126 §6]

## MEMBERSHIP

### (Membership Generally)

**238.015 Membership generally.** (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. 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) 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.

(5) 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.

(6) 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.

(7)(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.

(8)(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.

(9) Employees, including managers, of foreign trade offices of the Oregon Business Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g) 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.

(10) An employee who is participating in an alternative retirement program established pursuant to ORS 353.250 or an optional retirement plan established pursuant to ORS 341.551 may not be an active member of the Public Employees Retirement System. [Formerly 237.011; 1997 c.249 §65; 1999 c.130 §4; 1999 c.509 §23; 2001 c.192 §1; 2001 c.883 §41; 2001 c.945 §30; 2003 c.67 §17; 2005 c.152 §6; 2005 c.728 §3; 2007 c.804 §76]

**238.020** [Amended by 1965 c.607 §1; repealed by 1981 c.126 §6]

**238.025 Effect of service interruptions on membership.** Within the limits hereinafter specified regarding absence from service, no leave of absence, sabbatical leave, illness, accident or emergency preventing or interrupting service by an employee to an employer participating in the system shall be deemed to break the continuity of the employee's membership in the system. [Formerly 237.091]

**238.030** [Amended by 1953 c.426 §4; 1955 c.49 §1; repealed by 1981 c.126 §6]

**238.035 Membership of part but not all employees of a public employer.** (1) A public employer that is not participating in the system may, by application to the board, designate any class of employees of the public employer to become members of the system at the time of entering the system.

(2) The board shall consider an application received under this section to be an application to become a participating employer under this chapter, but only to the extent of providing membership for the class of employees designated in the application.

(3) The board, upon such terms as are set forth in a contract between the board and the employer, shall allow every employee in the designated class to become members of the Public Employees Retirement System in accordance with this chapter. A contract entered into under this section shall require the public employer to agree to eventually contract to provide membership to all of the employees who do not become members of the system at the time that the employer becomes a participating employer.

(4) All employees who have completed the period of service with the public employer that is required under ORS 238.015 shall become members of the system on a date specified by the board. All other employees in the designated class shall become members upon completion of the required period of service.

(5) The contract provided for in subsection (3) of this section may be in addition to or in lieu of a contract of integration under ORS 238.680.

(6) An employer entering into a contract under subsection (3) of this section may at any time thereafter enter into a contract with the board to provide membership to all or part of the employees who do not become members of the system at the time that the employer becomes a participating employer. Except as may be provided for prior service credit, or under a contract of integration under ORS 238.680, employees 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 if the employee has served with the employer for at least six months. When the employee starts to partic-

ipate 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 members of the system. [Formerly 237.031; 2001 c.945 §31]

**238.040** [Amended by 1963 c.227 §1; 1965 c.607 §2; repealed by 1981 c.126 §6]

**238.043** [1965 c.605 §2; repealed by 1981 c.126 §6]

**238.045 Membership of certain circuit court judges.** Each circuit court judge who was a district court judge before January 15, 1998, and who is a member of the Public Employees Retirement System shall be governed by the provisions of this chapter applicable to other persons holding elective offices who may become members of the system. [Formerly 237.013]

**238.047** [1965 c.605 §5; repealed by 1981 c.126 §6]

**238.050** [Amended by 1965 c.607 §3; repealed by 1981 c.126 §6]

**238.055 Membership of judges previously receiving retirement pay from Judges' Retirement Fund.** (1) On August 1, 1991, all judges receiving retirement pay from the Judges' Retirement Fund and all surviving spouses of judges receiving a pension from the Judges' Retirement Fund shall be retired members of the Public Employees Retirement System, except that:

(a) The amount of retirement pay or pension payable to the judge or surviving spouse of a judge and the terms and conditions of eligibility to receive retirement pay or a pension shall be as established by ORS 1.314 to 1.380 (1989 Edition); and

(b) The right of any person to receive any benefit as a result of the death of a judge by reason of the provisions of ORS 1.314 to 1.380 (1989 Edition) shall solely be as provided by ORS 1.314 to 1.380 (1989 Edition).

(2) After August 1, 1991, any judge who would have become eligible to receive retirement pay from the Judges' Retirement Fund shall, upon retirement, be a retired member of the Public Employees Retirement System, except that:

(a) The amount of retirement pay or pension payable to the judge or the surviving spouse of the judge and the terms and conditions of eligibility to receive retirement pay or a pension shall be as established by ORS 1.314 to 1.380 (1989 Edition); and

(b) The right of any person to receive any benefit as a result of the death of the judge by reason of the provisions of ORS 1.314 to 1.380 (1989 Edition) shall solely be as provided by ORS 1.314 to 1.380 (1989 Edition).

(3) On August 1, 1991, the Judges' Retirement Fund shall cease to exist as a separate fund and the assets and earnings of the Judges' Retirement Fund shall be paid into the employer reserves for judge members of the Public Employees Retirement Fund. The Public Employees Retirement Board shall continue to keep a separate regular account for any person who may become eligible to receive a retirement benefit under subsection (2) of this section and for any person whose child or children may become entitled to a benefit under ORS 1.346 (1989 Edition).

(4) Upon deposit of the assets and earnings of the Judge's Retirement Fund as provided under subsection (3) of this section, the Public Employees Retirement Board shall cause to be deposited from the employer reserves for judge members to the retired reserves of the Public Employees Retirement Fund, the amount actuarially determined to be necessary to fund the retirement pay and pensions of those judges and surviving spouses of judges who were receiving retirement pay or a pension from the Judges' Retirement Fund on August 1, 1991.

(5) The amount of retirement pay or pension payable to a judge or spouse of a retired judge who previously received retirement pay or a pension from the Judges' Retirement Fund, or who would have received retirement pay or a pension from the Judges' Retirement Fund, shall not be recalculated or affected in any way based on the provisions of ORS chapter 238, nor shall the eligibility of a judge or surviving spouse of a judge to receive retirement pay or a pension be affected by ORS chapter 238.

(6) The provisions of ORS 238.390, 238.395, 238.400 and 238.500 to 238.585 do not apply to a judge or surviving spouse of a judge who received retirement pay or a pension from the Judges' Retirement Fund prior to August 1, 1991, or to a judge who retires as a member of the Public Employees Retirement System under subsection (2) of this section.

(7) Any person who served as a judge before August 1, 1991, who had amounts deducted from the person's salary while serving as a judge for the purpose of making contributions to the Judges' Retirement Fund, and who is not eligible to become a retired member of the Public Employees Retirement System under this section, may withdraw the amounts deducted from the person's salary, with all earnings on those deductions, at any time after May 24, 2003. Withdrawal under this subsection cancels all rights the person may have in the Judges' Retirement Fund or the Public Employees Retirement System, and the rights that any spouse or beneficiary of the person may have in the Judges' Retirement Fund or the Public Employees Retirement System, by reason of service by the person as a judge for which contributions

were made to the Judges' Retirement Fund. [Formerly 237.039; 2001 c.945 §32; 2003 c.90 §1]

**238.060** [Amended by 1953 c.426 §4; repealed by 1965 c.607 §5 (238.061 enacted in lieu of 238.060)]

**238.061** [1965 c.607 §6 (enacted in lieu of 238.060); repealed by 1981 c.126 §6]

**238.062 Membership of deputy district attorneys.** 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 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. [Formerly 237.025; 2003 c.67 §18]

**238.065** [1965 c.605 §4; repealed by 1981 c.126 §6]

**238.068 Membership of legislators.** (1) Notwithstanding ORS 238.015, any person who is a member of the Legislative Assembly at any time on or after September 13, 1975, and before January 1, 1988, regardless of whether the person has reached the age of 65 years, may become a member of the Public Employees Retirement System by giving the Public Employees Retirement Board, before January 1, 1990, written notice of desire to do so. The written notice shall take effect on the first day of the month following the date of receipt thereof by the board or upon the person's completion of six months' service, whichever occurs last.

(2) Notwithstanding any other provision of this chapter, any person who is a member of the Legislative Assembly and a member of the system, and any person who is not a member of the Legislative Assembly but was a member thereof before January 11, 1987, upon payment to the board before July 1, 1991, of the total amount of the employee contributions the person would have made to the Public Employees Retirement Fund for all periods of service as a member of the Legislative Assembly before the date of that payment for which the person was not a member of the system, is entitled to retirement credit for those periods served as a member of the Legislative Assembly, including those periods after reaching the age of 65 years, that the person would have been entitled to had the person been a member of the system for those periods. Employee contributions to be paid by a person under this subsection may be paid at the option of the person in a lump sum or in installments. If the person is a member of the Legislative Assembly, upon request by the person in writing to the state official authorized to disburse funds in payment of the salary of the person as a member of the Legislative Assembly, the state official shall deduct monthly from that salary the amount of money indicated in the request for payment of employment contributions under this subsection and shall pay amounts so deducted to the board.

(3) Notwithstanding any other provision of this chapter, any person who is a member of the Legislative Assembly and a member of the system, and any person who is not a member of the Legislative Assembly but was a member thereof before January 9, 1989, who previously had been employed by an employer participating in the system, but had separated from all service with that employer entitling the employee to membership in the system and withdrawn the amount credited to the member account of the member, may have all of the rights in the system which were forfeited by the withdrawal restored by repaying to the board by July 1, 1991, the full amount so withdrawn together with the interest that would have accumulated on the sum had the amount not been withdrawn. [Formerly 237.029; 2001 c.945 §33]

**238.070** [Repealed by 1965 c.607 §9]

**238.072 Membership of certain legislative employees.** An employee shall not be considered to have ceased to be a member of the system under ORS 238.095 (2) by reason of any year in which the employee is employed by the Legislative Assembly or either house thereof, or by a committee of the Legislative Assembly or either house thereof, for periods aggregating eight months or more during the year, whether or not contributions are made to the fund by or on behalf of the employee for those periods of employment, unless the employee withdraws the amount credited to the member account of the member. [Formerly 237.019; 2001 c.945 §34]

**238.074 Membership of community college employees.** An academic employee of a community college who is employed 0.375 full-time equivalent (FTE) on a 12-month basis or 0.50 FTE on a nine-month basis shall be deemed to be employed for 600 hours or more in a year for purposes of this chapter. The combination of duties that comprises a 1.0 FTE in any given discipline or academic activity shall be determined by the governing body of the institution in which the academic employee is employed. Nothing in this section is intended to affect the rights of academic employees at institutions of higher learning or academic employees employed in public secondary or elementary schools. [Formerly 237.017 (3)]

**238.075** [1965 c.607 §8; repealed by 1981 c.126 §6]

**(Membership of Retired Employees)**

**238.078 Reemployment of retired members.** (1)(a) A member who has been retired for service for more than six consecutive calendar months may be reemployed by a participating public employer in the manner provided by this subsection.

(b) Any person reemployed as provided in this subsection shall resume making employee contributions, and the employer shall make contributions on behalf of the person as provided in ORS 238.225. Except as provided in paragraph (c) of this subsection, payments of retirement allowance and other benefits received by the person, including lump sum or installment payments received by the person under ORS 238.305 (2) or (3), shall not be repaid into the retirement fund after the person reenters public employment. Upon reemployment under this subsection, the board shall cease making payments of retirement allowance and other benefits to the person, including installment payments to the person under ORS 238.305 (4). The board shall reestablish the member account of the person and reduce the account by all payments of retirement allowance and other benefits, including installment payments, that were previously received by the person and that were derived from the member account. Amounts that were credited to the reserve established by the board for the payment of the person's benefits that were not derived from the member account shall be credited pro rata to the funds from which the amounts were derived.

(c) Upon reemployment under this subsection, the former retirement of the reemployed person and any election of option for payment of retirement benefits made by the person shall be canceled. When the person again retires the person may elect any option for payment of retirement benefits authorized by this chapter, except that a person who elected to receive a service retirement benefit pursuant to ORS 238.305 (2) or (3) at the time of former retirement may not elect any other option at the time of subsequent retirement unless an amount equal to the lump sum and the interest that would have accumulated on the sum has been repaid by the employee to the fund. Upon such subsequent retirement any prior service pension due the employee shall be derived from the unused portion of the prior service credit reserve and shall be calculated on the basis of then attained age.

(2) A member who has been retired for service for less than six consecutive calendar months may be reemployed by a participating public employer only upon immediate repayment in a lump sum by the member of the amount of retirement benefits drawn. The member account of the member shall be reestablished just as it was at the time of former retirement after the lump sum repayment is made.

(3) If a member of the system who retired before August 21, 1981, is reemployed, as provided in subsection (1) or (2) of this section, beginning on or after August 21, 1981, the service retirement allowance received upon subsequent retirement by the member shall be:

(a) For service before August 21, 1981, an allowance including a current service pension computed on the basis of ORS 237.147 (2) (1979 Replacement Part).

(b) For service on or after August 21, 1981, an allowance including a current service pension computed on the basis of ORS 238.300 (2).

(4) A person may be reemployed by a public employer that is not participating in the system, or may be employed by a participating public employer in a position that is in a class of employees that was not designated by the public employer under ORS 238.035 as a class of employees that become members of the system, without affecting the person's status as a retired member or the person's continued receipt of retirement benefits.

(5) Subsection (4) of this section does not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3). [Formerly 237.125; 2001 c.945 §10; 2003 c.625 §33a; 2005 c.808 §39; 2007 c.404 §3; 2009 c.390 §6]

**238.080** [Repealed by 1981 c.126 §6]

**238.082 Limits on hours worked by retired members.** (1) Subject to the limitations in this section, any public employer may employ any member who is retired for service if the administrative head of the public employer is satisfied that such employment is in the public interest.

(2) Except as provided in this section, the period or periods of employment by one or more public employers of a retired member who is reemployed under this section may not total 1,040 hours or more in any calendar year.

(3) A retired member who is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act may be employed under this section for the number of hours permitted by subsection (2) of this section, or for the number of hours for which the salary equals the maximum allowed for receipt of the full amount of those benefits to which the person is entitled, whichever is greater.

(4) Except as provided in subsection (9) of this section, the limitations on employment imposed by subsections (2) and (3) of

this section do not apply to a retired member who is employed as a teacher or as an administrator, as those terms are defined in ORS 342.120, if the retired member is employed by a school district or community college district located within a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census, or is employed by an education service district and the retired member's primary work duties are performed in a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census. A retired member who is employed under this subsection as a teacher, as defined in ORS 342.120, by the same public employer that employed the member at the time of retirement remains in the same collective bargaining unit that included the member before retirement.

(5) Except as provided in subsection (9) of this section, the limitations on employment imposed by subsections (2) and (3) of this section do not apply to a retired member who is employed:

(a) By the sheriff of a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

(b) By the municipal police department of a city with a population of fewer than 15,000 inhabitants, according to the latest federal decennial census;

(c) By the state or a county for work in a correctional institution located in a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census;

(d) By the Black Butte Ranch Rural Fire Protection District, the Black Butte Ranch Service District or the Sunriver Service District;

(e) By the Oregon State Police for work in a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census; or

(f) As a deputy director or assistant director of the Department of Human Services, if the Governor approves the exemption for the person from the limitations on employment imposed in subsections (2) and (3) of this section.

(6) Except as provided in subsection (9) of this section, the limitations on employment imposed by subsections (2) and (3) of this section do not apply to a retired member who is employed to temporarily replace an employee who serves in the National Guard or in a reserve component of the Armed Forces of the United States and who is called to federal active duty.

(7) Except as provided in subsection (9) of this section, the limitations on employment imposed by subsections (2) and (3) of this section do not apply to a retired member who is employed by a road assessment district organized under ORS 371.405 to 371.535.

(8) Except as provided in subsection (9) of this section, the limitations on employment imposed by subsections (2) and (3) of this section do not apply to a retired member who is a nurse and is employed by a public employer as a nurse or for the purpose of teaching nursing during the period in which a nursing workforce shortage declared by the Legislative Assembly or the Governor is in effect.

(9)(a) Except as provided in paragraph (b) of this subsection, subsections (4) to (8) of this section do not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3).

(b) Subsection (4) of this section applies to a person who retires under the provisions of ORS 238.280 (1), (2) or (3) as long as the person's date of retirement is more than six months before the date the person is employed under subsection (4) of this section.

(10) Employment under this section does not affect the status of a person as a retired member of the system and a recipient of retirement benefits under this chapter.

(11) Hours worked by a person employed under subsections (4) to (8) of this section shall not be counted for the purpose of the limitations on employment imposed by subsections (2) and (3) of this section. [Formerly 237.143; 1997 c.178 §1; 2001 c.874 §2; 2003 c.625 §34; 2005 c.808 §40; 2007 c.307 §1; 2007 c.404 §4; 2007 c.774 §1; 2007 c.789 §4; 2009 c.390 §1; 2009 c.868 §§3,5]

**Note:** Sections 2 and 3, chapter 499, Oregon Laws 2007, provide:

**Sec. 2.** (1) The limitations on employment imposed by ORS 238.082 (2) and (3) do not apply to a retired member who is a registered nurse and who is employed by a public employer as a nursing instructor.

(2) The limitations on employment imposed by ORS 238.082 (2) and (3) do not apply to a retired member who is employed by the Department of Public Safety Standards and Training for the purpose of providing training under ORS 181.610 to 181.712.

(3) This section does not apply to any member who retires under the provisions of ORS 238.280 (1) or (3).

(4) Hours worked by a person employed under this section shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) and (3).

(5) Employment under this section does not affect the status of a person as a retired member of the Public Employees Retirement System and a recipient of retirement benefits under this chapter. [2007 c.499 §2; 2009 c.390 §§3,10]

**Sec. 3.** Section 2 of this 2007 Act is repealed January 2, 2016. [2007 c.499 §3]

**Note:** Sections 3 and 4, chapter 774, Oregon Laws 2007, provide:

**Sec. 3.** (1) The limitations on employment imposed by ORS 238.082 (2) and (3) do not apply to a retired member who is employed by a school district or education service district to provide services as a speech-language pathologist or speech-language pathologist assistant.

(2) This section does not apply to any member who retires under the provisions of ORS 238.280 (1) or (3) unless the person's date of retirement is more than six months before the date the person is employed under this section.

(3) Hours worked by a person employed under this section shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) and (3).

(4) Employment under this section does not affect the status of a person as a retired member of the Public Employees Retirement System and a recipient of retirement benefits under this chapter. [2007 c.774 §3; 2009 c.390 §§4,11]

**Sec. 4.** Section 3 of this 2007 Act is repealed January 2, 2016. [2007 c.774 §4]

**238.085** [1965 c.605 §3; repealed by 1981 c.126 §6]

**238.088 Appointment or election of retired member to public office.** (1) Except as provided in subsection (2) of this section, a person who is elected to a full-time salaried office of the state or one of the participating political subdivisions thereof, or who is appointed to a full-time salaried office having a term fixed by statute or charter, whether or not the person has been retired, does not forfeit any rights accrued or accruing to the person under this chapter. However, for the period that such person holds such office the person is not entitled to any pension or annuity provided by this chapter. Upon ceasing to hold such office, benefits shall be computed or recomputed by the Public Employees Retirement Board on the basis of age then attained.

(2) If a person is elected or appointed to the office of sheriff or county judge or commissioner in a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census, and the person does not elect to become an active member of the system under ORS 238.015 (5), the person shall continue to be a retired member and to receive retirement benefits for as long as the person holds the office.

(3) Subsection (2) of this section does not apply to any member who retires under the provisions of ORS 238.280 (1), (2) or (3). [Formerly 237.133; 2003 c.625 §35a; 2005 c.152 §7; 2005 c.808 §41; 2007 c.404 §5]

**238.090** [Amended by 1953 c.426 §4; 1955 c.66 §1; 1963 c.227 §6; repealed by 1981 c.126 §6]

**238.092 Option of legislators to receive certain benefits; employment of persons as legislative employees or state police officer beyond 65 years of age.** (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) If a retired member of the system is employed by the Legislative Assembly, or by the Oregon State Police, for the purpose of service during a regular or special session of the Legislative Assembly, the hours worked during the session shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) and (3). [Formerly 237.145; 2001 c.945 §35; 2003 c.67 §19; 2007 c.776 §4; 2009 c.390 §8]

### (Termination of Membership)

**238.095 Termination of membership.** (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 inactive member ceases to be a member of the system if the member is not vested and is inactive for a period of five consecutive years.

(3) A school district employee does 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 inactive for the next following five school years; and

(b) The member either is reemployed by a school district in a qualifying position 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. Upon request by the former member, 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 Public Employees Retirement Fund as a qualified governmental retirement plan and trust. The board may deduct, from the amount paid to a former member under this subsection, all reasonable costs incurred by the system in locating the member.

(5) If the membership of a person in the system is terminated under subsection (2) of this section, and the person subsequently becomes an active member of the system, any amounts that were not paid to the person under subsection (4) of this section shall be credited with net earnings and losses. Crediting under this subsection commences upon the person becoming an active member of the system and continues as long as the person remains an active member. [Formerly 237.109; 1999 c.317 §7; 2001 c.945 §36; 2003 c.67 §20; 2003 c.105 §1; 2005 c.152 §4; 2007 c.776 §5]

**238.100** [Repealed by 1965 c.607 §9]

## RETIREMENT CREDIT

### (Restoration of Forfeited Credit)

**238.105 Restoration of credit forfeited by reason of termination of membership.** (1) Whenever, within five years after the employee is separated from all service entitling the employee to membership in the system, an employee who has withdrawn the amount credited to the member account of the member reenters the service of an employer participating in the system, the employee's rights in the system that were forfeited by the withdrawal shall be restored upon repaying to the board within one year after reentering the service of the employer, the full amount so withdrawn together with the interest that would have been accumulated on the sum had the amount not been withdrawn.

(2) Restoration of rights under this section does not affect any forfeiture of rights of a person by reason of:

(a) Withdrawal of an account established under ORS 238.440;

(b) Withdrawal from the pension program under ORS 238A.120; or

(c) Withdrawal of individual accounts pursuant to ORS 238A.375. [Formerly 237.111 (3); 2001 c.945 §37; 2007 c.52 §4]

**238.110** [1963 c.227 §2; 1965 c.607 §4; repealed by 1981 c.126 §6]

**238.115 Alternate method of restoring credit forfeited by reason of termination of membership.** (1)(a) A member of the system who, after separation from all service entitling the employee to membership in the system and withdrawal of the amount credited to the member account of the member, reenters the service of an employer participating in the system and serves as an active member of the system for 10 years after that reentry, and who has not otherwise obtained restoration of creditable service forfeited by the withdrawal, shall obtain restoration of one full month of creditable service forfeited by the withdrawal for each three full months of service as an active member after that reentry if the member, within 90 days before the effective date of retirement of the member:

(A) Applies in writing to the board for restoration of creditable service; and

(B) Pays to the board in a lump sum for credit to the member account of the member

the amount withdrawn and interest on the amount withdrawn compounded annually for each year or portion of a year after the date of the withdrawal and before the effective date of retirement of the member. The interest shall be computed at the annual rate of 7.5 percent.

(b) If a member who obtains restoration of creditable service as provided in this subsection does not obtain restoration of all creditable service forfeited by the withdrawal pursuant to service after reentry, the payment under paragraph (a) of this subsection shall be reduced proportionately to reflect the percentage of creditable service restored.

(c) A member who obtains restoration of creditable service as provided in this subsection is not entitled to elect to receive the service retirement benefit described in ORS 238.305 (2) or (3).

(2) A member who forfeited creditable service rendered to a public employer before March 27, 1953, because under ORS 237.976 (2) the employee withdrew contributions of the employee to the Public Employees Retirement System established by chapter 401, Oregon Laws 1945, and who did not obtain restoration of creditable service so forfeited as provided in chapter 857, Oregon Laws 1977, shall, upon retirement, receive restoration of creditable service so forfeited, if the member, before the effective date of retirement of the member:

(a) Applies in writing to the board for the restoration of the creditable service; and

(b) Pays to the board in a lump sum for credit to the member account of the member an amount determined by the board to be equal to the full amount of contributions so withdrawn and the interest that would have accumulated to the regular account of the member had those contributions not been withdrawn.

(3)(a) A member of the Public Employees Retirement System who was a member of an association established pursuant to ORS chapter 239 (1997 Edition), but separated from all service entitling the employee to membership in the system of the association and withdrew the amount credited to the member account of the employee in the retirement fund of the association, and who, after that separation, entered the service of an employer in the field of education participating in the Public Employees Retirement System and served as an active member of that system for 10 years after that entry, and who has not otherwise obtained restoration of all creditable service forfeited by the withdrawal, shall obtain creditable service as a member of the Public Employees Retirement System equal to all creditable service forfeited by the withdrawal if the member within 90 days before the effective date of retirement of the member:

(A) Applies in writing to the Public Employees Retirement Board for that creditable service; and

(B) Pays to the board in a lump sum for credit to the member account of the member the amount withdrawn and interest on the amount withdrawn compounded annually for each year or portion of a year after the date of the withdrawal and before the effective date of retirement or effective date of application of the member. The interest shall be computed at the rate actually credited to regular accounts for that period.

(b) This subsection provides a method of obtaining creditable service for forfeited creditable service described in this subsection that is in lieu of any application of subsection (1) of this section for that purpose.

(4) Restoration of creditable service under this section does not affect any forfeiture of rights of a person by reason of:

(a) Withdrawal of an account established under ORS 238.440;

(b) Withdrawal from the pension program under ORS 238A.120; or

(c) Withdrawal of individual accounts pursuant to ORS 238A.375. [Formerly 237.108; 1999 c.130 §5; 2001 c.945 §§11,38; 2007 c.52 §5]

**238.120** [1963 c.227 §3; repealed by 1981 c.126 §6]

### (Credit for Probationary Periods)

**238.125 Credit for probationary period of employment.** A member of the system who has a combined total of 10 years or more of creditable service in the system and prior service credit at the time of retirement, and who was required to complete one or more periods of six months or less in the service of an employer participating in the system before becoming a member of the system, shall receive retirement credit for those periods of six months or less if the member, within 90 days before the effective date of retirement of the member, applies in writing to the board for that retirement credit and pays to the board in a lump sum an amount determined by the board to be equal to:

(1) The total amount of employee contributions to the fund by or on behalf of the employee that would have been required for the six months' period if the employee had been a member of the system during that period, which amount shall be credited to the regular account of the member; and

(2) The total amount of employer contributions to the fund the employer of the employee would have been required to make in respect to the employee if the employee had been a member of the system during the

six months' period, which amount shall be credited to the reserve for pension accounts in the fund. [Formerly 237.117; 2001 c.945 §39]

**238.130** [1963 c.227 §4; 1967 c.335 §24; repealed by 1981 c.126 §6]

**238.135 Credit for probationary periods in seasonal positions.** (1) A member of the system who has 10 years or more of creditable service in the system at the time of retirement, and who served for less than six months working full-time in a seasonal position with a public employer participating in the system before becoming a member of the system, shall receive retirement credit for those periods of less than six months if the member, within 90 days before the effective date of retirement of the member, applies in writing to the board for that retirement credit and pays to the board in a lump sum an amount determined by the board to be equal to:

(a) The total amount of employee contributions to the fund by or on behalf of the employee that would have been required for the six months' period if the employee had been a member of the system during that period, plus interest at the rate of eight percent per annum from the date the contributions would have been made, which amount shall be credited to the regular account of the member; and

(b) The total amount of employer contributions to the fund the employer of the employee would have been required to make in respect to the employee if the employee had been a member of the system during the six months' period, plus interest at the rate of eight percent per annum from the date the contributions would have been made, which amount shall be credited to the reserve for pension accounts in the fund.

(2) As used in this section, "seasonal position" means an apprenticeship, internship or entry level role in the employ of a participating public employer that is served by a person before being employed in a technical or professional position with that public employer.

(3) No retirement credit shall be allowed under this section for any period of employment for which retirement credit is acquired under ORS 238.125. [Formerly 237.119; 2001 c.945 §40]

**238.140** [1963 c.227 §5; repealed by 1981 c.126 §6]

**(Credit for Periods of Service With Other Employers)**

**238.145 Credit for service as police officer or firefighter with nonparticipating employer.** (1) A member of the system employed as a police officer or firefighter shall be entitled to receive retirement credit as provided in subsection (3) of this section if:

(a) The member was employed by a public employer as a police officer or firefighter prior to becoming a member of the system;

(b) The public employer that had previously employed the member was not a participant in the system at the time the member was in the service of that public employer; and

(c) The public employer that had previously employed the member was located in this state.

(2) In addition to the requirements of subsection (1) of this section, if the member first becomes a member of the system on or after January 1, 2000, as described in subsection (5) of this section, the member must have been a member of the system for at least 60 calendar months at the time the purchase is made.

(3) Except as provided in subsection (4) of this section, a member of the system employed as a police officer or firefighter who meets the requirements of this section shall be entitled to receive retirement credit for the period of employment with a previous public employer as described in subsection (1) of this section up to a maximum of 10 years' retirement credit if the member:

(a) Applies in writing to the Public Employees Retirement Board for such retirement credit; and

(b) Pays to the board, in a lump sum, an amount representing the contributions the member and the member's employer would have made for the years for which the member seeks retirement credit calculated as though the member had received a salary for each of those years equal to the salary received by the member in the first full calendar year of employment as a police officer or firefighter within the system. In addition, the member shall pay the interest that would have accrued had the contributions been paid in the years for which the member seeks retirement credit, compounded annually. The interest shall be computed at the annual rate of eight percent. Payment of the lump sum shall be made on or before the effective date of retirement for the member. The amounts representing the contributions the member would have made and the interest on those amounts shall be credited to the regular account of the member. The amounts representing the contributions the employer would have made and the interest on those amounts shall be credits to the account of the member's current participating employer.

(4) If a person first becomes a member of the system on or after January 1, 2000, as described in subsection (5) of this section,

the person may not acquire more than five years of credit under this section in combination with any credit acquired under ORS 526.052 for periods of service with another employer that entitle the employee to retirement credit under a retirement plan offered by the other employer. If a person subject to limitation imposed by this subsection also is eligible for credit under ORS 526.052, the total years of credit that may be acquired under this subsection and ORS 526.052 may not exceed five years.

(5) A person becomes a member of the system before January 1, 2000, for the purposes of this section if:

(a) The person is a member of the system on January 1, 2000; or

(b) The person was a member of the system before January 1, 2000, ceased to be a member of the system under the provisions of ORS 238.095, 238.265 or 238.545 before January 1, 2000, but restores part or all of the forfeited creditable service from before January 1, 2000, under the provisions of ORS 238.105 or 238.115 after January 1, 2000. [Formerly 237.099; 1999 c.317 §12; 2001 c.945 §41]

**238.148 Credit for service as public safety officer in another state.** (1) A member of the Public Employees Retirement System who is a police officer is entitled to receive retirement credit as provided in subsection (2) of this section if:

(a) The member was employed as a public safety officer by another state, or political subdivision of another state, before being employed in a position that entitled the member to credit in the system; and

(b) The member makes the payment required by subsection (2) of this section within the time specified by that subsection.

(2) Except as provided in subsection (3) of this section, a member of the system employed as a police officer who meets the requirements of subsection (1) of this section is entitled to receive retirement credit for the period of the member's service with another state, or political subdivision of another state, not to exceed a maximum of four years, if the member within 90 days of the member's effective date of retirement:

(a) Applies in writing to the Public Employees Retirement Board for such retirement credit;

(b) Provides written verification to the board from the other state, or political subdivision of the other state, that employed the member, verifying the period of time that the member served as a public safety officer in the other state; and

(c) Pays to the board, in a lump sum, for each year of retirement credit applied for under this section, an amount determined by the board to represent the full cost to the system of providing the retirement credit to the member, including all administrative costs incurred by the system in processing the application for acquisition of the retirement credit.

(3) A member may not receive retirement credit under the provisions of this section for any period of service with another state, or political subdivision of another state, if the member is entitled to a pension or retirement allowance by reason of that service under a public plan or system offered by the other state or by a political subdivision of the other state.

(4) For the purposes of this section, "public safety officer" means a person who serves in a position with another state, or political subdivision of another state, that is the other state's equivalent of a position described in ORS 238.005 (16). [2007 c.776 §2]

**Note:** 238.148 was added to and made a part of ORS chapter 238 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**238.150** [Formerly 237.085; repealed by 2001 c.945 §73]

**238.155** [Formerly 237.093; repealed by 1997 c.175 §1 (238.156 enacted in lieu of 238.155)]

**238.156 Contributions, benefits and retirement credit for periods of service in uniformed services or Armed Forces; rules.** (1) Notwithstanding any other provision of this chapter, but subject to subsection (4) of this section, an employee who leaves a qualifying position for the purpose of performing service in the uniformed services is entitled to receive contributions, benefits and service credit for the period under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing contributions, benefits and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to contributions, benefits and service credit for any period of service in the uniformed services. Contributions, benefits and service credit under rules adopted by the board pursuant to this subsection may not exceed contributions, benefits and service credit required under federal law for periods of service in the uniformed services.

(3) Subject to subsection (4) of this section, an employee who leaves a qualifying position for the purpose of entering or reentering active service in the Armed Forces

shall acquire retirement credit for the period during which the employee served in the Armed Forces if:

(a) The employee returns to the service of the employer who employed the employee immediately before commencing service in the Armed Forces in a qualifying position;

(b) The employee returns to that employment within one year after being otherwise than dishonorably discharged from the Armed Forces and within five years after the date that the employee entered or reentered active service in the Armed Forces; and

(c) After returning to employment and before retirement, the employee pays to the Public Employees Retirement Board in a lump sum six percent of the salary that would have been paid to the member during the period of military service in the Armed Forces based on the employee's salary rate at the time the employee entered or reentered the Armed Forces, as though the employee had remained in the employment of the employer. Any lump sum contribution made under this paragraph shall be added to the employee's regular account and in all respects shall be considered as though made by payroll deduction.

(4) An employee may not receive benefits under both subsections (1) and (3) of this section for the same period of service in the Armed Forces or uniformed services. If an employee is entitled to benefits under both subsections (1) and (3) of this section by the terms of those provisions, the employee shall receive benefits under the subsection that provides the greater benefit.

(5) For the purposes of this section, "Armed Forces" means the Army, Navy, Air Force, Marine Corps and Coast Guard. [1997 c.175 §2 (enacted in lieu of 238.155); 2001 c.945 §42; 2003 c.625 §21; 2003 c.733 §51a; 2005 c.152 §8]

**238.157 Alternative provision for retirement credit for periods of service with Armed Forces.** (1) Any person who entered or reentered active service in the Armed Forces of the United States after January 1, 1950, for other than active duty for training, or who was in active service in the Armed Forces of the United States on January 1, 1950, for other than active duty for training, and who, after being other than dishonorably discharged therefrom, entered the employ of an employer participating in the Public Employees Retirement System, may acquire retirement credit for up to four years of active service in the Armed Forces by paying in a lump sum to the Public Employees Retirement Board within 90 days of the member's effective date of retirement an amount determined by the board to represent the full cost to the system of providing the retirement credit to the member, including all administrative costs incurred by the system in processing the application for acquisition of the retirement credit.

(2) No person shall receive retirement credit under this section for any period of service with the Armed Forces of the United States for which that person receives credit under the provisions of ORS 238.156 or for which the person is receiving or entitled to receive a pension or retirement pay under a public retirement system established by the United States for the performance of service in the Armed Forces.

(3) Any person acquiring retirement credit under this section may elect to have the service retirement allowance of the person determined under any calculation for which the person is eligible under ORS 238.300, even if the calculation does not produce the largest service retirement allowance. An election under this subsection must be made within 90 days of the member's effective date of retirement. [1997 c.578 §2; 2003 c.105 §2; 2005 c.808 §26]

**238.160 Retirement credit for service while on loan to federal government.** Any employee of an employer participating in the system shall receive retirement credit, subject to the limitations of this chapter, for the period of employment with the participating employer prior to July 1, 1946, and for employment in any branch or department of the United States Government, and for military service in the Armed Forces of the United States, as though the person had been an employee of the participating employer throughout such period of employment or service, if within 40 days from and after separation from such civilian employment with the United States Government, or within one year after being otherwise than dishonorably discharged from military service in the Armed Forces of the United States, the person returned to the employment of the participating employer from which the person was transferred or loaned, provided that such employee comes within either of the following descriptions:

(1) Prior to employment with the United States Government, the person was employed by the participating employer and was transferred or loaned to a branch or department of the United States Government pursuant to an agreement between such participating employer and such branch or department of the United States Government for the transfer or loan of any departmental unit of such participating employer to the federal government during the war emergency.

(2) Served in any branch of the Armed Forces of the United States while on military leave of absence from a position in federal

government employment as set forth in subsection (1) of this section. [Formerly 237.097]

**238.162 Retirement credit for service as teacher in public schools of another state.** (1) A member of the Public Employees Retirement System who is a teacher as described in subsection (3) of this section is entitled to receive retirement credit as provided in subsection (2) of this section if:

(a) The member was employed as a teacher in a public school in another state before being employed in a position that entitled the member to credit in the system; and

(b) The member makes the payment required by subsection (2) of this section within the time specified by that subsection.

(2) Except as provided in subsection (4) of this section, a member of the system employed as a teacher as described in subsection (3) of this section and who meets the requirements of subsection (1) of this section is entitled to receive retirement credit for the period of the member's service with a public school in another state, not to exceed a maximum of four years, if the member within 90 days of the member's effective date of retirement:

(a) Applies in writing to the Public Employees Retirement Board for such retirement credit;

(b) Provides written verification to the board from the public employer that employed the member in the other state, verifying the period of time that the member served as a teacher in a public school in the other state; and

(c) Pays to the board, in a lump sum, for each year of retirement credit applied for under this section, an amount determined by the board to represent the full cost to the system of providing the retirement credit to the member, including all administrative costs incurred by the system in processing the application for acquisition of the retirement credit.

(3) The provisions of this section apply only to a licensed teacher, as defined in ORS 342.120, who is employed by a common school district, a union high school district or an education service district.

(4) A member may not receive retirement credit under the provisions of this section for any period of service with a public school in another state if the member is entitled to a pension or retirement allowance by reason of that service under a public plan or system offered by the other state. [1997 c.742 §2; 2003 c.105 §3]

**(Miscellaneous)**

**238.165 Credit for certain periods of employment by Legislative Assembly.** (1) As used in this section, "legislative employee" means any person employed by the Legislative Assembly, either of its houses or any of its committees prior or subsequent to July 22, 1973, during any period or periods of such employment qualifying the person for membership and participation in the Public Employees Retirement System under the provisions of this chapter then in effect. "Legislative employee" does not include any member of the legislature.

(2) A person shall not receive retirement credit in the Public Employees Retirement System for any period in which the person was a legislative employee, during which the person did not pay the employee contributions required by law, except as provided under this section and ORS 173.210.

(3) Nothing in this section shall be considered to change any requirements of this chapter for membership in the Public Employees Retirement System, or to grant any membership or other rights to persons whose employment by the Legislative Assembly, either of its houses or any of its committees was not of a character or duration qualifying them under then applicable provisions of this chapter for membership in the system.

(4) Any person who is a legislative employee on July 22, 1973, who did not pay the employee contributions required by law during employment as a legislative employee prior to July 22, 1973, may obtain retirement credit for the period of such employment in the following manner:

(a) No later than one year after July 22, 1973, the employee shall give written notice to the board that the employee elects to pay to the fund the unpaid employee contributions attributable to legislative employment.

(b) The employee shall then pay to the board the entire amount of the unpaid employee contributions without interest, in a lump sum or at the option of the employee in installments, within five years after the date of making the election but prior to reaching compulsory retirement age.

(c) If a person has reached compulsory retirement age on or before July 22, 1973, or will reach compulsory retirement age no later than one year after July 22, 1973, the time in which the employee may pay the contributions to the system is extended to one year after July 22, 1973.

(5) Any person who was a legislative employee prior to July 22, 1973, and who is not so employed on July 22, 1973, but who becomes a legislative employee once again after July 22, 1973, may elect to pay employee

contributions and obtain retirement credit for service prior to July 22, 1973, as a legislative employee. The election shall be made by giving written notice to the board no later than one year after the first day of the subsequent employment, in the same manner and subject to the same conditions as set forth in subsection (4) of this section.

(6) Subject to subsection (8) of this section, any person who makes the election under subsection (4) or (5) of this section and pays to the system the entire amount of employee contributions required thereunder, and who during other qualifying employment by a participating public employer contributed to the fund and subsequently but prior to July 22, 1973, withdrew contributions under ORS 238.265, may, in the same manner and subject to the same conditions as set forth in subsection (4) of this section, repay to the fund the full amount of the contributions withdrawn by the employee, and rights in the system forfeited by the withdrawal shall thereupon be restored.

(7) If a person who has reached or will reach compulsory retirement age within one year after July 22, 1973, the time for repayment under this section of the full amount of withdrawn contributions in order to restore rights in the system is extended to one year after July 22, 1973.

(8) A restoration of forfeited rights in the system shall not be available under subsections (6) and (7) of this section if a person withdrew contributions before the commencement of the employment in the course of which the person was or became a legislative employee, if the covered employment in the course of which the withdrawn contributions were made terminated more than five years before the commencement of employment.

(9) Any person who, on July 22, 1973, is an employee of the Legislative Counsel, or the Legislative Counsel, and who would have been eligible for retirement credit in the system for such employment prior to July 22, 1973, but for failure to exercise the option to become a member of the system under provisions of ORS 173.210 prior to its amendment by chapter 735, Oregon Laws 1973, may nevertheless obtain retirement credit in the system for such employment by making the election and paying employee contributions as provided in and subject to the conditions of subsection (4) of this section. The person shall not be eligible to make any election under subsection (5) or subsections (6) and (7) of this section. [Formerly 237.095]

**238.170** [Formerly 237.021; repealed by 1999 c.130 §1]

**238.175 Retirement credit for periods of disability.** (1) A member of the Public Employees Retirement System who receives a disability retirement allowance or disability payments under ORS chapter 656 shall receive retirement credit for the period during which the member receives the disability retirement allowance or disability payments if the member receives the allowance or payments by reason of injury or disease sustained while in actual performance of duty and not intentionally self-inflicted.

(2) A member of the Public Employees Retirement System who receives a disability retirement allowance or disability payments under ORS chapter 656 by reason of injury or disease that was not sustained while in actual performance of duty and that was not intentionally self-inflicted shall receive retirement credit for all or part of the period during which the member receives the disability retirement allowance or disability payments if the member, within 90 days before the effective date of retirement of the member, applies in writing to the Public Employees Retirement Board for that retirement credit and pays to the board in a lump sum an amount determined by the board to represent the full cost to the system of providing the retirement credit to the member, including all administrative costs incurred by the system in processing the application for acquisition of the retirement credit.

(3) A member may acquire retirement credit under the provisions of this section for the purposes of calculating a service retirement allowance only if the member returns to employment with a participating public employer after the period of disability.

(4) A member may not acquire retirement credit under the provisions of this section for a period of time that is in excess of the period of time used in calculating the disability retirement allowance paid to the member under ORS 238.320 during the period of disability for which the member seeks credit. For the purposes of this subsection, the retirement credit that may be acquired by a police officer or firefighter who elects to receive the optional, service-connected disability retirement allowance provided for under ORS 238.345 shall be determined as though the police officer or firefighter had received a disability retirement allowance calculated under ORS 238.320.

(5) Retirement credit acquired under this section may be used for the purpose of establishing eligibility under ORS 238.115, 238.125 or 238.135 or any other provision of this chapter that requires a specified number of years of creditable service.

(6) Retirement credit under this section may be acquired only for periods occurring

on or after January 1, 1985, during which a member receives a disability retirement allowance or disability payments under ORS chapter 656. [1997 c.648 §2; 2003 c.105 §4]

**238.180** [2005 c.332 §10; repealed by 2007 c.769 §7]

## CONTRIBUTIONS

### (Employee Contributions)

**238.200 Employee contributions generally.** (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 for service performed on or after January 1, 2004. This subsection does not affect any contribution for the purpose of unit purchases under ORS 238.440 or amounts paid for acquisition of creditable service under ORS 238.105 to 238.175. [Formerly 237.071 (1) to (3); 2001 c.945 §43; 2003 c.67 §1; 2003 c.625 §9]

**238.205 Payment of employee contribution by employer.** 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 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. [Formerly 237.075; 1997 c.175 §8; 2001 c.945 §44; 2003 c.67 §2]

**238.210 Payment of certain circuit court judge employee contributions by employer.** The state shall "pick-up," assume or pay the full amount of contributions to the fund required of circuit court judges who were district court judges before January 15, 1998, and who are members of the system, but not judge members under ORS 238.500 to 238.585. The full amount of those contributions "picked-up," assumed or paid by the state shall be treated as provided in ORS 238.205 (2) to (4). [Formerly 237.079; 1997 c.175 §§9,10]

**238.215 Contributions by certain higher education employees.** Notwithstanding any other provision of this chapter:

(1) An employee, as defined in ORS 243.910 (2), who is an active member of the system and who has elected, and not canceled that election, to be assisted by the State Board of Higher Education under ORS 243.920 (1), shall not contribute to the fund on any part of the annual salary of the employee in excess of $4,800 at any time during which the State Board of Higher Education assists the employee under ORS 243.920 (1).

(2) The current service pension, whether for service or disability retirement, under this chapter provided by the contributions of the employers of such employee shall be:

(a) If the State Board of Higher Education is assisting such employee under ORS 243.920 (1) at the time of retirement, a pension equal to the annuity provided by the employee's accumulated contributions to the fund.

(b) If the State Board of Higher Education is not assisting such employee under ORS 243.920 (1) at the time of retirement, but previously so assisted the employee:

(A) For service before the date the State Board of Higher Education last ceased to assist the employee, a pension equal to the annuity provided by the employee's accumulated contributions to the fund before that date.

(B) For service on and after the date the State Board of Higher Education last ceased to so assist the employee, a pension computed as provided in ORS 238.300 (2), but if the employee retires before reaching the normal retirement age, actuarially reduced and computed on the then attained age. For the purpose of computing the pension under this subparagraph, only the number of years of membership of the employee after the day before that date and only the salary of the employee on which the employee contributes to the fund for those years shall be considered.

(3) Subsection (2) of this section does not apply to an employee, as defined in ORS 243.910 (2), who is an active member of the system, who elected to be assisted by the State Board of Higher Education under ORS 243.920 (1) before January 1, 1968, who canceled that election within the first 60 days of the calendar year 1968 as provided in ORS 243.940 (5) and who does not thereafter elect to be assisted by the State Board of Higher Education under ORS 243.920 (1).

(4) Subsection (2) of this section does not apply to an employee, as defined in ORS 243.910 (2), who is an active member of the system and has been an active member of the system continuously since any date before January 1, 1968; who elected to be assisted by the State Board of Higher Education under ORS 243.920 (1) before January 1, 1968; and who cancels that election in any calendar year after 1968, but before the calendar year in which the employee retires, as provided in ORS 243.940 (5) and does not thereafter elect to be assisted by the State Board of Higher Education under ORS 243.920 (1). In this case the benefit, whether for service or disability retirement, shall be computed as under ORS 238.300; however, for service during periods in which the employee was assisted by the State Board of Higher Education under ORS 243.920 (1), a year of membership as used in ORS 238.300 (2) shall be a portion of a year which is represented by a fraction the numerator of which is $4,800 and the denominator of which is the salary earned by the employee in that year. However, in no case shall the fraction be greater than one. [Formerly 237.073]

**(Employee Rollover Contributions)**

**238.220 Employee rollover contributions; rules.** (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) 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.

(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.

(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.

(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. [1999 c.988 §2; 2001 c.945 §45; 2003 c.67 §29]

**238.222 Trustee-to-trustee transfers to fund restoration of forfeited service or purchase of retirement credit; rules.** (1) Notwithstanding ORS 238.220, a member of the Public Employees Retirement System who is eligible to obtain restoration of forfeited creditable service under ORS 238.115, or to purchase retirement credit under ORS 238.125, 238.135, 238.145, 238.156, 238.157, 238.162, 238.165, 238.175 or 526.052, and who participates in an eligible retirement plan described in subsection (3) of this section, may use moneys transferred by way of a trustee-to-trustee transfer from the eligible retirement plan to the Public Employees Retirement Board for the purpose of obtaining restoration of the forfeited creditable service or to purchase the retirement credit. The board may not make any amount transferred under this section available to the member, and may use the amount only for the purposes described in this section. The amount transferred under this section may not exceed the amount needed to obtain restoration of the forfeited creditable service or to purchase the retirement credit.

(2) If amounts transferred under this section are not sufficient to pay the full amount necessary to obtain restoration of the forfeited creditable service or to purchase the retirement credit, the member must pay the remaining amount that is needed to obtain restoration of the forfeited creditable service or to purchase the retirement credit.

(3) The following are eligible retirement plans for the purposes of this section:

(a) A governmental deferred compensation plan described in section 457 of the Internal Revenue Code; and

(b) A tax sheltered annuity described in section 403(b) of the Internal Revenue Code.

(4) The board shall adopt rules and establish procedures for determining whether a member is allowed to obtain restoration of the forfeited creditable service or to purchase the retirement credit by means of a trustee-to-trustee transfer under this section. The rules and procedures must ensure that transfers under this section 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. [2009 c.894 §2]

**Note:** 238.222 becomes operative September 1, 2011. See section 3, chapter 894, Oregon Laws 2009.

**(Employer Contributions)**

**238.225 Employer contributions.** A participating public employer shall, at intervals designated by the Public Employees Retirement Board, transmit to the board those amounts the board determines to be actuarially necessary to adequately fund the benefits to be provided by the contributions of the employer under this chapter and the benefits to be provided under the pension program established by ORS 238A.100 to 238A.245, except for the disability benefit for which funding is provided under ORS 238A.240. From time to time, the board shall determine the liabilities of the system and shall set the amount of contributions to be made by participating public employers, and by other public employers who are required to make contributions on behalf of members, to ensure that those liabilities will be funded no more than 40 years after the date on which the determination is made. [Formerly 237.081; 2001 c.945 §13; 2002 s.s.1 c.9 §1; 2002 s.s.3 c.5 §1; 2003 c.625 §8; 2003 c.746 §7; 2003 c.802 §160; 2005 c.808 §10]

**238.227 Pooling of employers for purpose of computing employer contributions.** (1) For the purpose of computing the employer contributions required under ORS 238.225 for benefits to be provided under this chapter:

(a) The Public Employees Retirement Board shall group together the school districts of the state and treat the school districts of the state as a single employer for actuarial purposes; and

(b) The board shall group together all community college districts and the state and treat the community college districts and the state as a single employer for actuarial purposes.

(2) For the purpose of computing the employer contributions required under ORS 238.225 for benefits to be provided under this chapter, any participating public employer other than school districts may elect to be grouped with the state and all community college districts and treated as a single employer for actuarial purposes. An election under this subsection is irrevocable.

(3) The computation of the contributions of a participating public employer that makes an election under subsection (2) of this section shall be based only on the liabilities of the employer under this chapter that are incurred after the effective date of the employer's election. The board shall separately compute the contribution of the employer for the liabilities incurred by the employer under this chapter before the effective date of the employer's election.

(4) A participating public employer may make an election under subsection (2) of this section only by the adoption of a resolution or ordinance by the governing body of the public employer.

(5) Except as provided in this section, the board may not require that any participating public employer be grouped with any other participating public employer for the purpose of computing the employer contributions required under ORS 238.225 for benefits to be provided under this chapter. If two participating public employers merge or otherwise consolidate, and one of the public employers has made an election under subsection (2) of this section:

(a) The board may not require that the public employer that is the product of the consolidation be grouped with the state and all community college districts unless the public employer makes an election under subsection (2) of this section; and

(b) The board may require that the participating public employer that is the product of the consolidation make contributions based on the group rate only for those members for whom contributions based on the group rate were made before the consolidation. [2005 c.808 §12]

**238.229 Effect of lump sum payment on contributions of pooled employer; application of excess amounts to offset contributions to individual account program; rules.** (1) If a participating public employer is grouped with any other public employer for the purpose of computing employer contributions under ORS 238.225 and the individual public employer makes a lump sum payment that is in addition to the normal employer contribution of the public employer, the Public Employees Retirement Board shall adjust the amount of employer contributions to be made by the individual public employer to ensure that the benefit of the lump sum payment accrues only to the individual public employer making the payment. An individual public employer that makes a lump sum payment under the provisions of this subsection shall remain grouped with other public employers as provided by ORS 238.227 and 238A.220 for the purpose of all liabilities of the employer that are not paid under this subsection. The board by rule may establish a minimum lump sum payment that must be made by an individual public employer before adjusting employer contributions under this subsection. Notwithstanding any minimum lump sum payment established by the board, the board must allow an individual public employer to

make a lump sum payment under this subsection if the payment is equal to the full amount of the individual public employer's accrued unfunded liabilities under this section and ORS chapter 238A.

(2) The board shall establish a separate account within the Public Employees Retirement Fund for each lump sum payment made under this section by an individual public employer. The board shall credit to each account all interest and other income received from investment of the account funds during the calendar year. Except as provided in subsection (3) of this section, the board may not collect any administrative expense or other charge from the account or from earnings on the account. Except as provided in subsections (5) and (6) of this section, the account shall be used to offset contributions to the system that the public employer would otherwise be required to make for the liabilities against which the lump sum payment is applied.

(3) The board may charge a participating public employer expenses for administration of an account established under subsection (2) of this section in an amount not to exceed $2,500 for the calendar year in which the account is established and for the immediately following two calendar years, and in an amount not to exceed $1,000 per year for all subsequent years.

(4) If a participating public employer has any liabilities that are attributable to creditable service by employees of the employer before the participating public employer was grouped with other public employers under ORS 238.227, whether under this section or pursuant to board rule, any lump sum payment made under this section must be applied first against those liabilities, with the oldest liability being paid first. Any amounts remaining after application under this subsection must be deposited in a separate account established under subsection (2) of this section.

(5) Except as provided in subsection (6) of this section, if the board determines at any time after an actuarial study that the amounts in an account established under subsection (2) of this section exceed the amounts necessary to fund the employer's actuarial liabilities under the system, upon request of the employer, the board shall apply the excess amounts to offset contributions to the individual account program that the employer has agreed to pay under ORS 238A.335 or 238A.340. The board may apply excess amounts to offset contributions to the individual account program under this subsection only to the extent that the application will not result in the balance in the account being reduced to less than the outstanding principal balance owed on the bonds issued to fund the account. If the request is made by a school district, the school district must attach to the request a copy of a resolution adopted by the district school board for the district authorizing the request. The board shall adopt rules governing offsets under the provisions of this subsection.

(6) The board shall apply any excess amounts in an account established under subsection (2) of this section to offset contributions to the individual account program pursuant to subsection (5) of this section only if the board has determined that applying the excess amounts does not cause the system or the Public Employees Retirement Fund to lose qualification as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [2005 c.808 §13; 2009 c.889 §1]

**Note:** Section 3, chapter 889, Oregon Laws 2009, provides:

**Sec. 3.** As soon as possible after the effective date of this 2009 Act [August 4, 2009], the Public Employees Retirement Board shall seek a ruling from the Internal Revenue Service on whether the application of excess amounts in an account established under ORS 238.229 (2) to offset contributions to the individual account program pursuant to ORS 238.229 (5) would cause the system or the Public Employees Retirement Fund to lose qualification as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [2009 c.889 §3]

**238.230** [Formerly 237.017 (2); repealed by 2001 c.945 §15]

**238.231 Unfunded liability or surplus after employee transfer or employer merger, consolidation or split.** (1) If a participating public employer transfers employees who are members of the Public Employees Retirement System to another public employer, the two public employers must enter into a written agreement that addresses the manner in which any unfunded liability or surplus of the transferring public employer under the system will be paid or credited.

(2) If two or more public employers merge or consolidate, and any of the public employers participate in the system, the public employers that merged or consolidated must enter into a written agreement that addresses the manner in which any unfunded liability or surplus of the merged or consolidated public employers under the system will be paid or credited.

(3) If a participating public employer splits into two or more public employers, the public employers that result from the split must enter into a written agreement that addresses the manner in which any unfunded liability or surplus of the original participat-

ing public employer under the system will be paid or credited.

(4) A written agreement entered into under this section must be delivered to the Public Employees Retirement Board not later than 60 days after the transfer, merger, consolidation or split becomes effective. If public employers affected by a transfer, merger, consolidation or split, including public employers created by a merger, consolidation or split, fail to deliver to the board a written agreement that addresses the unfunded liabilities or surpluses, or fail to deliver to the board a written agreement that addresses the unfunded liabilities or surpluses in a manner satisfactory to the board, the board shall decide the manner in which unfunded liabilities or surpluses will be allocated among the public employers. [2005 c.808 §14]

## MEMBER ACCOUNTS

### (Generally)

**238.250 Regular accounts.** 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. [Formerly 237.275; 2001 c.945 §46; 2003 c.67 §22]

**238.255 Credits to regular accounts when earnings less than assumed interest rate.** (1) The regular account for 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. 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 and except as provided in subsection (5) 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. In any year in which the fund experiences a loss, the board shall charge the amount of the loss attributable to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, against the reserve account.

(3) The regular account for 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 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

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

(4) The board may divide the reserve account established under subsection (1) of this section into one or more subaccounts for the purpose of implementing the provisions of this section.

(5) Subsection (2) of this section does not apply to a person who is a judge member of the system on June 30, 2003. [Formerly 237.277; 2001 c.945 §4; 2003 c.3 §1; 2003 c.67 §5; 2003 c.625 §10]

**238.258 Minimum regular account balance.** (1) Notwithstanding any other provision of this chapter, the regular account balance of a member or alternate payee 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 or alternate payee's regular account balance. If the regular account balance of a member

or alternate payee described in subsection (3) of this section is less than the amount provided for under subsection (2) of this section at the time of retirement or withdrawal of the account, the Public Employees Retirement Board shall credit the account with the difference and charge the amount so credited to the reserve account established under ORS 238.255.

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

(3) The provisions of this section apply only to:

(a) A member who establishes membership in the system before January 1, 1996, as described in ORS 238.430, and who retires or withdraws the member account of the member on or after April 1, 2004; and

(b) An alternate payee of a member described in paragraph (a) of this subsection. [2003 c.67 §8; 2003 c.625 §12]

**238.260 Variable Annuity Account; rules.** (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. The account is part of the Public Employees Retirement System and is not a separate defined contribution plan or account for the purposes of the Internal Revenue Code.

(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 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 279A.050 (2) and 279A.140.

(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 279A.050 (2) and 279A.140.

(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. If the member account of the member as of the effective date of the election is less than what the member account of the member would have been had the member not participated in the variable annuity program, not including the contributions made on salary in excess of $4,800 per year during the period January 1, 1956, through December 31, 1967, the monthly retirement allowance of a member calculated under ORS 238.300 (2)(a) or (b)(B) shall be decreased by the value of the difference.

(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) Subject to paragraph (c) of this subsection, 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. [Formerly 237.197; 2001 c.945 §47; 2003 c.67 §3; 2003 c.625 §36; 2003 c.794 §218; 2005 c.808 §§2,3]

**Note:** Section 19, chapter 625, Oregon Laws 2003, provides:

**Sec. 19.** The amendments to ORS 238.260 by section 3, chapter 67, Oregon Laws 2003, do not apply to any judge member who is a judge member of the system on June 30, 2003. A person who is a judge member of the system on June 30, 2003, may continue to make con-

tributions to the Variable Annuity Account for services as a judge member performed on or after January 1, 2004. [2003 c.625 §19]

### (Withdrawal or Transfer of Member Account)

**238.265 Withdrawal of member account.** (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) A member who is vested in the pension program established under ORS chapter 238A and who is eligible to withdraw from the pension program under ORS 238A.120 may withdraw a member account under this section only if the member also withdraws from the pension program. A member who has an individual account or accounts in the individual account program established under ORS chapter 238A may withdraw a member account under this section only if the member also withdraws all individual accounts pursuant to ORS 238A.375. A member who has an account established under ORS 238.440 may withdraw a member account under this section only if the member also withdraws the account established under ORS 238.440.

(5) 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. [Formerly 237.111 (2); 1999 c.317 §5; 2001 c.945 §48; 2003 c.67 §11; 2007 c.52 §1]

**238.270 Transfer of member account to other public employee retirement system.** 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. [Formerly 237.115; 2001 c.945 §49; 2003 c.67 §23]

### ELIGIBILITY FOR RETIREMENT

**238.280 Eligibility for retirement.** (1) Except as otherwise provided in this section, a member of the Public Employees Retirement System who attains the age of 55 shall be retired upon written application by the member to the Public Employees Retirement Board on a reduced service retirement allowance, that is the actuarial equivalent of the service retirement allowance provided for in ORS 238.300 at the normal retirement age.

(2) A member of the system who has 25 years or more of creditable service in the system as a telecommunicator, as defined in ORS 181.610, shall be retired upon written application by the member to the board on a reduced service retirement allowance that is the actuarial equivalent of the service retirement allowance provided for in ORS 238.300 at the normal retirement age. A member who retires under this subsection before attaining the age of 55 shall not re-

ceive a cost-of-living adjustment under ORS 238.360 until the member attains the age of 55.

(3) A police officer or firefighter who is a member of the system and attains the age of 50 shall be retired upon written application by the member to the board on a reduced service retirement allowance, which shall be the actuarial equivalent of the service retirement allowance provided for in ORS 238.300 at the normal retirement age. The provisions of this subsection apply to an inactive member of the system who was employed as a police officer or firefighter in a qualifying position immediately before becoming inactive.

(4) Notwithstanding ORS 238.215 (2)(b)(B):

(a) A police officer or firefighter who is a member of the system, attains the age of 50 and has a combined total of 25 years or more of creditable service in the system and prior service credit shall be retired upon written application by the member to the board on a service retirement allowance including, without actuarial reduction, the same current service pension and prior service pension provided for in ORS 238.300 at the normal retirement age. The provisions of this paragraph apply to an inactive member of the system who was employed as a police officer or firefighter in a qualifying position immediately before becoming inactive.

(b) An employee who is a member of the system, has a combined total of 30 years or more of creditable service in the system and prior service credit, and is not eligible to retire under paragraph (a) of this subsection shall be retired upon written application by the member to the board on a service retirement allowance including, without actuarial reduction, the same current service pension and prior service pension provided for in ORS 238.300 at the normal retirement age. [Formerly 237.121; 2001 c.945 §78; 2005 c.808 §§37,38; 2007 c.404 §1]

## BENEFITS

### (Service Retirement Allowance)

**238.300 Service retirement allowance.** 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 designates 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 other than a police officer or firefighter, including service as a 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 or firefighter 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 July 1, 2003, the actuarial equivalent of the annuity provided by the accumulated contributions of the member. A person establishes membership in the system before July 1, 2003, for the purposes of this subparagraph if:

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

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

(B) For a member who made contributions before August 21, 1981, the equivalent

of a pension computed pursuant to this subsection as it existed immediately before that date.

(c) As used in this subsection, "number of years of membership" means the number of full years of creditable service plus any remaining fraction of a year of creditable service. Except as otherwise provided in this paragraph, in determining a remaining fraction a full month shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as a full month. Membership of a school district employee, an employee of 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. [Formerly 237.147; 1997 c.249 §67; 2001 c.900 §49; 2001 c.945 §50; 2003 c.67 §4; 2003 c.625 §22; 2003 c.733 §46e]

**Note:** Section 46f, chapter 733, Oregon Laws 2003, provides:

**Sec. 46f.** The amendments to ORS 238.300 by section 46e of this 2003 Act apply to periods of service as a member of the Legislative Assembly served by reason of appointment or election to the Legislative Assembly on or after the effective date of this 2003 Act [August 29, 2003], including periods of service as a member of the Legislative Assembly served by reason of reelection to the Legislative Assembly after the effective date of this 2003 Act. [2003 c.733 §46f]

**238.305 Optional service retirement allowance calculations.** (1) Not later than 60 days after the first benefit payment is made to a retired member of the Public Employees Retirement System, the member may elect to convert the allowance described by ORS 238.300 as payable after retirement into a service retirement annuity of equivalent actuarial value of one of the optional forms named below. The election of Option 2, 2A, 3 or 3A shall be effective immediately upon the member's retirement.

Option 1. (a) A life annuity (nonrefund) payable during the member's life only, which shall be the actuarial equivalent of accumulated contributions by the member and interest thereon credited at the time of retirement (if death occurs before the first payment is due, the member account shall be treated as though death had occurred before retirement); (b) a life pension (nonrefund) provided by the contributions of employers as provided in ORS 238.300 (2); (c) an additional nonrefund pension 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; or

Option 2. A reduced service retirement allowance payable during the member's life, with the provision that it continue after death for the life of the beneficiary the member nominates by written designation duly acknowledged and filed with the Public Employees Retirement Board at the time of election, should the beneficiary survive the member; or

Option 2A. A reduced service retirement allowance payable during the member's life which, unless modified under subsection (6) of this section, continues after death for the life of the beneficiary the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 3. A reduced service retirement allowance payable during the member's life, with the provision that it continue after death at one-half the rate paid to the member and be paid for the life of the beneficiary the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 3A. A reduced service retirement allowance payable during the member's life which, unless modified under subsection (6) of this section, continues after death at one-

half the rate paid to the member and is paid for the life of the beneficiary the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 4. A reduced service retirement allowance payable during the member's life, with the provisions that if the member dies before a total of 180 monthly payments is made, the remainder of the 180 monthly payments shall be paid monthly to the beneficiary the member nominates by written designation duly acknowledged and filed with the board at any time before the member's death; and that if the member designates no beneficiary to receive the monthly payments or no such beneficiary is able to receive the monthly payments, an amount equal to the actuarial value, on the date of the member's death, of the total of the monthly payments not made to the member shall be paid according to ORS 238.390 for disposal of an amount credited to the member account of a member at the time of death; and that if the beneficiary receiving monthly payments dies before the total number of monthly payments to which the beneficiary is entitled is made, an amount equal to the actuarial value, on the date of the beneficiary's death, of the total of the monthly payments not made to the member and beneficiary shall be paid according to ORS 238.390 for disposal of an amount credited to the member account of a member at the time of death and as if the beneficiary had been a member.

(2) Not later than 60 days after the first benefit payment is made to a retired member of the system, the member may elect, in lieu of the allowance described by ORS 238.300 as payable after retirement, a service retirement benefit consisting of:

(a) A refund of accumulated contributions by the member and interest thereon credited at the time of refund; and

(b) A life pension (nonrefund) provided by the contributions of employers as provided in ORS 237.147 (2) (1979 Replacement Part), and an additional life pension (nonrefund) for prior service credit as provided in ORS 238.300 (3). At the same time as making the election under this subsection, the member may elect to convert the pensions described by this paragraph into a service retirement annuity of equivalent actuarial value of one of the optional forms named as Option 2, 2A, 3 or 3A under subsection (1) of this section.

(3) Not later than 60 days after the first benefit payment is made to a retired member of the system, the member may elect in lieu of the allowance described by ORS 238.300 a refund service retirement benefit consisting of:

(a) A refund of accumulated contributions by the member and interest thereon credited at the time of retirement;

(b) An amount that matches the amount of accumulated contributions by the member and interest thereon, provided by the contributions of employers; and

(c) Interest on the amounts described in paragraphs (a) and (b) of this subsection from the effective date of retirement until the amounts are paid.

(4)(a) If the member elects to receive the service retirement benefit described in subsection (2) or (3) of this section, the member shall elect at the same time to receive the refund described in subsection (2)(a) or (3) of this section in one lump sum payment or in more than one but not more than five installment payments. If the member elects installment payments:

(A) The amount to be paid by employer contributions under subsection (3)(b) of this section shall be transferred to the individual account of the member in the Public Employees Retirement Fund as of the effective date of retirement.

(B) The installment payments shall be paid once each year for the number of consecutive years equal to the number of installment payments elected.

(C) The amount of each installment payment shall be designated by the member at the time of making the election, but the last installment payment shall be the unrefunded balance remaining in the member account of the member in the fund.

(D) The member account of the member in the fund shall be maintained until the last installment payment is paid. The board shall establish procedures for computing and crediting interest annually on the unrefunded balance of the member account.

(E) A yearly installment payment shall be paid on the anniversary of the date of the first installment payment.

(F) The member is considered to have elected to transfer any balance in the variable account of the member to the regular account of the member.

(G) If the member dies before payment of all installment payments, the unrefunded balance in the member account of the member plus interest to date of disbursement is payable as provided in ORS 238.390 (4).

(b) If a member elects to receive the refund service retirement benefit described in subsection (3) of this section, and does not elect to receive those amounts in installments under the provisions of this subsection, all rights of the member in the system shall terminate upon the payment of the

amounts provided for in subsection (3) of this section, except as provided in paragraph (c) of this subsection. If a member elects to receive the refund service retirement benefit described in subsection (3) of this section, and also elects to receive those amounts in installments under the provisions of this subsection, all rights of the member in the system shall terminate upon the making of the first payment, except as provided in paragraph (c) of this subsection.

(c) A member who elects to receive the refund service retirement benefit described in subsection (3) of this section, and any eligible spouse or dependent of the member, shall continue to be eligible for insurance under ORS 238.410, and for any premium payments the member may be entitled to under ORS 238.415 and 238.420.

(5) The designation of a beneficiary, the election of an option or any other election or designation under subsection (1), (2), (3) or (4) of this section may be changed by the member within 60 days after the date of the first benefit payment, except that the designation of a beneficiary under Option 4 may be changed by the member at any time before the member's death.

(6) If a retired member has elected to receive a service retirement allowance under Option 2A or Option 3A as provided in subsection (1) of this section, and if the beneficiary under that option dies after the expiration of the time within which the member could change the election of an option or if the beneficiary is the spouse of the member and the marriage relationship is terminated as provided by law after the expiration of the time within which the member could change the election of an option, the member may elect to receive, in lieu of the optional form of allowance previously elected, the allowance that the member would have received on the effective date of retirement under Option 1 as provided in subsection (1) of this section and adjusted by the actual amount of any cost-of-living or other post-retirement adjustments made to the original allowance since the effective date of retirement. Notice of election under this subsection must be in a form approved by the board. If an election is made under this subsection, the Option 1 payment amount is applicable to the first full month after the death of the beneficiary, or the first full month after entry of the judgment of divorce, and payable the first day of the month thereafter. If the increased amount is not paid in any month in which the increased amount is due, the board shall make a lump sum payment to the retired member that is equal to the difference between the amount paid to the member for that month and the amount that should have been paid under the provisions of this subsection.

(7) Notwithstanding any other provision of this section, any member of the system who retired before October 3, 1989, and elected to receive a service retirement allowance under either Option 2 or 3 as provided in subsection (1) of this section shall be entitled to receive a service retirement allowance equal to that which the member would have received on the effective date of retirement under Option 1 as provided in subsection (1) of this section and adjusted by the actual amount of any cost-of-living or other post-retirement adjustments made to the original allowance since the effective date of retirement if:

(a) The member has attained 80 years of age;

(b) The person designated by the member as the member's beneficiary has predeceased the member; and

(c) The member gives written notice to the board of the death of the member's beneficiary.

(8) Notwithstanding any other provision of this section, any member of the system who retired before October 3, 1989, who elected to receive a refund of accumulated employee contributions and a life pension or pensions under subsection (2) of this section, and who elected to convert the life pension or pensions provided for in subsection (2) of this section into a service retirement annuity under Option 2 or 3 under subsection (1) of this section, shall be entitled to receive a life pension or pensions equal to that which the member would have received on the effective date of retirement under subsection (2) of this section and adjusted by the actual amount of any cost-of-living or other post-retirement adjustments made to the original life pension or pensions since the effective date of retirement if:

(a) The member has attained 80 years of age;

(b) The person designated by the member as the member's beneficiary has predeceased the member; and

(c) The member gives written notice to the board of the death of the member's beneficiary.

(9) The service retirement allowance provided in subsection (7) or (8) of this section shall be applicable to the first full month after the death of the member's beneficiary, or the first full month after the member attains 80 years of age, whichever is later.

(10) The board may deny an election to convert a service retirement allowance under this section, a change of beneficiary under

this section or a change in benefit options under this section if that denial is required to maintain the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [Formerly 237.155; 1997 c.180 §1; 1999 c.317 §10; 2001 c.945 §§8,68; 2003 c.625 §3; 2005 c.138 §1]

**Note:** Section 3, chapter 180, Oregon Laws 1997, provides:

**Sec. 3.** (1) If on October 4, 1997, a retired member is eligible for the service retirement allowance provided by ORS 238.305 (7) or (8) but was not eligible under ORS 238.305 (1995 Edition):

(a) The member may give written notice of the member's eligibility to the Public Employees Retirement Board at any time after October 4, 1997; and

(b) The service retirement allowance of the retired member under ORS 238.305 (7) or (8) is first applicable to the first full month after the death of the member's beneficiary, or the first full month after the member attained 80 years of age, whichever is later.

(2) As soon as possible after October 4, 1997, the board shall calculate and mail a check for the amount of any retroactive payment required under subsection (1) of this section. The retroactive payment shall represent the difference between the total of all monthly amounts paid to the member before the first recalculated monthly payment is made under subsection (1) of this section, and the total of all monthly amounts that would have been paid to the member if ORS 238.305, as amended by section 1, chapter 180, Oregon Laws 1997, had been in effect on and after October 3, 1989. In no event shall the increased service allowance under ORS 238.305 (7), or the increased life pension or pensions under ORS 238.305 (8), be applicable to any monthly payment that was made before the first full month following October 3, 1989, and no retroactive payment shall be made under this section for any monthly payment that was made before the first full month following October 3, 1989. [1997 c.180 §3; 2001 c.945 §9]

**238.310 Minimum service retirement allowance.** (1) Notwithstanding any other provision of this chapter, the service retirement allowance of a member who has 15 or more years of creditable service shall be not less than $100 a month, computed under the nonrefund plan:

(a) For a member who retires and begins receiving a service retirement allowance before or on reaching the age of 65 years, on the basis of retirement at the age of 65 years.

(b) For a member who retires and begins receiving a service retirement allowance after reaching the age of 65 years, on the basis of age reached at retirement.

(2) Any member who receives a service retirement allowance calculated under the provisions of this section shall receive the retirement benefit in the form of a lump sum amount as provided in ORS 238.315. [Formerly 237.200; 2001 c.945 §85]

**238.315 Lump sum payment in lieu of small allowance.** A member of the system who has separated from the service of all participating employers, who retires for service and whose total service retirement allowance on the effective date of retirement, as computed by the board in accordance with the nonrefund plan, is less than $200 per month, shall receive, in lieu of any and all retirement allowance or other benefits under the system, a retirement benefit in the form of a lump sum amount equal to the actuarial value, on the effective date of retirement, of the retirement allowance computed by the board in accordance with the nonrefund plan. A member who receives a retirement benefit as provided in this section is eligible to participate in insurance coverage under ORS 238.410, and the board shall determine the manner in which the cost of that coverage payable by the member shall be paid. [Formerly 237.151; 2001 c.945 §84]

**(Disability Retirement Allowance)**

**238.320 Disability retirement allowance.** (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. [Formerly 237.171; 2001 c.945 §51; 2003 c.67 §24]

**238.325 Optional disability retirement allowance calculations.** (1) At any time after establishing membership, but before the expiration of 90 days after the Public Employees Retirement Board makes its finding that the employee is disabled, an employee who is a member of the Public Employees Retirement System may elect to convert the disability retirement allowance otherwise payable on the member account of the member into a disability retirement annuity of equivalent actuarial value, by selecting one of the optional forms named below. The election of Option 2, 2A, 3 or 3A shall be effective immediately upon the effective date of the member's disability, and in the event of death within the first 90-day period of incapacity, payment to the beneficiary of the member shall be made in accordance with the option selected.

Option 1. (a) A life annuity (nonrefund) payable during the member's life only, which shall be the actuarial equivalent of the accumulated contributions and interest thereon credited to the member at the time the member retires (if death occurs before the first payment is due, the member account of the member shall be treated as though death had occurred before retirement); (b) a life pension (nonrefund) provided by the contributions of employers as provided in ORS 238.320 (1)(b); (c) an additional nonrefund pension 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; or

Option 2. A reduced disability retirement allowance payable during the period of incapacity, with the provision that after death, if death shall occur after the effective date of the disability and during the period of incapacity, it shall continue for the life of the beneficiary whom the member has designated in writing duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 2A. A reduced disability retirement allowance payable during the period of incapacity which, unless modified under subsection (3) of this section, continues after

death, if death shall occur after the effective date of the disability and during the period of incapacity, for the life of the beneficiary whom the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 3. A reduced disability retirement allowance payable during the period of incapacity, with the provision that after death, if death shall occur after the effective date of the disability and during the period of incapacity, such allowance shall continue at one-half the rate paid to the member and be paid for the life of the beneficiary whom the member has designated in writing duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 3A. A reduced disability retirement allowance payable during the period of incapacity which, unless modified under subsection (3) of this section, continues after death, if death shall occur after the effective date of the disability and during the period of incapacity, at one-half the rate paid to the member and is paid for the life of the beneficiary whom the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 4. A reduced disability retirement allowance payable during the period of incapacity, with the provisions that if the member dies during the period of incapacity and before a total of 180 monthly payments is made, the remainder of the 180 monthly payments shall be paid monthly to the beneficiary the member nominates by written designation duly acknowledged and filed with the board at any time before the member's death; and that if the member designates no beneficiary to receive the monthly payments or no such beneficiary is able to receive the monthly payments, an amount equal to the actuarial value, on the date of the member's death, of the total of the monthly payments not made to the member shall be paid according to ORS 238.390 for disposal of an amount credited to the member account of a member at the time of death; and that if the beneficiary receiving monthly payments dies before the total number of monthly payments to which the beneficiary is entitled is made, an amount equal to the actuarial value, on the date of the beneficiary's death, of the total of the monthly payments not made to the member and beneficiary shall be paid according to ORS 238.390 for disposal of an amount credited to the member account of a member at the time of death and as if the beneficiary had been a member.

(2) The beneficiary designated by a member to receive any benefit under this section shall be the same as designated under ORS 238.390 (1). The designation of a beneficiary or the election of an option may be changed by a member within 60 days after the date of the first benefit payment, except that the designation of a beneficiary under Option 4 may be changed by the member at any time before the member's death.

(3) If a retired member has elected to receive a disability retirement allowance under Option 2A or Option 3A as provided in subsection (1) of this section, and if the beneficiary under that option dies after the expiration of the time within which the member could change the election of an option or if the beneficiary is the spouse of the member and the marriage relationship is terminated as provided by law after the expiration of the time within which the member could change the election of an option, the member may elect to receive, in lieu of the optional form of allowance previously elected, the allowance that the member would have received on the effective date of retirement under Option 1 as provided in subsection (1) of this section and adjusted by the actual amount of any cost-of-living or other post-retirement adjustments made to the original allowance since the effective date of retirement. Notice of election under this subsection must be in a form approved by the board. If an election is made under this subsection, the Option 1 payment amount is applicable to the first full month after the death of the beneficiary, or the first full month after entry of the judgment of divorce, and payable the first day of the month thereafter. If the increased amount is not paid in any month in which the increased amount is due, the board shall make a lump sum payment to the retired member that is equal to the difference between the amount paid to the member for that month and the amount that should have been paid under the provisions of this subsection.

(4) The cost to the system of a disability retirement allowance in any optional form may not exceed the cost to the system of a nonrefund disability retirement allowance payable to, and on account of, the member making such election.

(5) The obligation for payment of any benefit in force prior to April 8, 1953, may not be altered by subsections (1) to (4) of this section. However, the beneficiary of a retired member who prior to July 1, 1953, elected an option but died prior to the effective date of such election, shall have a right to repay, before December 31, 1953, the amount of the lump sum refund made in lieu of the monthly life benefit elected and receive payment of

such benefit, computed as of the date of the member's death and payable from such date.

(6) If a member who would have qualified for disability benefits makes preliminary application for such benefits but dies prior to being found by the board to be disabled or prior to electing a plan of benefit payments, and the records of the board indicate that the member had designated the surviving spouse as beneficiary under ORS 238.390 (1), such surviving spouse may, not more than 90 days after the board makes its finding that the member would have qualified for disability benefits if living:

(a) Elect to receive the amount referred to in ORS 238.395 if such benefit would have been available if the member had not applied for disability benefits;

(b) If not eligible for benefits under ORS 238.395, elect to receive benefits under ORS 238.390 (1); or

(c) Elect Option 2 or 3 under subsection (1) of this section and designate the surviving spouse as beneficiary thereunder with the same force and effect as if the election and designation had been properly made by the deceased member.

(7) The board may deny an election to convert a disability retirement allowance under this section, a change of beneficiary under this section or a change in benefit options under this section if that denial is required to maintain the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [Formerly 237.181; 1999 c.317 §11; 2001 c.945 §52; 2005 c.138 §2]

**238.330 Minimum disability retirement allowance.** (1) Whenever an active or inactive member of the system has been found to be entitled to a disability retirement allowance as provided in ORS 238.320, the member shall receive not less than an aggregate of $100 a month under the nonrefund plan, subject to reduction to equivalent actuarial value in the event of the member's exercising any option provided by ORS 238.325.

(2) Notwithstanding ORS 238.320, 238.325 and subsection (1) of this section, if an active or inactive member of the system has been found to be entitled to a disability retirement allowance as provided in ORS 238.320 after the member has passed earliest service retirement age, the amount of monthly disability retirement allowance shall not be less than the amount which the member would have received had the member retired for service and elected the same option.

(3) Notwithstanding ORS 238.320, 238.325 and subsection (1) of this section, the amount of a monthly disability retirement allowance shall be reduced by the amount by which the combined total of the disability retirement allowance to which the retired member is otherwise entitled for the month and the earned income for the month exceeds the monthly salary received by the retired member at the time of retirement for disability; but the amount of the reduction shall not reduce the combined total of the disability retirement allowance and earned income for the month to less than $400. [Formerly 237.187]

**238.335 Medical examination for disability retirement allowance; rules.** The board shall require medical examinations for all applicants for retirement for disability under such general rules as it prescribes, and may provide for the discontinuance of any disability retirement allowance and the forfeiture of all rights under this chapter, in the case of any person who refuses to submit to such an examination. [Formerly 237.191]

**238.340 Return to work.** When a member retired because of disability is determined by the Public Employees Retirement Board to be not incapacitated to the extent that the member is disabled from the performance of any work for which the member is qualified, the disability retirement shall be canceled forthwith, the member shall be eligible for reemployment and the member account of the member shall be credited with the amount that stood to the credit in the member account of the member in the fund at the time of retirement for disability. Any such person who for any reason is not reinstated in the service of an employer participating in the system shall receive separation benefits or service retirement benefits as provided in this chapter. [Formerly 237.195; 1997 c.53 §1; 2001 c.945 §53]

**238.345 Optional service-connected disability retirement allowance for police officers and firefighters.** (1) A police officer or firefighter, other than a volunteer firefighter, who would be entitled to receive disability benefits as a member of the Public Employees Retirement System under ORS 238.320 (1), may elect to receive the service-connected disability retirement allowance authorized under this section. The allowance authorized under this section is an amount equal to 50 percent of the police officer's or firefighter's final average salary as determined at the date of the injury causing the disability. If elected, the allowance authorized under this section is in lieu of any service-connected disability retirement benefit available under this chapter.

(2) The election to receive the benefits authorized under subsection (1) of this section shall be made within 90 days after the board makes its decision that the police offi-

cer or firefighter is disabled. The election once made shall not be changed.

(3) A police officer or firefighter electing to receive the benefits authorized under subsection (1) of this section may elect to convert those benefits to a service-connected disability retirement annuity of equivalent actuarial value as provided in ORS 238.325.

(4) Nothing in this section shall interfere with the right of a police officer or firefighter to receive a disability retirement allowance under this chapter for disability not incurred in the line of duty. [Formerly 237.173]

**(Use of Sick Leave to Increase Retirement Allowance)**

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

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

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

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

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

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

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

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

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

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

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

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

(B) Where the public employer provided sick leave before July 1, 1973, but formal records of accumulation and use were not required or if required, are unavailable or incomplete, or the sick leave was subject to

administrative limitations on total accumulation or transfer between public employers, accumulated unused sick leave for periods before July 1, 1973, may be considered as equal to 2.675 hours for each full month worked or an amount per month equal to the average monthly accumulation by an employee during the period beginning July 1, 1973, and ending at the time of retirement, whichever amount is greater, but reduced by the amount of any accumulated unused sick leave credited to the employee on July 1, 1973.

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

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

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

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

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

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

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

(4) Employers with plans providing payments on account of sickness in lieu of sick leave with pay may request the board to consider the monetary value of accumulated unused payments on account of sickness as if such payments were an equivalent amount of accumulated unused sick leave with pay under the same terms and conditions specified in subsections (1) and (2) of this section. [Formerly 237.153; 1997 c.249 §68; 2001 c.295 §10; 2007 c.70 §57; 2007 c.858 §60; 2009 c.562 §16]

**238.355 Computation of unused sick leave for community college employees.** Notwithstanding ORS 238.350 (2)(a), unused sick leave for community college employees shall accumulate for an unlimited number of days and shall accumulate at the rate of 10 days per school year or one day per month employed, whichever is greater. Except as provided in ORS 238.350 (1)(b), unused sick leave accumulated by community college employees shall be computed in the same manner as for employees in state classified service for computation of retirement benefits. [Formerly 237.017 (1)]

**(Cost-of-Living Adjustments)**

**238.360 Cost-of-living adjustments.** (1) As soon as practicable after January 1 each year, the Public Employees Retirement Board shall determine the percentage increase or decrease in the cost-of-living for the previous calendar year, based on the Consumer Price Index (Portland area—all items) as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the Portland, Oregon, area. Prior to July 1 each year the allowance which the member or the member's beneficiary is receiving or is entitled to receive on August 1 for the month of July shall be multiplied by the percentage figure determined, and the allowance for the next 12

months beginning July 1 adjusted to the resultant amount.

(2) Such increase or decrease shall not exceed two percent of any monthly retirement allowance in any year and no allowance shall be adjusted to an amount less than the amount to which the recipient would be entitled if no cost-of-living adjustment were authorized.

(3) The amount of any cost-of-living increase or decrease in any year in excess of the maximum annual retirement allowance adjustment of two percent shall be accumulated from year to year and included in the computation of increases or decreases in succeeding years.

(4) Any increase in the allowance shall be paid from contributions of the public employer under ORS 238.225. Any decrease in the allowance shall be returned to the employer in the form of a credit against contributions of the employer under ORS 238.225. [Formerly 237.060; 2001 c.945 §79]

**238.365** [Formerly 237.209; 2001 c.945 §69; renumbered 238.387 in 2001]

**238.370** [Formerly 237.199; repealed by 2001 c.945 §73]

**(Benefit Increases in Compensation of Claims Based on Taxation of Benefits)**

**238.375 Increased benefits payable in compensation for certain damages attributable to taxation of benefits.** (1) Notwithstanding any other provision of sections 3 to 10, chapter 569, Oregon Laws 1995, the increased benefits payable under ORS 238.380 and 238.387 (2), including all increased benefits payable to judge members by reason of the application of ORS 238.380 and 238.387 (2) to judge members, and under section 10, chapter 569, Oregon Laws 1995:

(a) Shall not be paid in any tax year in which retirement benefits that are payable under the Public Employees Retirement System and that are attributable to service rendered by the member before September 29, 1991, are wholly exempt from Oregon personal income taxation under Oregon law.

(b) Shall be reduced proportionately for any tax year in which retirement benefits that are payable under the Public Employees Retirement System and that are attributable to service rendered by the member before September 29, 1991, are partially exempt from Oregon personal income taxation under Oregon law.

(2) An overpayment of benefits that results from the operation of subsection (1) of this section is not recoverable from the recipient of the benefits, but the Public Employees Retirement Board shall ensure that no additional overpayments are made.

(3) No member of the system or beneficiary of a member of the system shall acquire a right, contractual or otherwise, to the increased benefits provided by sections 3 to 10, chapter 569, Oregon Laws 1995.

(4)(a) Notwithstanding any other provision of law, a class action may not be commenced on or after July 14, 1995, based on a claim for damages arising out of the subjecting of benefits paid under this chapter to Oregon personal income taxation by act of the Legislative Assembly.

(b) Notwithstanding any other provision of law, any court in which there is pending on May 30, 1997, a class action that was commenced before July 14, 1995, based on a claim for damages arising out of the subjecting of benefits paid under this chapter to Oregon personal income taxation, may at any time after May 30, 1997, reopen that class action if by act of the Legislative Assembly there is a decrease in the benefit payable under ORS 238.380 or 238.387 (2), or in the benefits payable to judge members by reason of the application of ORS 238.380 or 238.387 (2) to judge members, or in the benefits payable to any member, judge member or beneficiary under section 10, chapter 569, Oregon Laws 1995, without an equivalent decrease in the personal income tax imposed under Oregon law on benefits paid under the system that are attributable to service rendered before September 29, 1991. Upon reopening the class action, the court may change the membership of the classes and may grant such further relief as may be warranted, including the entry of a judgment for damages or a judgment for supplemental relief under ORS 28.080. [1995 c.569 §2; 1997 c.175 §4; 2001 c.945 §70]

**238.380 Calculation of increased benefit payable under ORS 238.375.** (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 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 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:

$$\frac{1}{.91}$$

(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 (7) 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) The increased benefits provided by this section apply only to members who es-

tablish 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.

(8) 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.

(9) A person establishes membership in the system before July 14, 1995, for the purposes of subsection (7) 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. [1995 c.569 §3; 1997 c.175 §5; 2001 c.945 §54; 2003 c.67 §30; 2009 c.868 §1]

**238.385 Retirement allowance increase based on years of service.** (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 (9), 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. [Formerly 237.208; 1997 c.175 §6; 2001 c.945 §55; 2003 c.67 §31; 2009 c.868 §2]

**238.387 Retirement allowance increases for members who retired before January 1, 1991.** (1) In addition to any increase under ORS 238.360, first effective for the month of December 1990, payable January 1, 1991, the monthly retirement allowance payable to or on account of any person who has retired as a member of the Public Employees Retirement System shall be increased by the following percentages:

(a) If the member was serving as other than a police officer or firefighter at the time of retirement, the percentage increase 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) If the member was serving as a police officer or firefighter at the time of retirement, the percentage increase 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 monthly retirement allowance 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 retirement shall not be increased under the provisions of this subsection.

(2) In addition to any increase under ORS 238.360, first effective for the month of December 1990, payable January 1, 1991, the monthly retirement allowance payable to or on account of any person who has retired as a member of the Public Employees Retirement System shall be increased by a percentage equal to the percentage calculated under ORS 238.380 (4), less any increase provided to the retired member under subsection (1) of this section.

(3) The increased allowance provided in subsections (1) and (2) of this section shall be funded by employer contributions. [Formerly 238.365]

### (Death Benefits)

**238.390 Death benefit.** (1) If 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 termination of a person's membership in the system pursuant to ORS 238.095 (1) or (2) invalidates any designation of beneficiary made by the person before the termination of membership.

(2) If a member dies before retiring and has not designated a beneficiary under subsection (1) of this section, the Public Employees Retirement Board shall pay the amount of money, if any, credited at the time of death to the member account of the deceased member to a personal representative appointed for the estate of the deceased member. If an affidavit has been filed under ORS 114.505 to 114.560, and the amount of money credited to the account does not exceed the maximum amount of personal property for which an affidavit may be filed under ORS 114.505 to 114.560, the board shall pay the amount to the person who filed the affidavit.

(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 $200.

(4) Accrued benefits due a retired member at the time of death are payable to the designated beneficiary or as provided in subsection (2) 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.

(5) If a member dies before retiring and has designated a beneficiary under subsection (1) of this section, but the beneficiary dies before the member, or dies before distribution is made under this section, the Public Employees Retirement Board shall pay the amount of money, if any, that would otherwise have been paid to the beneficiary to a personal representative appointed for the estate of the deceased beneficiary. If an affidavit has been filed under ORS 114.505 to 114.560, and the amount of money that would have been paid to the beneficiary does not exceed the maximum amount of personal property for which an affidavit may be filed under ORS 114.505 to 114.560, the board shall pay the amount to the person who filed the

affidavit on behalf of the estate of the beneficiary.

(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) Payment by the board of amounts in the manner provided by this section completely discharges the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment. [Formerly 237.165; 2001 c.945 §56; 2003 c.67 §25; 2003 c.625 §1; 2005 c.808 §28]

**238.395 Additional death benefit.** (1) In addition to any other benefits under this chapter, a death benefit, provided by contributions of the public employer under ORS 238.225, shall be paid to the beneficiaries designated under ORS 238.390 (1) of a person who is an active or inactive member of the system and who dies as a result of injuries received while employed in the service of the public employer or within 120 days after termination from service with a participating public employer. A member who is on a leave of absence without pay from employment with a participating public employer has not terminated service with that participating public employer for the purposes of this section.

(2) The death benefit referred to in subsection (1) of this section shall be an amount equal to the amount in the member account of the deceased member at the time of death.

(3) In the event that a beneficiary has not been named as provided in subsection (1) of this section and ORS 238.390 (1), the death benefit referred to in subsection (1) of this section shall be paid in the manner provided for payment of money credited to the member account of the member in ORS 238.390 (2).

(4) The beneficiary designated under subsection (1) of this section and ORS 238.390 (1) may elect to receive the amount payable in actuarially determined monthly payments for the life of such beneficiary as long as such monthly payments, plus the monthly amount if elected under ORS 238.390 (3), are at least $200.

(5) Interest upon the death benefit provided by this section shall accrue until the date that the benefit is distributed. The board shall establish procedures for computing interest to be credited on the benefit for the period between the date of death and date of distribution.

(6) Payment by the Public Employees Retirement Board of additional death benefits in the manner provided by this section completely discharges the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment. [Formerly 237.169; 2001 c.945 §57; 2003 c.625 §4]

**238.400 Payment upon death of retired member who dies before making election of retirement benefits.** If a person who is a member of the system, who has attained normal retirement age and who has retired from service, dies without making an election under ORS 238.305 and prior to the expiration of the time within which such an election could be made by the person, and the records of the Public Employees Retirement Board indicate that the person has designated the surviving spouse as the beneficiary under ORS 238.390 (1), such surviving spouse may, not more than 60 days after the date of the death of such deceased member, elect to receive the amount referred to in ORS 238.390 (1), or elect Option 2 or Option 3 under ORS 238.305 and designate self as the beneficiary thereunder with the same force and effect as if the election and designation had been properly made by the deceased member. [Formerly 237.167]

**238.405 Death benefit payable to survivors of certain police officers or firefighters.** (1) The surviving spouse or child of a police officer or firefighter, who died a member of the Public Employees Retirement System while retired either for service or disability and while receiving or being entitled to receive a benefit under ORS 238.345 or under this chapter, is entitled to a benefit under this section. The benefit shall be equal to 25 percent of the unmodified retirement allowance the police officer or firefighter was receiving or was entitled to receive at the time of death under ORS 238.345 or under this chapter. The benefit authorized by this section is in addition to any other benefit the surviving spouse or child is entitled to and is available to the child until the child attains 18 years of age.

(2) For the purpose of this section, the unmodified retirement allowance is that allowance described in ORS 238.300, or if election to receive the benefits authorized under ORS 238.345 has been made, the unmodified retirement allowance is 50 percent of the final average salary of the police officer or firefighter as determined on the date of the injury causing disability.

(3) The board shall pay to a surviving spouse or child entitled to a benefit under this section a lump sum amount equal to the

actuarial value of the allowance provided under this section if the allowance is less than $30 per month. The lump sum amount shall be in lieu of the allowance provided for under this section. [Formerly 237.163]

**238.407 Distribution of death benefit as rollover distribution.** (1) If a benefit is payable under this chapter to a beneficiary by reason of the death of a member of the system, the beneficiary may elect to have all or part of the distribution of the death benefit paid in an eligible rollover distribution to an individual retirement plan described in 26 U.S.C. 408(a), or an individual retirement annuity, other than an endowment contract, described in 26 U.S.C. 408(b), if the plan or annuity is established for the purpose of receiving the eligible rollover distribution on behalf of the designated beneficiary.

(2) Subsection (1) of this section applies to an eligible rollover distribution of death benefits to a beneficiary who is not treated as the spouse of the decedent for federal tax purposes and who is the decedent's designated beneficiary for the purposes of the minimum required distribution requirements of 26 U.S.C. 401(a)(9). To the extent provided by rules of the Public Employees Retirement Board, a trust maintained for the benefit of one or more beneficiaries must be treated by the board in the same manner as a trust that is designated as a beneficiary for the purposes of the minimum required distribution requirements of 26 U.S.C. 401(a)(9).

(3) As used in this section, "eligible rollover distribution" has the meaning given that term in 26 U.S.C. 402(c)(4), as in effect on January 1, 2008. [2007 c.628 §4]

**(Insurance Premium Payments)**

**238.410 Board may contract for insurance for retirees; rules.** (1) As used in this section:

(a) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services, an insurance company or health care service contractor licensed or certified in another state that is operating under the laws of that state, or two or more of those companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation.

(b) "Eligible person" means:

(A) A member of the Public Employees Retirement System who is retired for service or disability and is receiving a retirement allowance or benefit under the system, and a spouse or dependent of that member;

(B) A person who is a surviving spouse or dependent of a deceased retired member of the system or the surviving spouse or dependent of a member of the system who had not retired but who had reached earliest retirement age at the time of death;

(C) A person who is receiving retirement pay or a pension calculated under ORS 1.314 to 1.380 (1989 Edition), and a spouse or dependent of that person; or

(D) A surviving spouse or dependent of a deceased retired member of the system or of a person who was receiving retirement pay or a pension calculated under ORS 1.314 to 1.380 (1989 Edition) if the surviving spouse or dependent was covered at the time of the decedent's death by a health care insurance plan contracted for under this section.

(c) "Health care" means medical, surgical, hospital or any other remedial care recognized by state law and related services and supplies and includes comparable benefits for persons who rely on spiritual means of healing.

(2) The Public Employees Retirement Board shall conduct a continuing study and investigation of all matters connected with the providing of health care insurance protection to eligible persons. The board shall design benefits, devise specifications, invite proposals, analyze carrier responses to advertisements for proposals and do acts necessary to award contracts to provide health care insurance, including insurance that provides coverage supplemental to federal Medicare coverage, with emphasis on features based on health care cost containment principles, for eligible persons. The board is not subject to the provisions of ORS chapters 279A and 279B, except ORS 279B.235, in awarding contracts under the provisions of this section. The board shall establish procedures for inviting proposals and awarding contracts under this section.

(3) The board shall enter into a contract with a carrier to provide health care insurance for eligible persons for a one or two-year period. The board may enter into more than one contract with one or more carriers, contracting jointly or severally, if in the opinion of the board it is necessary to do so to obtain maximum coverage at minimum cost and consistent with the health care insurance needs of eligible persons. The board periodically shall review a current contract or contracts and make suitable study and investigation for the purpose of determining whether a different contract or contracts can and should, in the best interest of eligible persons, be entered into. If it would be advantageous to eligible persons to do so, the board shall enter into a different contract or contracts. Contracts shall be signed by the chairperson on behalf of the board.

(4) Except as provided in ORS 238.415 and 238.420, the board may deduct monthly from the retirement allowance or benefit, retirement pay or pension payable to an eligible person who elects to participate in a health care insurance plan the monthly cost of the coverage for the person under a health care insurance contract entered into under this section and the administrative costs incurred by the board under this section, and shall pay those amounts into the Standard Retiree Health Insurance Account established under subsection (7) of this section. The board by rule may establish other procedures for collecting the monthly cost of the coverage and the administrative costs incurred by the board under this section if the board does not deduct those costs from the retirement allowance or benefit, retirement pay or pension payable to an eligible person.

(5) Subject to applicable provisions of ORS chapter 183, the board may make rules not inconsistent with this section to determine the terms and conditions of eligible person participation and coverage and otherwise to implement and carry out the purposes and provisions of this section and ORS 238.420.

(6) The board may retain consultants, brokers or other advisory personnel, organizations specializing in health care cost containment or other administrative services when it determines the necessity and, subject to the State Personnel Relations Law, shall employ such personnel as are required to assist in performing the functions of the board under this section.

(7) Pursuant to section 401(h) of the Internal Revenue Code, the Standard Retiree Health Insurance Account is established within the Public Employees Retirement Fund, separate and distinct from the General Fund. All payments made by eligible persons for health insurance coverage provided under this section shall be held in the account. Interest earned by the account shall be credited to the account. All moneys in the account are continuously appropriated to the Public Employees Retirement Board and may be used by the board only to pay the cost of health insurance coverage under this section and to pay the administrative costs incurred by the board under this section.

(8) The sum of all amounts paid by eligible persons into the Standard Retiree Health Insurance Account, by participating public employers into the Retiree Health Insurance Premium Account under ORS 238.415, and by participating public employers into the Retirement Health Insurance Account under ORS 238.420, may not exceed 25 percent of the aggregate contributions made by participating public employers to the Public Employees Retirement Fund on or after July 11, 1987, not including contributions made by participating public employers to fund prior service credits.

(9) Until all liabilities for health benefits under the system are satisfied, contributions and earnings in the Standard Retiree Health Insurance Account, the Retiree Health Insurance Premium Account under ORS 238.415 and the Retirement Health Insurance Account under ORS 238.420 may not be diverted or otherwise put to any use other than providing health benefits and payment of reasonable costs incurred in administering this section and ORS 238.415 and 238.420. Upon satisfaction of all liabilities for providing health benefits under this section, any amount remaining in the Standard Retiree Health Insurance Account shall be returned to the participating public employers who have made contributions to the account. The distribution shall be made in such equitable manner as the board determines appropriate. [Formerly 237.320; 1999 c.317 §16; 1999 c.407 §7; 2003 c.794 §219; 2005 c.808 §§4,5]

**Note:** 238.410 was added to and made a part of ORS chapter 237 (1993 Edition) by legislative action but was not added to ORS chapter 238 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**238.415 Payment toward cost of pre-Medicare insurance; rules.** (1) As used in this section:

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

(b) "Eligible retired state employee" means:

(A) A retired member of the Public Employees Retirement System who was a state employee at the time of retirement, is retired for service or disability, is receiving a retirement allowance or benefit under the system, had eight years or more of qualifying service in the system at the time of retirement or is receiving a disability retirement allowance including a pension computed as if the member had eight years or more of creditable service in the system at the time of retirement, and has attained earliest service retirement age but is not eligible for federal Medicare coverage; or

(B) A person who is a surviving spouse or dependent of a deceased eligible retired state employee as provided in subparagraph (A) of this paragraph at the time of death, who:

(i) Is receiving a retirement allowance or benefit under the system; or

(ii) Was covered at the time of the eligible retired state employee's death by the retired employee's health insurance contracted for under ORS 238.410, and the employee retired on or after September 29, 1991.

(c) "Qualifying service" means creditable service in the system and any periods of employment with an employer participating in the system required of the employee before becoming a member of the system.

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

(2) Of the monthly cost of coverage for an eligible retired state employee under a health care insurance contract entered into under ORS 238.410, an amount as determined under subsection (3) of this section shall be paid from the Retiree Health Insurance Premium Account established by subsection (4) of this section, and any monthly cost in excess of the amount so determined shall be paid by the eligible retired state employee in the manner provided in ORS 238.410 (4). Any amount paid under this subsection shall be exempt from all state, county and municipal taxes imposed on the eligible retired member.

(3) On or before January 1 of each year, the Public Employees Retirement Board shall calculate the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the board under ORS 238.410 and the health insurance premiums paid by state employees who are not retired under contracts entered into by the Public Employees' Benefit Board. For the purposes of subsection (2) of this section, an eligible retired state employee shall be entitled to receive toward the monthly cost of coverage under a health insurance contract entered into under ORS 238.410:

(a) For an eligible retired state employee with eight years or more of qualifying service in the system, but less than 10 years of qualifying service in the system, 50 percent of the amount calculated by the board under this subsection.

(b) For an eligible retired state employee with 10 years or more of qualifying service in the system, but less than 15 years of qualifying service in the system, 60 percent of the amount calculated by the board under this subsection.

(c) For an eligible retired state employee with 15 years or more of qualifying service in the system, but less than 20 years of qualifying service in the system, 70 percent of the amount calculated by the board under this subsection.

(d) For an eligible retired state employee with 20 years or more of qualifying service in the system, but less than 25 years of qualifying service in the system, 80 percent of the amount calculated by the board under this subsection.

(e) For an eligible retired state employee with 25 years or more of qualifying service in the system, but less than 30 years of qualifying service in the system, 90 percent of the amount calculated by the board under this subsection.

(f) For an eligible retired state employee with 30 years or more of qualifying service in the system, 100 percent of the amount calculated by the board under this subsection.

(4) Pursuant to section 401(h) of the Internal Revenue Code, the Retiree Health Insurance Premium Account is established within the Public Employees Retirement Fund, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. All moneys in the account are continuously appropriated to the Public Employees Retirement Board and may be used only to pay costs of health care insurance contract coverage under subsection (2) of this section, paying the administrative costs incurred by the board under this section and investment of moneys in the account under any law of this state specifically authorizing that investment.

(5) The Retiree Health Insurance Premium Account shall be funded by employer contributions. The state shall transmit to the board those amounts the board determines to be actuarially necessary to fund the liabilities of the account. The level of employer contributions shall be established by the board using the same actuarial assumptions it uses to determine employer contribution rates to the Public Employees Retirement Fund. The amounts shall be transmitted at the same time and in the same manner as contributions for pension benefits are transmitted under ORS 238.225.

(6) The Public Employees Retirement Board shall, by rule, establish a procedure for calculating the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the board under ORS 238.410 and the health insurance premiums paid by state employees who are not retired under contracts entered into by the Public Employees' Benefit Board.

(7) As provided in section 401(h)(5) of the Internal Revenue Code of 1986, upon satisfaction of all liabilities for providing benefits described in subsection (2) of this section, any amount remaining in the Retiree Health Insurance Premium Account shall be returned to the state.

(8) No member of the system shall have an interest in the Retiree Health Insurance Premium Account or in the benefits provided under this section. [Formerly 237.247; 1997 c.222 §45; 1999 c.317 §17; 2001 c.945 §80; 2003 c.14 §113; 2005 c.808 §6]

**Note:** 238.415 was added to and made a part of ORS chapter 237 (1993 Edition) by legislative action but was not added to ORS chapter 238 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**238.420 Payment toward cost of Medicare supplemental insurance.** (1) As used in this section, "eligible retired member" means:

(a) A retired member of the Public Employees Retirement System who is retired for service or disability, is receiving a retirement allowance or benefit under the system, had eight years or more of qualifying service in the system at the time of retirement or is receiving a disability retirement allowance including a pension computed as if the member had eight years or more of creditable service in the system at the time of retirement, and is eligible for federal Medicare coverage; or

(b) A person who is a surviving spouse or dependent of a deceased eligible retired member as provided in paragraph (a) of this subsection at the time of death, who is eligible for federal Medicare coverage and who:

(A) Is receiving a retirement allowance or benefit under the system; or

(B) Was covered at the time of the retired member's death by the retired member's health insurance contracted for under ORS 238.410, and the member retired before May 1, 1991.

(2) For purposes of subsection (1)(a) of this section, "qualifying service" means creditable service in the system and any periods of employment with an employer participating in the system required of the employee before becoming a member of the system.

(3) Of the monthly cost of coverage for an eligible retired member under a health care insurance contract that provides coverage supplemental to federal Medicare coverage entered into under ORS 238.410, an amount equal to $60 or the total monthly cost of that coverage, whichever is less, shall be paid from the Retirement Health Insurance Account established by subsection (4) of this section, and any monthly cost in excess of $60 shall be paid by the eligible retired member in the manner provided in ORS 238.410 (4). Any amount paid under this subsection shall be exempt from all state, county and municipal taxes imposed on the eligible retired member.

(4) Pursuant to section 401(h) of the Internal Revenue Code, the Retirement Health Insurance Account is established within the Public Employees Retirement Fund, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. All moneys in the account are continuously appropriated to the Public Employees Retirement Board and may be used only to pay costs of health care insurance contract coverage under subsection (3) of this section, paying the administrative costs incurred by the board under this section and investment of moneys in the account under any law of this state specifically authorizing that investment.

(5) The Retirement Health Insurance Account shall be funded by employer contributions. Each public employer that is a member of the system shall transmit to the board such amounts as the board determines to be actuarially necessary to fund the liabilities of the account. The level of employer contributions shall be established by the board using the same actuarial assumptions it uses to determine employer contribution rates to the Public Employees Retirement Fund. The amounts shall be transmitted at the same time and in the same manner as contributions for pension benefits are transmitted under ORS 238.225.

(6) As provided in section 401(h)(5) of the Internal Revenue Code of 1986, upon satisfaction of all liabilities for providing benefits described in subsection (1) of this section, any amount remaining in the Retirement Health Insurance Account shall be returned to the employers participating in the retirement system on an equitable basis as determined by the board.

(7) No member of the system shall have an interest in the Retirement Health Insurance Account. [Formerly 237.248; 1999 c.317 §18; 2001 c.945 §88; 2005 c.808 §7]

**(Benefits Payable to Vested Inactive Member)**

**238.425 Benefits payable to vested inactive member.** In the event that an employee who is a vested member of the system 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 based on the member's then attained age. [Formerly 237.111 (1); 2001 c.945 §58; 2003 c.67 §12; 2003 c.625 §15]

**(Benefits Payable to Persons Establishing Membership on or After January 1, 1996)**

**238.430 Limitation on benefits payable to persons establishing membership on or after January 1, 1996.** (1) Notwithstanding any other provisions of this chapter, a person who establishes membership in the Public Employees Retirement System on or after January 1, 1996, is entitled to receive only the benefits provided under ORS 238.435 for periods of service with participating public employers after January 1, 1996, and has no right or claim to any other benefit provided under this chapter. A person who establishes membership in the Public Employees Retirement System before January 1, 1996, is entitled to receive those benefits otherwise provided by this chapter, and is not subject to the provisions of ORS 238.435.

(2) A person establishes membership in the system before January 1, 1996, for the purposes of this section if:

(a) The person is a member of the system, or a judge member of the system, on January 1, 1996;

(b) The person was a member of the system before January 1, 1996, ceased to be a member of the system under the provisions of ORS 238.095, 238.265 or 238.545 before January 1, 1996, but restored part or all of the forfeited creditable service from before January 1, 1996, under the provisions of ORS 238.105 or 238.115 after January 1, 1996;

(c) The person performed any period of service for a participating public employer before January 1, 1996, 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; or

(d) The person becomes a member of the system under the terms of an integration contract pursuant to the terms of ORS 238.680, and under the terms of the contract the person receives retirement credit in the system for periods of employment performed for the public employer before January 1, 1996.

(3) The provisions of ORS 238.435 do not apply to judge members of the system. [1995 c.654 §2; 1997 c.175 §12; 2005 c.22 §176]

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

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

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

(b) One-third of the total salary paid to a public employee who is an active member of the system in the last 36 calendar months of membership before the effective date of retirement of the employee.

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

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

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

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

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

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

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

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

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

(7) Except as provided in this section, all provisions of this chapter are applicable to persons who establish membership in the system on or after January 1, 1996, as described in ORS 238.430. [1995 c.654 §3; 1999 c.407 §4; 2005 c.808 §33; 2009 c.103 §1]

**Note:** Section 2, chapter 103, Oregon Laws 2009, provides:

**Sec. 2.** The amendments to ORS 238.435 by section 1 of this 2009 Act apply to all monthly disability retirement allowances paid on or after the operative date specified in section 5 of this 2009 Act [January 1, 2010]. As soon as possible after the effective date of this 2009 Act [May 21, 2009], the Public Employees Retirement Board shall recalculate any disability retirement allowance being paid on the effective date of this 2009 Act, and the recalculated disability retirement allowance shall be effective for the month of December 2009 and payable January 1, 2010. [2009 c.103 §2]

**(Optional Purchase of Benefit Units by Police and Firefighters)**

**238.440 Optional purchase of benefit units by police and firefighters.** (1) A police officer or firefighter who is a member of the system may elect to make additional contributions to the fund to purchase increased benefits between the date of retirement and age 65. The rate of additional contribution shall be determined by the actuary, dependent upon the age of the police officer or firefighter at the date of election, so as to provide monthly payments on the basis of $10 per unit of benefits purchased. No police officer or firefighter may elect to purchase more than eight units. For each $10 unit purchased by the police officer or firefighter, the employer shall purchase an equal $10 unit. A police officer or firefighter who is retained until age 65 shall receive a lump sum refund of the additional contributions made toward units purchased, plus interest thereon, but shall receive no benefits from the additional contributions by the employer for such units. If a police officer or firefighter retires after age 60 but prior to age 65, the units purchased by additional contributions shall provide increased monthly benefits based on life expectancy, but the matching units purchased by the employer shall not, regardless of age, exceed $10 per month per unit purchased by the police officer or firefighter. If a police officer or firefighter is absent from the employment of a participating employer for any reason and because of such absence is unable to make monthly additional contributions, the benefits provided under this section shall be actuarially reduced upon the retirement of the police officer or firefighter. The Public Employees Retirement Board shall establish an account for each member who elects to make additional contributions under this section and shall credit all contributions made by that member and interest on those contributions to the account.

(2) Notwithstanding subsection (1) of this section, a police officer or firefighter who retires prior to age 60 may apply for and receive an actuarially reduced unit income commencing at any date between the date of early retirement and age 60, with monthly benefits payable for at least 60 months or any other monthly formula in excess of 60 months but always terminating by age 65. Such a police officer or firefighter may elect to pay in a lump sum within the 60 days immediately preceding early retirement the contribution that the police officer or firefighter would have made to the account had the police officer or firefighter worked to age 60.

(3) Any police officer or firefighter who elects to make additional contributions to purchase increased benefits may elect at any time before termination to cancel such election. Having once canceled such election, no police officer or firefighter shall be again permitted to make additional contributions.

(4) A member may withdraw the amounts credited to the account established for the member under this section if:

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

(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.

(5) A member who withdraws the amounts credited to the account established for the member pursuant to subsection (4) of this section may not thereafter make additional contributions under this section.

(6) A police officer or firefighter who has elected to make additional contributions under this section and who transfers to employment in which not entitled to make such additional contributions may retain the account established under subsection (1) of this section for five years immediately following such transfer by not requesting a withdrawal. If, at the end of the five-year period, the police officer or firefighter has not reached age 50, or has not returned to employment in which entitled to make additional contributions under this section, the election shall be canceled and the amount of the account established under subsection (1) of this section shall be refunded to the police officer or firefighter.

(7) Any election to make additional contributions under this section and any cancellation of such election shall be submitted to the employer and to the board in writing. [Formerly 237.071 (4); 1999 c.317 §5a; 2007 c.52 §6]

### (Prior Service Credit)

**238.442 Prior service credit.** (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 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. [2001 c.945 §75; 2001 c.945 §75a; 2003 c.67 §32]

### (Miscellaneous)

**238.445 Benefits exempt from execution, bankruptcy and certain taxes; exceptions.** (1) Except as provided in this section, the right of a person to a pension, an annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit or death benefit, or any other right accrued or accruing to any person under the provisions of this chapter or ORS chapter 238A, and the money in the various funds created by ORS 238.660 and 238.670, shall be exempt from garnishment and all state, county and municipal taxes heretofore or hereafter imposed, except as provided under ORS chapter 118, shall not be subject to execution, garnishment, attachment or any other process or to the operation of any bankruptcy or insolvency law heretofore or hereafter existing or enacted, and shall be unassignable.

(2) Subsection (1) of this section does not apply to state personal income taxation of

amounts paid under this chapter and ORS chapter 238A.

(3) Unless otherwise ordered by a court under ORS 25.387, the exemption from execution or other process granted under this section applies to 75 percent of amounts paid under this chapter and ORS chapter 238A if the execution or other process is issued for a support obligation or an order or notice entered or issued under ORS chapter 25, 107, 108, 109, 110, 416, 419B or 419C. [Formerly 237.201; 1999 c.80 §86; 1999 c.745 §3; 2003 c.733 §52]

**238.450 Computation of retirement allowance or benefit; notice of dispute.** (1) Upon receiving an application for a retirement allowance or benefit from a member of the Public Employees Retirement System and obtaining information necessary for computation of the retirement allowance or benefit to which the member is entitled upon retirement, the system shall provide to the member a written computation of the retirement allowance or benefit to which the member is entitled upon retirement and summary of the information used in making that computation.

(2) A member of the system may dispute the accuracy of the information used by the system in making the computation only by filing a written notice of dispute with the system not later than whichever of the following days occurs last:

(a) The 240th day after the date on which the computation and information summary is provided to the member pursuant to subsection (1) of this section.

(b) The 240th day after the date on which the retirement allowance or benefit to which the member is entitled first becomes payable.

(3) The filing of a notice of dispute under subsection (2) of this section extends the time allowed for election of an optional form of retirement allowance or benefit until the 30th day after the conclusion of the proceeding and any judicial review thereof if the proceeding or review results in a change in the computation of the retirement allowance or benefit.

(4) Upon receiving a notice of dispute under subsection (2) of this section, the system shall determine the accuracy of the disputed information and make a written decision either affirming the accuracy of the information and computation based thereon or changing the computation using corrected information. The system shall provide to the member a copy of the decision and a written explanation of any applicable statutes and rules. The member is entitled to judicial review of the decision as provided in ORS 183.484 and rules of the board consistent with applicable statutes.

(5) This section does not affect any authority of the system, on its own initiative, to correct an incorrect computation of any retirement allowance or benefit. [Formerly 237.210; 2007 c.53 §1]

**238.455 Estimated benefit payments.** (1)(a) Whenever a member of the system is retired for service and is entitled to receive a retirement allowance or benefit that is payable monthly, and the Public Employees Retirement Board is unable to calculate the amount of the monthly payment in time to allow mailing of the monthly payment to the member within 62 days of the date the first monthly payment is due, the board shall calculate an estimated amount for the monthly payment based on the information then available to the board and shall mail that payment to the member within 62 days of the date the first monthly payment is due.

(b) Whenever a member of the system is retired for disability and is entitled to receive a retirement allowance or benefit that is payable monthly, and the board is unable to calculate the amount of the monthly payment in time to allow mailing of the monthly payment to the member within 10 days of either the date the board approves the member's application or the date that the first monthly payment is due, whichever is later, the board shall calculate an estimated amount for the monthly payment based on the information then available to the board and shall mail that payment to the member within 10 days of the date the board approves the member's disability benefit, the date the board receives the member's election of one of the optional forms of disability retirement allowance or the date the first monthly payment is due, whichever is later.

(2) The board shall continue to mail estimated payments under subsection (1) of this section until such time as the correct amount of the monthly payment is determined.

(3) The board shall notify the member receiving an estimated payment under subsection (1) of this section that the payment is an estimated payment only. The board shall further notify the member of the provisions of subsection (4) of this section.

(4) If the board determines that any estimated payment made to the member under subsection (1) of this section resulted in payment to the member of an amount other than the correct amount due the member as a retirement allowance or benefit, the board shall immediately so notify the member. Thereafter, the board may increase or decrease the monthly payment to the member until such time as the total difference between the amount or amounts the member received and the amount or amounts the

member should have received is accounted for. Thereafter the member shall receive the monthly payment as finally calculated by the board.

(5) If the estimated payment made to the member under subsection (1) of this section results in an underpayment to the member of $10 or more a month, the board shall pay interest on the balance of such underpayment at a rate established by rule of the board until such time as the underpayment is paid to the member pursuant to subsection (4) of this section.

(6) No member shall have any right to any allowance or other benefit other than that provided for in this chapter and ORS chapter 238A based on the board's estimate under this section or based on any other estimate made by the board for any other purpose under this chapter and ORS chapter 238A. [Formerly 237.159; 2003 c.733 §53; 2005 c.302 §1]

**238.458 Unclaimed benefits.** (1) A benefit that is owed to a member or beneficiary of a member under the Public Employees Retirement System shall be forfeited at the end of the system's plan year in which the benefit becomes due if the Public Employees Retirement Board is unable to locate the member or beneficiary. If the member, beneficiary or any other person thereafter establishes a right to the forfeited benefit, the board shall reinstate the benefit. If the benefit is a periodic payment, the board shall make a retroactive payment to the member, beneficiary or other person in a lump sum for all amounts that would have been paid before reinstatement of the benefit. No interest shall be paid on the benefit for the period commencing when the benefit became due and the date of the retroactive payment.

(2) Death benefits and other amounts payable by reason of the death of a member do not escheat to the state when the member dies without heirs, devisees or beneficiaries designated under ORS 238.390. If a beneficiary has not been designated under ORS 238.390, and a personal representative or a person filing an affidavit under ORS 114.505 to 114.560 fails to make claim for the benefits within one year after the member dies, the benefits shall be forfeited to the Public Employees Retirement Fund in the manner provided by subsection (1) of this section and are subject to reinstatement only upon subsequent appointment of a personal representative or the filing of an affidavit in the manner provided by ORS 114.505 to 114.560. If benefits are paid to a personal representative or a person filing an affidavit under ORS 114.505 to 114.560, the personal representative or person filing the affidavit shall return to the board the amount that would otherwise escheat to the state after payment of administrative expenses and claims against the estate. Any amounts returned to the board under this subsection shall be forfeited to the fund. [1999 c.317 §20; 2003 c.625 §2]

**238.460 Waiver of retirement allowance.** (1) If receipt in full by a person of a retirement allowance or other benefit under this chapter or ORS chapter 238A would prevent such person from receiving in full any other governmental pension to which the person is entitled, such person may waive for a calendar year sufficient monthly payments, or portions thereof, of retirement allowance or other benefit under this chapter or ORS chapter 238A to permit the person to receive in full the other governmental pension. The waiver shall be made in writing and filed with the Public Employees Retirement Board not less than 15 days before the first day of the month to which the waiver applies.

(2) If for any month the waiver does not apply to the full retirement allowance due under this chapter, the waiver applies first to all or the necessary portion of prior service pension, then to all or to the necessary portion of current service pension, and then to the necessary portion of annuity.

(3) The waiver may be revoked at any time, but no retirement allowance or other benefit waived for the period of time in which the waiver is in effect shall be paid. The revocation shall be made in writing and filed with the board. If a person dies during the period of time in which the waiver is in effect, the waiver is considered revoked on the date of such death. [Formerly 237.157; 2003 c.733 §54; 2005 c.22 §177]

**238.462 Spousal consent required for certain optional forms of retirement allowance.** (1) A member of the Public Employees Retirement System who is married on the effective date of the member's retirement shall receive a service retirement allowance in the form provided for in Option 3 under ORS 238.305 (1) or a disability retirement allowance in the form provided for in Option 3 under ORS 238.325 (1) unless the member provides proof of spousal consent to receiving an allowance in the form provided by ORS 238.300 or 238.320, or in one of the optional forms provided for in ORS 238.305 and 238.325 other than Option 3.

(2) Except as provided in subsection (3) of this section, a member of the system who is married on the effective date of the member's retirement may not change the form in which a retirement allowance is paid after an election has been made as to the form of the retirement allowance unless the member provides proof of spousal consent.

(3) A member of the system who is married on the effective date of the member's retirement is not required to provide spousal

consent to a change in the form in which a retirement allowance is paid if the spouse of the member dies after the effective date of the member's retirement or disability and the change in the form of the allowance is made within the time periods provided by ORS 238.305 and 238.325. A member seeking to change the form of a retirement allowance without spousal consent under the provisions of this subsection must provide a notarized statement to the Public Employees Retirement Board that certifies to the board that the spouse of the member is deceased.

(4) Any member of the system who is not married on the effective date of the member's retirement must provide a notarized statement to the Public Employees Retirement Board that certifies to the board that the member is not married. No retirement allowance may be paid to a member of the system who is not married until the statement required by this subsection is provided to the board.

(5) A member of the system who is married on the effective date of the member's retirement must provide proof of spousal consent for the purposes of this section by submitting a statement to the board that:

(a) Contains the notarized signature of the member's spouse;

(b) Indicates the form in which the retirement allowance is to be paid; and

(c) Contains a statement that the member's spouse consents to the payment of the retirement allowance in the specified form.

(6) If a member of the system who is married on the effective date of the member's retirement fails to provide proof of spousal consent as required by this section, the board shall calculate and pay to the member a retirement allowance in the form provided for in Option 3 under ORS 238.305 (1) if the retirement is for service, or a retirement allowance in the form provided for in Option 3 under ORS 238.325 (1) if the retirement is for disability. The allowance will be calculated based on the ages of the member and the spouse, and the spouse will be designated as the beneficiary for any survivor benefits that may thereafter become payable.

(7) Proof of spousal consent under this section is not required for, and cannot alter, the designation of any form of a retirement allowance that is required under the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation, that has been received by the board in compliance with the requirements prescribed by ORS 238.465. [1997 c.476 §2; 1999 c.407 §5; 2003 c.576 §404; 2005 c.22 §178]

**238.465 Benefits payable to others under certain judgments; rules.** (1) Notwithstanding ORS 238.445 or any other provision of law, payments under this chapter or ORS chapter 238A of any pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit that would otherwise be made to a person entitled thereto under this chapter or ORS chapter 238A shall be paid, in whole or in part, by the Public Employees Retirement Board to an alternate payee if and to the extent expressly provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the total value of benefits payable to a member and to an alternate payee under this section may not be greater than the value of the benefits the member would otherwise be eligible to receive. Any payment under this subsection to an alternate payee bars recovery by any other person.

(2) A judgment, order or settlement providing for payment to an alternate payee under subsection (1) of this section may also provide:

(a) That payments to the alternate payee may commence, at the election of the alternate payee, at any time after the earlier of:

(A) The earliest date the member would be eligible to receive retirement benefits if the member separates from service; or

(B) The date the member actually separates from service due to death, disability, retirement or termination of employment.

(b) That the alternate payee may elect to receive payment in any form of pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit in the form of a joint and survivor annuity, that would be available to the member under this chapter or ORS chapter 238A, or that would be available to the member if the member retired or separated from service at the time of election by the alternate payee, without regard to the form of benefit elected by the member.

(c) That the alternate payee's life is the measuring life for the purpose of measuring payments to the alternate payee under the form of benefit selected by the alternate payee and for the purpose of determining necessary employer reserves.

(d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person designated by the member as a beneficiary under ORS 238.300, 238.305, 238.325, 238A.190 or 238A.400 be changed, even though the member has retired and has begun receiving a retirement allowance or pension. If a change of beneficiary is ordered under this paragraph, the board shall adjust the anticipated benefits that would be payable to the member and the beneficiary to ensure that the cost to the system of providing benefits to the member and the new beneficiary does not exceed the cost that the system would have incurred to provide benefits to the member and the original beneficiary. The judgment, order or settlement may not provide for any change to the option selected by the retired member under ORS 238.300, 238.305, 238.320, 238.325, 238A.190 or 238A.400 as to the form of the retirement benefit.

(3) The board shall adopt rules that provide for:

(a) The creation of a separate account in the name of the alternate payee reflecting the judgment's, order's or agreement's distribution of the member's benefits under this chapter or ORS chapter 238A;

(b) The establishing of criteria to determine whether domestic relations judgments, orders and agreements comply with this section; and

(c) The definitions and procedures for the administration of this section.

(4) An alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and 238.395. Subject to ORS 238A.410 (2), an alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS 238A.410. If the alternate payee fails to designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and 238.395, the benefits shall be paid as provided by ORS 238.390 (2). If the alternate payee fails to designate a beneficiary for the purposes of death benefits payable under ORS 238A.410, the benefits shall be paid as provided by ORS 238A.410 (3). If a judgment, order or agreement awards an interest to an alternate payee, and if the alternate payee predeceases the member before the alternate payee has commenced receiving benefits, the alternate payee shall be considered a member of the system who died before retiring for the purposes of the death benefits provided in ORS 238.390, 238.395, 238A.230 and 238A.410, but for purposes of the death benefits provided in ORS 238.395, the alternate payee shall be considered a member of the system who died before retiring only if the member would have been eligible for death benefits under ORS 238.395 had the member died at the same time as the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons entitled to receive the benefits under ORS 238.390, 238.395, 238A.230 and 238A.410, shall constitute payment in full of the alternate payee's interest under the judgment, order or agreement.

(5) Any increase in the retirement allowance provided to the member shall increase the amounts paid to the spouse or former spouse of the member in the same proportion, except that an alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other retirement allowance increase until benefits are first paid from the system on behalf of the member.

(6) An alternate payee under this section is not eligible to receive the benefits provided under ORS 238.410, 238.415, 238.420 and 238.440 by reason of the provisions of this section.

(7) An alternate payee who elects to begin receiving payments under subsection (1) of this section before the member's effective date of retirement is not eligible to receive any additional payment by reason of credit in the system acquired by the member after the alternate payee begins to receive payments.

(8) Subsection (1) of this section applies only to payments made by the board after the date of receipt by the board of written notice of the judgment, order or agreement and such additional information and documentation as the board may prescribe.

(9) Whenever the board is required to make payment to an alternate payee under the provisions of this section, the board shall charge and collect out of the benefits payable to the member and the alternate payee actual and reasonable administrative expenses and related costs incurred by the board in obtaining data and making calculations that are necessary by reason of the provisions of this section. The board may not charge more than $300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. The board shall allocate expenses and costs charged under the provisions of this subsection between the member and the alternate payee based on the fraction of the benefit received by the member or alternate payee.

(10) Unless otherwise provided by the judgment, order or agreement, a member has no interest in the benefit payable to an alternate payee under this section. Upon the death of an alternate payee, the board shall make such payment to the beneficiary designated by the alternate payee as may be re-

quired under the form of benefit elected by the alternate payee. If a death benefit is payable under ORS 238.390 or 238.395 by reason of the death of an alternate payee, payment of the death benefit shall be made to the beneficiary designated by the alternate payee under ORS 238.390 (1), or as otherwise provided by ORS 238.390 and 238.395.

(11) As used in this section, "court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia. [Formerly 237.205; 2001 c.945 §§82,89; 2003 c.576 §405; 2003 c.733 §55; 2005 c.808 §32]

**238.470 Interest on payments from fund.** Interest is not payable on any payment from the Public Employees Retirement Fund unless specifically provided for in this chapter. [Formerly 237.202]

**238.475 Effect of transfer of employee to another participating employer.** No transfer after July 1, 1946, by a member of the system from the service of one employer participating in the system to the service of another such employer shall impair any rights or deprive the member of any credits accruing to the member as a result of membership in the system after July 1, 1946, and prior to the transfer. [Formerly 237.101]

**238.480 Effect of change to calendar year on contributions and credit of members.** All contributions made and all service credit earned under the Public Employes' Retirement Act of 1953 prior to January 1, 1956, on the basis of a fiscal year shall not be affected by the change from fiscal year basis to calendar year basis on January 1, 1956, under the 1955 amendments of the Public Employes' Retirement Act of 1953, and such contributions and credit are recognized as if no such change had been made. [Formerly 237.107]

## PUBLIC EMPLOYEE BENEFIT EQUALIZATION FUND

**238.485 Fund established.** (1) Pursuant to section 415(m) of the Internal Revenue Code, there is established a Public Employee Benefit Equalization Fund, separate and distinct from the General Fund and from the Public Employees Retirement Fund. The Public Employee Benefit Equalization Fund is declared to be a trust fund. Interest earned on the fund, if any, shall inure to the benefit of the fund. The Public Employees Retirement Board shall administer the fund and shall act as trustee for the fund.

(2) The assets of the Public Employee Benefit Equalization Fund that are attributable to the contributions of a participating public employer pursuant to ORS 238.488 remain available to the general creditors of the employer in the event of the employer's insolvency until those assets are distributed to members of the Public Employees Retirement System, distributed to the beneficiaries of those members or used to pay the administrative expenses of the fund. Before distribution, members of the Public Employees Retirement System and beneficiaries of those members have no right to or interest in any asset of the fund.

(3) All moneys paid into the fund shall be deposited with the State Treasurer, who is custodian of the fund. The board may draw warrants and issue checks on the fund in the same manner that it draws warrants and issues checks on the Public Employees Retirement Fund.

(4) Any warrant, check or order issued by the board for payment from the fund that is canceled, declared void, abandoned or otherwise made unpayable pursuant to law because it is outstanding and unpaid for a period of more than two years, may be reissued by the board without bond if the payee is located after such warrant, check or order is canceled, declared void, abandoned or otherwise made unpayable pursuant to law. [1997 c.201 §2; 2005 c.808 §8]

**238.488 Payment of benefits; employer contributions.** (1) A member of the Public Employees Retirement System, or the beneficiary of that member, who by reason of the benefit limitations imposed by Internal Revenue Code section 415 receives a retirement allowance under the system that is less than the allowance the member or beneficiary would otherwise have received under ORS chapter 238, excluding any payments the member or beneficiary may receive under this section and ORS 238.485 and 238.490, shall receive from the Public Employee Benefit Equalization Fund a monthly amount equal to the difference. Any overpayment or improperly made payment from the Public Employee Benefit Equalization Fund may be recovered from the member or beneficiary, or from payments to the member or beneficiary from the Public Employee Benefit Equalization Fund, in the same manner as provided in ORS 238.715 for recovery of overpayments and improperly made payments from the Public Employees Retirement Fund. Notwithstanding ORS 238.445, an overpayment or improperly made payment from the Public Employee Benefit Equalization Fund may be recovered on behalf of the Public Employee Benefit Equalization Fund from payments to the member or beneficiary from the Public Employees Retirement Fund in the same manner as provided in ORS 238.715 for recovery of overpayments and improperly made payments from the Public Employees Retirement Fund if:

(a) No payments are being made to the member or beneficiary from the Public Employee Benefit Equalization Fund at the time recovery of an overpayment or improperly made payment is sought; or

(b) The Public Employees Retirement Board in its discretion determines that the payments being made from the Public Employee Benefit Equalization Fund are inadequate to ensure full recovery of the overpayment or improperly made payment.

(2) A public employer that participates or has participated in the Public Employees Retirement System and that employs or has employed a member of the system who receives a benefit under subsection (1) of this section, or whose beneficiary receives a benefit under subsection (1) of this section, must contribute to the Public Employees Retirement Board a sum equal to all amounts paid to the member or beneficiary that is attributable to the member's employment by the public employer, plus any amount assessed by the board to pay administrative costs under ORS 238.490 (3). If the member has retirement credit attributable to employment with more than one public employer, the board shall allocate the costs of the benefit under this section among the public employers involved, based on the member's length of service with each employer.

(3) A public employer that makes a contribution to the Public Employee Benefit Equalization Fund under subsection (2) of this section shall receive a credit equal to the amount of the contribution against any obligation of the public employer to make contributions to the Public Employees Retirement Fund under ORS 238.225. The credit shall be equal to the amount paid by the employer to the board under subsection (2) of this section less any sums paid to the board by the public employer for administrative costs under ORS 238.490 (3). The board shall apply the credit to reduce the public employer's payment obligation under ORS 238.225 for the month in which the payment is made under this section. The credit does not reduce any obligation below zero and any credit not used may be carried over as a credit against future obligations under ORS 238.225.

(4) All amounts collected from public employers under this section shall be deposited in the Public Employee Benefit Equalization Fund established by ORS 238.485.

(5) The Public Employees Retirement Board shall pay the benefits specified in subsection (1) of this section only to the extent that the benefits have been funded by contributions made by the member's employer under subsection (2) of this section before the date on which the benefits are to be paid. The Public Employees Retirement Board may enforce the provisions of subsection (2) of this section in the manner provided in ORS 238.705 and 238.710 for the enforcement of employer contributions to the Public Employees Retirement Fund.

(6) The board shall notify all participating employers of the records and information needed for the implementation and administration of this section. Each participating employer shall maintain records for all employees who are members of the system, and all former employees who have been members of the system, and shall supply the board with all information required by the board to allow the board to identify members and beneficiaries who are entitled to payment under subsection (1) of this section. [1997 c.201 §3]

**238.490 Administrative expenses.** (1) The administrative expenses incurred by the Public Employees Retirement Board in administering the Public Employee Benefit Equalization Fund shall be paid from interest earned by the fund. If the interest is insufficient, the excess expense shall be paid from the contributions by participating employers under ORS 238.488.

(2) In order to facilitate financing the establishment and administration of the Public Employee Benefit Equalization Fund, the board may designate fiscal periods and may provide that extraordinary expenses incurred during a period, such as expenses for equipment and actuarial studies, may, for purposes of equitably distributing part of the burden of expenses, be apportioned to subsequent fiscal periods in any manner that seems equitable to the board.

(3) For each fiscal period designated by the board, the administrative expenses of the fund for that period shall be deducted from the interest earned by the Public Employee Benefit Equalization Fund. If such interest be insufficient for such purpose, each employer contributing to the Public Employee Benefit Equalization Fund shall pay a fraction of those administrative expenses determined by dividing the employer's total contribution to the fund for the period by the sum of all the employers' contributions to the fund for the period. [1997 c.201 §4]

**238.492 Rules for administration of fund.** The Public Employees Retirement Board may adopt rules for the administration of ORS 238.485, 238.488 and 238.490. In adopting rules under this section, the board shall consider and take into account all federal law requirements relating to deferred compensation plans, including the requirements imposed for the deferral of income tax on deferred compensation benefits until those

benefits are paid or made available to the recipient. [1997 c.201 §5]

**Note:** 238.492 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 238 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## JUDGE MEMBERS

**238.500 Definitions for ORS 238.500 to 238.585.** As used in ORS 238.500 to 238.585, unless the context requires otherwise:

(1) "Court" means the Supreme Court, the Court of Appeals, the Oregon Tax Court and a circuit court.

(2) "Judge" means a judge of any court.

(3) "Judge member" means a judge who is a member of the Public Employees Retirement System subject to ORS 238.500 to 238.585.

(4) "Service as a judge" means creditable service, as defined by ORS 238.005, by a judge as:

(a) A regularly elected or appointed judge of a court; or

(b) A regularly elected or appointed judge of a court temporarily in another court. [Formerly 237.211]

**238.505 Judges as PERS members.** (1) Except as provided in subsection (2) of this section, a person who is not a judge on December 31, 1983, and who is elected or appointed to the office of judge on or after January 1, 1984, shall become a judge member on the date the person takes the office.

(2) A person who, by reason of the age at which becoming a judge, could not make contributions to the Public Employees Retirement Fund during each of five calendar years as a judge member at or before attaining the age of 75 years shall not become a judge member. [Formerly 237.215]

**238.510** [Renumbered 237.350 in 1995]

**238.515 Contributions.** (1)(a) Each judge member shall contribute monthly to the Public Employees Retirement Fund seven percent of the monthly salary of the judge member. The contributions of a judge member and earnings on the contributions shall be credited to the member account of the judge member.

(b) The state shall pick-up, assume or pay the full amount of contributions to the fund required of judge members. The full amount of required judge member contributions picked-up, assumed or paid by the state on behalf of judge members shall be considered salary only for the purpose of computing a judge member's final average salary within the meaning of ORS 238.535 (2) and not for any other purpose. The full amount of required judge member contributions picked-up, assumed or paid by the state on behalf of judge members shall be added to the member account of the judge members and shall be considered judge member contributions for all other purposes of ORS 238.500 to 238.585.

(2) The state shall make employer contributions to the fund in respect to judge members as provided in ORS 238.225. Notwithstanding ORS 238.227, for the purposes of actuarial computation and contributions of the state under ORS 238.225, judge members shall be considered a separate group of employees. [Formerly 237.217; 2001 c.945 §59; 2005 c.808 §25]

**238.520** [Renumbered 237.355 in 1995]

**238.525 Compulsory retirement age.** A judge member shall be retired from judicial office at the end of the calendar year in which the judge member attains the age of 75 years. [Formerly 237.219]

**238.530** [Renumbered 237.360 in 1995]

**238.535 Service retirement allowance.** (1) Prior to attaining 60 years of age, all judge members shall elect in writing to retire under either paragraph (a) or (b) of this subsection. The election shall be irrevocable after the judge member attains 60 years of age. Any judge member who fails to make the election provided for in this subsection prior to attaining 60 years of age shall be retired under the provisions of paragraph (a) of this subsection.

(a) Upon retiring from service as a judge at the age of 65 years or thereafter, a judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge member and the state in an annual amount equal to 2.8125 percent of final average annual salary multiplied by the number of years of service as a judge not exceeding 16 years of service as a judge and 1.67 percent of final average salary multiplied by the number of years of service as a judge exceeding 16 years of service as a judge, but the annual amount shall not exceed 65 percent of final average salary.

(b) Upon retiring from service as a judge at the age of 60 years or thereafter, a judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge member and the state in an annual amount equal to 3.75 percent of final average salary multiplied by the number of years of service as a judge not exceeding 16 years of service as a judge and two percent of final average salary

multiplied by the number of years of service as a judge exceeding 16 years of service as a judge, but the annual amount shall not exceed 75 percent of final average salary.

(c) Any judge member electing to retire under paragraph (b) of this subsection shall serve as a pro tem judge, without compensation, for 35 days per year for a period of five years. A judge who serves more than 35 days per year may carry over the additional days to fulfill the pro tem service obligation in future years. The five-year period shall commence on the judge member's date of retirement or the date on which the judge member commences pro tem service under ORS 238.545 (4), whichever is earlier. Judge members may be reimbursed for expenses incurred in providing pro tem services under this paragraph. Upon certification from the Chief Justice that any judge member who retired under paragraph (b) of this subsection has failed to perform the pro tem services required under this paragraph, and has not been relieved of the obligations to perform those services in the manner provided by this paragraph, the Public Employees Retirement Board shall recalculate the service retirement allowance of the noncomplying judge member as though the judge member elected to retire under paragraph (a) of this subsection, and the noncomplying judge member shall receive only that recalculated amount thereafter. A judge may be relieved of the pro tem service obligation imposed by this paragraph if the judge fails for good cause to complete the obligation. A retired judge member who is relieved of the obligation to serve as a pro tem judge shall continue to receive the retirement allowance provided in paragraph (b) of this subsection.

(d) For the purpose of paragraph (c) of this subsection:

(A) "Good cause" includes, but is not limited to:

(i) Physical or mental incapacitation of a judge that prevents the judge from discharging the duties of judicial office;

(ii) Failure of the appointing authority to assign a judge to the requisite amount of pro tem service, whether because of insufficient need for pro tem judges, a determination by the appointing authority that the skills of a judge do not match the needs of the courts, clerical mistake, or otherwise; or

(iii) Death of a judge.

(B) "Good cause" does not include:

(i) A judge's refusal, without good cause, to accept pro tem assignments sufficient to meet the required amount; or

(ii) A judge's affirmative voluntary act that makes the judge unqualified to serve as a judge of this state including, but not limited to, failure to maintain active membership in the Oregon State Bar, acceptance of a position in another branch of state government, or acceptance of a position in the Government of the United States or of another state or nation.

(e) The Chief Justice may make rules for the implementation of this subsection.

(2) As used in subsection (1) of this section, "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year paid to a judge member in three of the calendar years of service as a judge before the judge member retires, in which three years the judge member was paid the highest salary.

(b) One-third of the total salary paid to a judge member in the last 36 calendar months of service as a judge before the judge member retires.

(3) As used in subsection (1) of this section, "number of years of service" means the number of full years plus any remaining fraction of a year. 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.

(4) For a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989 Edition), the service retirement allowance under subsection (1) of this section on retirement at the age of 70 years and either 12 years of service or two full six-year terms as a judge shall be at least the equivalent of the retirement pay the judge would have received had the judge retired under ORS 1.314 to 1.390 (1989 Edition).

(5) A judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years and who attains the age of 60 years shall be retired upon written application by the judge member to the board on a reduced service retirement allowance that shall be the actuarial equivalent of the service retirement allowance provided for in subsection (1)(a) of this section.

(6) For the purposes of this section, a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989 Edition) shall be considered to have made contributions to the Public Employees Retirement Fund during one calendar year for each calendar year during which the judge made contributions to the Judges' Retirement Fund.

(7)(a) Notwithstanding subsection (1)(a) of this section, the maximum percentage used in calculating the annual amount of the life pension (nonrefund) for a judge who is a

judge member on September 27, 1987, or who elected to become a judge member in the manner provided by ORS 237.215 (3)(b) or (4)(b) (1989 Edition), shall be the percentage specified by paragraph (b) of this subsection if either:

(A) On September 27, 1987, the judge had more than 28 years of service that were creditable either under the system; or

(B) On September 27, 1987, the judge had more than 28 years of service that were creditable under the Judges' Retirement Fund established pursuant to ORS 1.314 to 1.390 (1989 Edition) and the judge became a member of the system under the provisions of ORS 237.215 (3)(b) (1989 Edition).

(b) The maximum percentage used in calculating the annual amount of the life pension (nonrefund) of a judge member who meets the requirements of paragraph (a) of this subsection shall not exceed 45 percent plus 1.67 percent multiplied by the number of years of service as a judge that exceed 16 years and that were served on or before September 27, 1987.

(c) In computing the annual amount of the life pension of a judge who meets the requirements of paragraph (a) of this subsection, the board shall use the percentage specified by paragraph (b) of this subsection and the final average salary of the judge computed on the date of retirement, not the final average salary of the judge computed as of September 27, 1987. In making the computation under this subsection, the board shall use the definition of "final average salary" provided by ORS 238.535 as amended by section 2, chapter 625, Oregon Laws 1987. [Formerly 237.220; 1997 c.801 §19; 1999 c.317 §21; 2005 c.22 §179]

**238.538 Health benefit plans for certain retired judge members.** (1) A judge member who elects to retire under ORS 238.535 (1)(b):

(a) Shall continue to be eligible as a nonretired employee for health benefit plans contracted for under ORS 243.135 during the time that the judge member is serving as a pro tem judge under ORS 238.535 (1)(c); and

(b) Subject to availability of funding, shall continue to receive the monthly state contribution as payment of all or part of the cost of a health benefit plan during the time that the judge member is serving as a pro tem judge under ORS 238.535 (1)(c).

(2) A judge member receiving the monthly state contribution as payment of all or part of the cost of a health benefit plan under this section is not eligible for payments against the cost of Medicare supplemental insurance under ORS 238.420 until such time as the judge member is no longer serving as a pro tem judge under ORS 238.535 (1)(c). [2001 c.823 §6]

**238.540** [Renumbered 237.365 in 1995]

**238.545 Withdrawal of member account; retirement allowance of inactive judge member.** (1) Except as otherwise provided in this section, a judge member may withdraw from the Public Employees Retirement Fund the amount credited to the member account of the judge member if:

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

(b) The judge 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 Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust;

(c) The judge member has not attained 60 years of age; and

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

(2) If a judge member wishes to withdraw the member account balance under this section, the judge 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 judge 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 judge member separates from service.

(3) If a judge member who is eligible to withdraw as provided in subsection (1) of this section does not elect to withdraw, the member account of the judge member shall remain to the credit of the judge member, and the judge member is entitled to such death benefits and disability retirement allowance as ORS 238.500 to 238.585 provide. Before attaining 60 years of age, a judge member who is eligible to withdraw as provided in subsection (1) of this section but who does not withdraw must elect in writing to retire under either ORS 238.535 (1)(a) or (b). The election is irrevocable after the judge member attains 60 years of age. Any inactive judge member who fails to make the election provided for in this subsection prior to attaining 60 years of age shall be retired under the provisions of ORS 238.535 (1)(a). The service retirement allowance of an inactive judge member who retires under ORS

238.535 (1)(a) shall be a reduced service retirement allowance that is the actuarial equivalent of the service retirement allowance provided for in ORS 238.535 (1)(a). An inactive judge member who elects to retire under ORS 238.535 (1)(b) must meet all other requirements imposed by ORS 238.535 for retirement under ORS 238.535 (1)(b).

(4) If approved by the Chief Justice of the Supreme Court, an inactive judge member who elects to retire under ORS 238.535 (1)(b) pursuant to the provisions of subsection (3) of this section may commence to serve the pro tem service obligation imposed by ORS 238.535 before the judge member's date of retirement. If the Chief Justice determines, at any time after the judge member commences performing the pro tem service obligation, that the judge member has failed to perform the pro tem services in the manner required by ORS 238.535 (1)(c), and the judge member has not been relieved of the obligation to perform those services in the manner provided by ORS 238.535 (1)(c), the Chief Justice shall notify the Public Employees Retirement Board. If the judge member has not yet retired, the board shall calculate the service retirement allowance of the noncomplying judge member at the time of retirement in the manner provided by ORS 238.535 (1)(a). If the judge member has retired, the board shall recalculate the service retirement allowance of the noncomplying judge member in the manner provided by ORS 238.535 (1)(a), and the noncomplying judge member shall receive only that recalculated amount thereafter. An inactive judge member may be relieved of the pro tem service obligation imposed by ORS 238.535 (1)(c) in the same manner as provided in ORS 238.535 for retired judge members.

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

(6) ORS 238.105 and 238.115 (1) apply to a former judge member who has withdrawn the member account balance under this section. [Formerly 237.223; 1997 c.801 §20; 1999 c.317 §6; 2001 c.566 §1; 2001 c.945 §60]

**238.550** [Renumbered 237.370 in 1995]

**238.555 Disability retirement allowance.** (1)(a) A judge member who has not attained the age of 65 years and who is found to be mentally or physically incapacitated for an extended duration, as determined by medical examination by one or more physicians selected by the board, 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, shall be retired for disability and shall receive as a disability retirement allowance, payable monthly, a pension equal to the service retirement allowance to which the judge member would be entitled under ORS 238.535 (1)(a), had the judge member served as a judge continuously until attaining the age of 65 years, but not less than an annual amount equal to 45 percent of the final average salary, as defined in ORS 238.535 (2), of the judge member.

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

(2) A judge member who has six or more years of service as a judge, who has not attained the age of 65 years and who is found to be mentally or physically incapacitated for an extended duration, as determined by medical examination by one or more physicians selected by the board, and thereby unable to perform any work for which qualified, from cause other than injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, shall be retired for disability and shall receive as a disability retirement allowance, payable monthly, a pension equal to the service retirement allowance to which the judge member would be entitled under ORS 238.535 (1)(a) had the judge member served as a judge continuously until attaining the age of 65 years, but not less than an annual amount equal to 45 percent of the final average salary, as defined in ORS 238.535 (2), of the judge member.

(3) The effective date of the disability of a judge member shall not be determined by the board as prior to the last day for which the judge member performed service as a judge.

(4) No disability retirement allowance may be paid for any month in which the judge member received salary or sick leave benefits from the state.

(5) ORS 238.320 (4) and (5), 238.330 (3), 238.335 and 238.340 apply to retirement of a judge member for disability.

(6) A judge member who is retired under the provisions of ORS 1.310 is entitled to any applicable retirement allowance for which eligible under ORS 238.500 to 238.585. [Formerly 237.225]

**238.560** [Renumbered 237.375 in 1995]

**238.565 Beneficiary of judge; spouse's pension.** (1) For the purposes of this section, the beneficiary of the judge member shall be any person, or the personal representative of the estate of the judge member, or a trustee named by the judge member to execute an express trust, whom the judge member designates as a beneficiary by written desig-

nation duly acknowledged and filed with the board before the death of the judge member.

(2)(a) If a judge member who has six or more years of service as a judge dies before retiring, and the judge member is not an inactive judge member who is performing a pro tem service obligation under the provisions of ORS 238.545 (4), the surviving spouse of the judge member shall receive a life pension, payable monthly, equal to two-thirds of the service retirement allowance the judge member would have received under ORS 238.535 (1)(a) had the judge member retired on the date of death.

(b) If a judge member who has six or more years of service as a judge dies before retiring, and the judge member is an inactive member who is performing a pro tem service obligation under the provisions of ORS 238.545 (4), the surviving spouse of the judge member shall receive a life pension, payable monthly, equal to two-thirds of the service retirement allowance the judge member would have received under ORS 238.535 (1)(b) had the judge member retired on the date of death.

(c) If a surviving spouse receiving a pension under paragraph (a) or (b) of this subsection dies and the total amount received as pension by the surviving spouse is less than the amount credited to the member account of the judge member in the fund on the date of death of the judge member, the beneficiary shall receive a lump sum amount equal to the difference between the total amount received by the surviving spouse and the amount so credited to the member account of the judge member.

(d) If a judge member who has six or more years of service as a judge dies before retiring and has no surviving spouse, the beneficiary shall receive a lump sum amount equal to the amount credited to the member account of the judge member in the fund on the date of death of the judge member.

(e) If the surviving spouse of a judge member who dies before retiring is not entitled to a pension under paragraph (a) or (b) of this subsection, the surviving spouse shall receive a lump sum amount equal to the amount credited to the member account of the judge member in the fund on the date of death of the judge member.

(3)(a) If a judge member dies after retiring, the surviving spouse of the judge member shall receive a life pension, payable monthly, equal to two-thirds of the retirement allowance the judge member is receiving or is entitled to receive on the date of death.

(b) If a surviving spouse receiving a pension under paragraph (a) or (b) of this subsection dies and the total amount received as retirement allowance by the retired judge member and as pension by the surviving spouse is less than the amount credited to the member account of the judge member on the date of retirement of the judge member, the beneficiary shall receive a lump sum amount equal to the difference between the total amount received as retirement allowance and pension and the amount so credited to the member account of the judge member.

(c) If a judge member dies after retiring and has no surviving spouse, and the total amount received as retirement allowance by the retired judge member is less than the amount credited to the member account of the judge member on the date of retirement of the judge member, the beneficiary shall receive a lump sum amount equal to the difference between the total amount received as retirement allowance and the amount so credited to the member account of the judge member.

(4) At any time after becoming a judge member, but not later than the date on which the first payment on account of retirement is due, a judge member may elect to provide an addition to the pension of the surviving spouse of the judge member under subsection (3)(a) of this section by selecting a reduced retirement allowance for the judge member. The additional pension to the surviving spouse shall be the actuarial equivalent of the reduction in the retirement allowance of the judge member and, in no event, when added to the pension under subsection (3)(a) of this section, shall it exceed the reduced retirement allowance elected by the judge member.

(5) Any accrued retirement allowance due a retired judge member that is unpaid at the time of death of the judge member shall be paid to the surviving spouse of the judge member. If there is no surviving spouse, the accrued retirement allowance shall be paid to the beneficiary of the judge member. If there is no surviving spouse or beneficiary, the accrued retirement allowance shall be paid as provided in ORS 238.390 (2).

(6) Notwithstanding any other provision of this section, a judge member shall be considered to have died with no surviving spouse if:

(a) The judge member has entered into a prenuptial or antenuptial agreement with the spouse of the judge that provides that the spouse shall have no right or claim to a surviving spouse's pension; and

(b) The judge member has filed a copy of the prenuptial or antenuptial agreement with the board before the death of the judge member.

(7) The board shall not be liable for any payment made to a beneficiary by reason of a prenuptial or antenuptial agreement filed with the board under subsection (6) of this section unless the board has actual knowledge that the agreement has been revoked.

(8) A judge member may elect to have all or part of the pension that is payable to a surviving spouse under this section be paid to a former spouse of the judge member. The election may be made before or after the judge member retires. If a judge member makes an election under this subsection, the board shall pay the designated portion of pension to the former spouse for the life of the former spouse. If a judge member is married at the time an election is made under this subsection, the spouse of the judge member must give written consent to the election. An election under this subsection does not affect the amount of any additional pension elected by a judge member under subsection (4) of this section. If a judge member makes an election under this subsection and the judge member does not have a surviving spouse when the judge member dies, the former spouse shall receive a life pension for only that part of the pension specified in the election. If a judge member makes an election under this subsection and the judge member has a surviving spouse when the judge member dies:

(a) The surviving spouse shall receive no benefit if the judge member elected to have the entire pension payable under this section paid to the former spouse; or

(b) The surviving spouse shall receive that part of the pension not paid to the former spouse until the death of the former spouse. [Formerly 237.227; 1997 c.801 §21; 1999 c.317 §22; 2001 c.945 §61; 2003 c.625 §5; 2007 c.527 §1]

**238.570** [Renumbered 237.380 in 1995]

**238.575 Cost-of-living adjustments; ad hoc increase.** (1) Every monthly retirement allowance or pension payable to a judge member or surviving spouse of a judge member under ORS 238.500 to 238.585 shall be adjusted annually to reflect the percentage increase or decrease in the cost of living as provided in ORS 238.360.

(2) ORS 238.387 applies to judge members, and for that purpose the monthly retirement allowance referred to in ORS 238.387 shall be the monthly retirement allowance payable to a judge member or the monthly pension payable to the surviving spouse of a judge member under ORS 238.565 (3)(a). [Formerly 237.230; 2001 c.945 §71]

**238.580 Application of PERS laws to judges.** (1) ORS 238.005 (3) and (21), 238.025, 238.078, 238.082, 238.092, 238.115 (1), 238.250, 238.255, 238.260, 238.350, 238.380, 238.410, 238.415, 238.420, 238.445, 238.458, 238.460, 238.465, 238.475, 238.600, 238.605, 238.610, 238.618, 238.630, 238.635, 238.645, 238.650, 238.655, 238.660, 238.665, 238.670 and 238.705 and the increases provided by ORS 238.385 for members of the system who are serving as other than police officers or firefighters apply in respect to service as a judge member.

(2) This chapter applies in respect to persons described in ORS 238.505 (1) and in respect to service as a judge member only as specifically provided in ORS 238.500 to 238.585. [Formerly 237.233; 1999 c.317 §23; 2001 c.945 §62; 2005 c.152 §9]

**238.585 Use of creditable service by person who serves as both member and judge member; restoration of forfeited rights upon becoming judge member.** (1) A judge member who has creditable service as other than a judge member is entitled to the use of all creditable service as a judge member for the purpose of establishing eligibility under ORS 238.115, 238.125, 238.135 or any other provision of this chapter that requires a specified number of years of creditable service.

(2) A judge member who has creditable service as other than a judge member is entitled to use of all creditable service as other than a judge member for the purpose of establishing eligibility under the provisions of ORS 238.385, 238.415, 238.420 or any other provision of this chapter that is applicable to a judge member and that requires a specified number of years of creditable service.

(3) A member of the system other than a judge member who separates from all service entitling the person to membership in the system and who withdraws the amount credited to the member account of the member in the fund may restore all rights forfeited by the withdrawal in the manner specified by ORS 238.105 if the person becomes a judge member within five years after the date that the person is separated from all service entitling the person to membership in the system. [1995 c.658 §136; 2001 c.945 §63]

## ADMINISTRATION

### (Public Employees Retirement System)

**238.600 System established; legislative intent.** (1) A system of retirement and of benefits at retirement or death for employees of public employers hereby is established and shall be known as the Public Employees Retirement System. The Public Employees Retirement System consists of this chapter and ORS chapter 238A. It is the intent of the Legislative Assembly that the system be qualified and maintained under sections 401(a), 414(d) and 414(k) of the Internal Re-

venue Code as a tax-qualified defined benefit governmental plan.

(2) If the Public Employees Retirement System is terminated, or if contributions may no longer be made to the system, each member of the system has a nonforfeitable right to the benefits that the member has accrued as of the date of the termination, or as of the date that contributions may no longer be made to the system, to the extent that those benefits are funded. [Formerly 237.005; 1997 c.121 §2; 1999 c.317 §9; 2003 c.733 §55a; 2005 c.808 §1]

**238.601 Legislative findings and intent; administration of system.** The Legislative Assembly finds that the maintenance of a solid, affordable public employees retirement plan is essential to providing effective, efficient services to the citizens of Oregon by allowing the state and political subdivisions of the state to hire and retain employees who are committed to providing those services. It is the intent of the Legislative Assembly that the Public Employees Retirement Board, in performing its duties as trustee of the Public Employees Retirement Fund, recognize that the continued stability and viability of the Public Employees Retirement System depends on the ability of public employers and taxpayers to pay the costs of the system. Consistent with this intent, the board shall administer the system to create and maintain long-term stability and viability in the system, and shall act to achieve full funding for the benefits provided by the system, giving equal consideration to the interests of the public employer and the employee to the extent that treatment does not violate the fiduciary duties of the board. Nothing in this section shall be construed to impose a fiduciary duty on the board to consider the interests of public employers, and the board shall consider the interests of public employers only with respect to matters unrelated to the board's fiduciary duties as trustee of the fund. [2001 c.945 §2]

**238.605 Actuarial report on system.** At least once every two years the board shall cause a competent actuary familiar with public systems of retirement and death benefits to prepare a report evaluating the current and prospective assets and liabilities of the system and indicating its current and prospective financial condition. In preparing the report the actuary shall investigate the mortality, disability, service and other experience of the members of, and employers participating in the system, shall state fully the condition of the system, and shall make such recommendations as the actuary deems advisable to facilitate administering it properly. The board shall publish and distribute a summary of the report to all the public employers participating in the system. The board may authorize the transfer of any portion of the funds collected under the provisions of ORS 238.225 to carry out the recommendations of the actuary. [Formerly 237.285]

**238.607 Actuarial equivalency factor tables.** (1) Once every two calendar years, the Public Employees Retirement Board shall adopt actuarial equivalency factor tables for the purpose of computing the payments to be made to members and their beneficiaries, alternate payees and judge members and their spouses and beneficiaries. The tables may be adopted in conjunction with the system evaluation required by ORS 238.605. Tables adopted under this section must use the best actuarial information on mortality available at the time the board adopts the tables, as provided by the actuary engaged by the board. Actuarial equivalency factor tables adopted under this section become effective on January 1 of the calendar year following adoption of the tables by the board. All computations of payments must use the actuarial equivalency factor tables that are in effect on:

(a) The effective date of retirement for any member, judge member or alternate payee;

(b) The date that the first payment is due for any death beneficiary; or

(c) The date that the first payment is due for any recalculation of payments that is not attributable to error, including but not limited to recalculations under ORS 238.465 (2).

(2) The board may not defer or delay implementation of the actuarial equivalency factor tables adopted under this section. [2003 c.68 §2]

**Note:** Sections 3 and 4, chapter 68, Oregon Laws 2003, provide:

**Sec. 3.** The Public Employees Retirement Board shall first adopt actuarial equivalency factor tables under section 2 of this 2003 Act [238.607] to become effective January 1, 2005. [2003 c.68 §3]

**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 of the actuary's 2001 experience study as 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 all calculations applicable to the member under ORS 238.300 (2) and 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 May 9, 2003, 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, using all calculations applicable to the member under ORS 238.300 (2), 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 May 9, 2003, 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.

(6) This section and section 2, chapter 68, Oregon Laws 2003 [238.607], do not apply to the calculation of the retirement allowance and surviving spouse pension of a person who is a judge member on June 30, 2003, and who makes an election under ORS 238.565 (4). The board shall use the actuarial equivalency factor tables in effect on June 30, 2003, for the purpose of calculating the retirement allowance and surviving spouse pension of a person who is a judge member on June 30, 2003, and who makes an election under ORS 238.565 (4), whether that election is made before, on or after June 30, 2003. [2003 c.67 §40; 2003 c.68 §4; 2003 c.625 §16]

**238.608 Separate actuarial equivalency factor tables for certain police officers and firefighters.** (1) The Public Employees Retirement Board shall conduct a study of the life expectancy of members of the Public Employees Retirement System in the categories described in subsection (2) of this section. If the board determines that members in the categories described in subsection (2) of this section have a life expectancy that is substantially shorter than the life expectancy of members of the system generally, the board shall adopt and use separate actuarial equivalency factor tables under ORS 238.607 for the purpose of computing the payments to be made to members in the categories described in subsection (2) of this section and to the beneficiaries and alternate payees of those members. Any actuarial equivalency factor tables adopted under this section shall first become effective January 1, 2005.

(2) The provisions of this section apply to members of the system who are defined as firefighters under ORS 238.005 (9) or as police officers under ORS 238.005 (16)(a), (b), (d), (e), (f), (k), (L), (n), (o) or (p). [2003 c.68 §7; 2003 c.625 §18]

**238.610 Administrative expenses of system.** (1) The administrative expenses of the Public Employees Retirement System shall be paid from interest earned by the Public Employees Retirement Fund; provided, that if such interest be insufficient the expense in excess thereof shall be paid from the contributions which this chapter and ORS 238A.220 and 238A.240 require participating employers to pay into the Public Employees Retirement Fund. The Public Employees Retirement Board by rule may establish procedures for recovering administrative costs from members for services provided in estimating retirement benefit amounts and processing payments if the board determines that the services requested by an individual member result in extraordinary costs to the system.

(2) In order to facilitate financing the establishment and administration of the system the board may designate fiscal periods and may provide that extraordinary expenses incurred during one such period, such as expenses for equipment and actuarial studies, may, for purposes of equitably distributing part of the burden of the expenses, be apportioned to subsequent fiscal periods in such manner as to the board seems equitable.

(3) For each fiscal period designated by the board there shall be deducted from the interest earned by the fund, the administrative expenses of the system for that period; provided, that if such interest be insufficient for such purpose, the excess expense shall be paid by deducting from the account of each employer participating in the system that fraction of the administrative expense of the system for that period which the employer's total contribution to the fund for the period is of the sum of all the employers' contributions to the fund for the period.

(4) Amounts payable as refunds and retirement allowances shall not for any purpose be deemed expenses of the board and shall not be included in its biennial departmental budget. [Formerly 237.291; 2003 c.105 §5; 2003 c.733 §56]

**238.615 Revolving fund for payment of administrative expenses.** (1) On request from the Public Employees Retirement System, the Oregon Department of Administrative Services shall draw warrants on amounts authorized for payment of the administrative expenses of the system for use

by the system as a revolving fund. The revolving fund shall not exceed the aggregate sum of $5,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the system may draw checks.

(2) The revolving fund may be used by the system to pay travel expenses for employees of the system and for any consultants or advisors for whom payment of travel expenses is authorized by law, or advances therefor, or for salary advances or payment to terminating employees, or for receipt and disbursement of funds made available to the system through vocational rehabilitation training programs.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the system and by the department. When such claims have been approved, a warrant covering them shall be drawn in favor of the system and charged against the appropriate fund or account and shall be used to reimburse the revolving fund. [Formerly 237.293]

**238.618 Exclusion of employer or employee from system to maintain tax qualification.** Notwithstanding any other provision of law, the Public Employees Retirement Board may deny or terminate participation by an employer in the Public Employees Retirement System, and may deny or terminate membership in the system for any employee, if the board determines that allowing participation by the employer or membership for the employee would cause the system or the Public Employees Retirement Fund to lose qualification as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [1999 c.317 §3]

**238.620** [1995 c.296 §2; repealed by 1999 c.317 §14]

**238.625** [1995 c.296 §3; 1997 c.179 §20; repealed by 1999 c.317 §14]

**(Public Employees Retirement Board)**

**238.630 Board generally; rules.** (1) The governing authority of the system shall be a board known as the Public Employees Retirement Board and consisting of five members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Except as otherwise provided in ORS 238.640, the term of each member shall be three years. The Governor shall designate one member to serve as chairperson, who shall serve as chairperson at the pleasure of the Governor.

(2) The board shall have:

(a) The powers and privileges of a corporation, including the right to sue and be sued in its own name as such board; and

(b) The power and duty, subject to the limitations of this chapter and ORS chapter 238A, of managing the system.

(3) The board:

(a) Shall arrange for actuarial service for the system;

(b) Shall employ a director;

(c) Shall create such other positions as it deems necessary to sound and economical administration of the system, which positions the director shall fill by appointment;

(d) Shall, with the approval of the Director of the Oregon Department of Administrative Services, and as otherwise provided by law, fix the salaries of all persons employed for purposes of administering the system;

(e) Shall publish and distribute to all employer and employee members of the system an annual report including a summary of investments of moneys in the fund, investment earnings, significant legislative or administrative changes in the system and other pertinent information on the operation of the system for the preceding year;

(f) Shall determine the actuarial equivalency of optional forms of retirement allowances and pensions and adopt for that purpose the necessary actuarial equivalency factor tables in the manner provided by ORS 238.607, which shall constitute a part of the system; and

(g) Shall adopt rules and take all actions necessary to maintain qualification of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. Rules under this paragraph may impose limits on contributions to the system, limits on benefits payable from the system and other limitations or procedures required or imposed under federal law or regulation for the purpose of qualification of the Public Employees Retirement System and Public Employees Retirement Fund under the Internal Revenue Code as a governmental retirement plan and trust.

(4) The board established by this section shall succeed to all the duties and prerogatives of the Public Employees Retirement Board created by chapter 401, Oregon Laws 1945, in relation to the Public Employees Retirement Fund, and in addition shall perform all duties required of it by ORS 237.950 to 237.980, in regard to moneys payable to or from such fund.

(5) The board shall identify by rule those records that must be maintained by participating public employers for the purposes of subsection (3)(g) of this section. A participating public employer shall maintain records for all employees who are members of the system as required by board rules, and shall provide that information to the board upon request. [Formerly 237.251; 1997 c.121 §3; 2001 c.945 §6; 2003 c.68 §8; 2003 c.69 §1; 2003 c.733 §57]

**238.635 Board consideration of system goals and objectives.** The Public Employees Retirement Board shall include a study of accounting, reporting and related subjects when considering the goals and objectives of the Public Employees Retirement System. [Formerly 237.253]

**238.640 Qualifications of board members.** (1) All members of the Public Employees Retirement Board must be at least 21 years of age, be citizens of the United States and have been residents of the state for at least two years immediately preceding appointment to the board.

(2) One member of the board must be:

(a) An employee of the state in a management position at the time of appointment and throughout the term of appointment; or

(b) A person who holds an elective office, by election or appointment, in the governing body of a participating public employer, other than the state.

(3) One member must be a public employee, as defined in ORS 243.650, who is in an appropriate bargaining unit, as defined in ORS 243.650, and who has an exclusive representative at the time of the member's appointment and throughout the term of the member. Membership on the board does not affect the status of the person as a public employee, as defined in ORS 243.650.

(4) Three members of the board must have experience in business management, pension management or investing. A member appointed under this subsection may not be a member of the Public Employees Retirement System or a beneficiary of a member of the system, and may not have any interest in benefits provided by the system.

(5) Notwithstanding the qualifications established for members of the board under this section, all members of the board have the same fiduciary duties and must exercise the same degree of independent judgment.

(6) Any vacancy on the board shall be filled by appointment for the unexpired term of the member replaced. Members of the board may be reappointed.

(7) Except as provided in subsection (8) of this section, a member of the board is entitled to compensation and expenses as provided in ORS 292.495 from the Public Employees Retirement Fund.

(8) Any member of the board who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the board. The wages or salary of the member shall not be reduced during periods that the member is released from duty for the purpose of conducting the official business of the board. The board shall reimburse a public employer for the cost of continuing the wages or salary of the member while the member is released from duty under this subsection. A member who continues to receive wages or salary under the provisions of this subsection shall not receive compensation under ORS 292.495, but shall receive travel and other expenses provided for under ORS 292.495. The provisions of this subsection do not apply to any person who is a member of the board and who holds another office that is subject to the provisions of section 10, Article II of the Oregon Constitution, prohibiting the holding of more than one lucrative office. [Formerly 237.255; 1997 c.324 §1; 2001 c.945 §6a; 2003 c.69 §2]

**238.645 Director and staff.** The system shall be administered, subject to the limitations of this chapter, ORS chapter 238A and the budget prescribed by the board, by the director provided for by ORS 238.630 and by a staff which the board authorizes and which the director appoints. The director shall hold that position during the discretion of the board and the members of the staff shall hold their respective positions during the discretion of the director. No member of the staff may be removed from it, however, in a manner contrary to the laws of the state regarding civil service. The director shall furnish such bond as is required by the board. [Formerly 237.259; 2003 c.733 §58]

**238.646 Authority of Director of Public Employees Retirement System to require fingerprints.** For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Director of the Public Employees Retirement System may require the fingerprints of a person who:

(1)(a) Is employed or applying for employment by the system; or

(b) Provides services or seeks to provide services to the system as a contractor, vendor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology

systems or the information contained in the systems;

(b) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(c) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property;

(d) That has mailroom duties as the primary duty or job function of the position;

(e) In which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, personal financial information or criminal background information;

(f) In which the person provides security, design or construction services for government buildings, grounds or facilities; or

(g) In which the person has responsibility for auditing within the system. [2005 c.730 §76]

**Note:** 238.646 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 238 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**238.650 Rules of board; written plan document.** (1) Subject to the limitations of this chapter and ORS chapter 238A, the Public Employees Retirement Board shall, from time to time, establish rules for transacting its business and administering the system in accordance with the requirements of ORS chapter 183.

(2) All rules adopted by the board become part of the written plan document of the Public Employees Retirement System for the purpose of the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [Formerly 237.263; 1999 c.317 §1; 2003 c.733 §59]

**238.655 Procedure for board hearings.** In order to determine any facts necessary to the administration of the retirement system, the board may conduct hearings, subpoena and examine witnesses and require any person having custody thereof to bring before the board any book, record, document, certificate, writing, article or thing necessary to a determination of facts. The chairperson or member of the board acting in such capacity shall have authority to administer oaths. The procedure in such hearings shall be informal. Fees shall not be paid to witnesses who are public officers or employees, whether or not their employer is participating in the system. No public employer shall make deduction from the compensation of public officers or employees because of absence from their respective positions in order to be examined as witnesses before the board. The fees of other witnesses and mileage of any witness shall be as allowed by law to witnesses in ORS 44.415 (2). Fees and mileage and all other necessary disbursements in connection with a hearing shall be paid by the public employer whose failure or refusal to supply any facts requested of it by the board made necessary such hearing. [Formerly 237.315]

**238.657 Board counsel.** 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 chapter 67, Oregon Laws 2003. [2003 c.67 §14a; 2005 c.22 §180]

**Note:** Legislative Counsel has substituted "chapter 67, Oregon Laws 2003," for the words "this 2003 Act" in section 14a, chapter 67, Oregon Laws 2003, compiled as 238.657. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 2003 Comparative Section Table located in Volume 20 of ORS.

**(Public Employees Retirement Fund)**

**238.660 Fund generally; board review of legislative proposals.** (1) The Public Employees Retirement Fund is declared to be a trust fund, separate and distinct from the General Fund, for the uses and purposes set forth in this chapter and ORS chapter 238A and ORS 237.950 to 237.980, and for no other use or purpose, except that this provision shall not be deemed to amend or impair the force or effect of any law of this state specifically authorizing the investment of moneys from the fund. Interest earned by the fund shall be credited to the fund. Except as otherwise specifically provided by law, the Public Employees Retirement Board established by ORS 238.630 is declared to be the trustee of the fund. Consistent with the legislative intent expressed in ORS 238.601, and to the extent it is consistent with the board's fiduciary duties, the board shall give equal consideration to the interests of participating public employers and the interests of members. Nothing in this subsection shall be construed to impose a fiduciary duty on the board to consider the interests of public employers, and the board shall consider the interests of public employers only with respect

to matters unrelated to the board's fiduciary duties as trustee of the fund.

(2) Until all liabilities to members and their beneficiaries are satisfied, assets of the fund may not be diverted or otherwise put to any use that is not for the exclusive benefit of members and their beneficiaries. This subsection does not limit return of employer contributions for health benefits in the manner provided by ORS 238.410, 238.415 and 238.420 upon satisfaction of all liabilities for health benefits under those sections.

(3) The State of Oregon and other public employers that make contributions to the fund have no proprietary interest in the fund or in the contributions made to the fund by them. The state and other public employers disclaim any right to reclaim those contributions and waive any right of reclamation they may have in the fund. This subsection does not prohibit alteration or refund of employer contributions if the alteration or refund is authorized under this chapter or ORS chapter 238A and is due to erroneous payment or decreased liability for employer contributions under the system. This subsection does not prohibit the offset of contributions to the individual account program under ORS 238.229 (5).

(4) The board may accept gifts of money or other property from any source, given for the uses and purposes of the system. Money so received shall be paid into the fund. Money or other property so received shall be used for the purposes for which received. Unless otherwise prescribed by the source from which the money or other property is received, the money shall be considered as income of the fund and the other property shall be retained, managed and disposed of as are investments of the fund.

(5) All moneys paid into the fund shall be deposited with the State Treasurer, who shall be custodian of the fund and pay all warrants drawn on it in compliance with law. No such warrant shall be paid until the claim for which it is drawn is first approved by the director or designee and otherwise audited and verified as required by law. Monthly, each beneficiary's gross benefit shall be calculated; applicable deductions made for taxes, insurance and other withholdings; and the net amount paid to the beneficiary, by check or by electronic funds transfer (EFT) to the beneficiary's bank. A deduction summary shall be made, by type, and a check issued for the aggregate of each type for transmittal to the appropriate taxing jurisdiction, vendor or institution. A voucher shall be prepared and transmitted to the Oregon Department of Administrative Services for reimbursement of the checking account, and the department shall draw a warrant on the State Treasurer, payable to the Public Employees Retirement System, for the amount thereof.

(6) Any warrant, check or order for the payment of benefits or refunds under the system out of the fund issued by the board which is canceled, declared void or otherwise made unpayable pursuant to law because it is outstanding and unpaid for a period of more than two years, may be reissued by the board without bond if the payee is located after such warrant, check or order is canceled, declared void or otherwise made unpayable pursuant to law.

(7) All references in this chapter to checks or warrants are subject to the provisions of ORS 291.001.

(8) The board shall provide for an annual audit of the retirement fund and for an annual report to the Legislative Assembly and to all members of, retirees of, and all employers participating in, the system. The annual report must contain financial statements prepared in accordance with generally accepted accounting principles. The financial statements must include the report of any independent auditor.

(9) The board may review legislative proposals for changes in the benefits provided under this chapter and ORS chapter 238A and may make recommendations to committees of the Legislative Assembly on those proposed changes. In making recommendations under this subsection, the board acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommendations under this subsection on the Oregon Public Service Retirement Plan established by ORS chapter 238A, the board shall seek to maintain the balance between benefits and costs, and the relative risk borne by employers and employees with respect to investment performance, reflected in ORS chapter 238A as in effect on January 1, 2004.

(10) The board shall appoint a committee to advise the board on legislative proposals for changes in the benefits provided under this chapter and ORS chapter 238A. The committee must have an equal number of members representing labor and management. No costs of reviewing legislative proposals and making recommendations under this subsection may be charged to the fund. Any member of the committee who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the committee, and the wages or salary of the member may not be reduced by the employer during periods that the member is released from duty for the purpose of conducting the offi-

cial business of the committee. [Formerly 237.271; 1997 c.121 §1; 1999 c.317 §8; 1999 c.407 §6; 2001 c.945 §3; 2003 c.17 §2; 2003 c.625 §29; 2003 c.733 §60; 2009 c.889 §2]

**Note:** Section 44e, chapter 733, Oregon Laws 2003, provides:

**Sec. 44e.** Until June 30, 2005, the Public Employees Retirement System may use moneys of the Public Employees Retirement Fund that are unrelated to the Oregon Public Service Retirement Plan to pay the administrative costs of the individual account program. The authority created by this section is in addition to and not in lieu of the authority of the system to use moneys attributable to the individual account program to pay administrative expenses of that program. Not later than February 1, 2010, all moneys used under this section to pay the costs of administering the individual account program must be repaid to the fund from individual accounts by means of adjustments to those accounts under ORS 238A.350 (1). [2003 c.733 §44e; 2005 c.808 §20]

**238.661 Moneys in fund appropriated to board.** Moneys in the Public Employees Retirement Fund are continuously appropriated to the Public Employees Retirement Board to carry out the purposes of this chapter and ORS chapter 238A. [2001 c.716 §10; 2003 c.733 §61]

**238.665 Contributions and interest not included in board's budget.** Contributions required by this chapter or ORS chapter 238A to be placed in the retirement fund, and interest required to be allocated to the member accounts of members of the retirement system and to participating employers, shall not be included in the biennial departmental budget of the board. [Formerly 237.279; 2001 c.945 §64; 2003 c.733 §62]

**238.667** [2001 c.945 §17; repealed by 2003 c.67 §38]

**238.670 Reserve accounts in fund.** (1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(c) To provide for any other contingency that the board may determine to be appropriate.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS

291.371 (1), for its review and comment. [Formerly 237.281; 2001 c.945 §5]

**238.672 Crediting of earnings to employer upon death or retirement of member.** Upon the death or retirement of a member of the Public Employees Retirement System, the Public Employees Retirement Board shall credit earnings to the participating public employer or employers that employed the member. The board shall credit earnings to the amounts charged to each employer by reason of the death or retirement. The earnings rate used by the board shall be the same rate that the board uses for crediting member accounts at the time the charge is made. [2001 c.945 §21]

**238.675 Transfer of unclaimed death benefit or account balance to other account or reserve.** (1)(a) Any benefit payment that is payable as the result of the death of a member may be transferred by the Public Employees Retirement Board to another account or reserve in the fund if:

(A) The total benefit payable to the beneficiaries designated by the deceased member is less than $250 in amount;

(B) Ten years have passed since the death of the member; and

(C) No claim has been made for the benefit payment.

(b) Amounts transferred under this section shall be credited to accounts or reserves in the fund designated by the board in its discretion.

(c) The board shall establish procedures for the filing of a delayed claim by a beneficiary of a deceased member who would otherwise be entitled to receive a benefit payment. Delayed claims may be filed after the 10-year period provided for in paragraph (a) of this subsection.

(2)(a) The Public Employees Retirement Board may transfer the amount credited to the member account of a former member to another account or reserve in the fund if:

(A) The total amount credited to the member account of the former member is less than $250;

(B) The membership of the person in the system has been terminated under the provisions of ORS 238.095 (2) or the membership of the person in the pension program or individual account program has been terminated under ORS 238A.110 or 238A.310; and

(C) Ten years have passed since the former member ceased to be a member of the system and no claim has been made for payment of the amount credited to the member account of the former member.

(b) Amounts transferred under this section shall be credited to reserves or accounts in the fund designated by the board in its discretion.

(c) The board shall establish procedures for the filing of a delayed claim by a former member of the system who would otherwise be entitled to receive amounts credited to the member account of the former member. Delayed claims may be filed after the 10-year period provided for in paragraph (a) of this subsection. [Formerly 237.295; 2001 c.945 §65; 2003 c.733 §63]

## (Integration of Other Retirement Systems)

**238.680 Integration of other retirement systems.** (1) Employees whose membership in a previously established retirement system excludes them from membership in the system established by this chapter may apply to the Public Employees Retirement Board in writing for the former system to be integrated into the latter and for them to be allowed to become members of the latter. Whenever two-thirds of them and their employer, through its governing body, so apply, the board:

(a) May cause a financial and actuarial investigation of the proposed integration to be made, the cost of which shall be borne by the previously established system; and

(b) May upon such terms as are set forth in a contract between the board and the employer, integrate the previously established system into the system established by this chapter.

(2) Nothing in this chapter nor any action taken pursuant thereto shall reduce or impair the benefits which employees who are receiving benefits from a retirement system integrated with the system provided by this chapter would have received had the integration not been effected.

(3) A retirement plan which has been adopted by an association organized pursuant to the provisions of ORS chapter 239 (1997 Edition), prior to April 8, 1953, and which exists on April 8, 1953, may be integrated into the retirement system established by this chapter in the manner prescribed in this subsection and not otherwise:

(a) A proposed form of contract setting forth all the terms, conditions and provisions of the integration shall be prepared by, and adopted by a majority vote of, the board of trustees of the association and approved by the board of directors of the school district in which the association is organized.

(b) The proposed contract so adopted and approved shall be submitted to a vote of the active members of the association. In submitting a proposed contract, an association shall follow the procedure provided in its

bylaws for the promulgation and adoption of bylaws.

(c) Adoption by the membership of an association of a proposed contract of integration shall be by an affirmative vote of not less than two-thirds of the active members of the association at the time of the election.

(d) The proposed contract so formulated, approved and adopted shall be submitted to the retirement board created by ORS 238.630 for acceptance or rejection. In the event that the proposed contract is accepted by the board, then the integration shall proceed in accordance with the provisions of the contract.

(e) No contract of integration shall in any way alter, impair or adversely affect any rights, benefits or privileges which have vested under the provisions of law in a member of an association by virtue of retirement, either on account of disability or on account of having attained the retirement age, prior to the effective date of the contract of integration.

(f) A contract of integration formulated, approved and adopted as provided in this subsection shall contain provisions whereby there will be provided to each active member of the association who becomes a member of the retirement system created by this chapter pursuant to a contract of integration, retirement benefits, in addition to the retirement benefits accruing for subsequent service under the Public Employes' Retirement Act of 1953, determined in compliance with sound actuarial practice and with the findings of an accredited actuary on the basis of the reserves of the members at the time of the integration.

(g) A contract of integration shall likewise provide that any active member of an association which integrates with the retirement system may elect at the time of the integration as to whether the member shall obtain a refund of the amount standing to the credit of the member on the books of the association at the time of the integration. In the event that a member so elects, then the amount standing to the credit of the member shall be refunded and the additional benefits provided under paragraph (f) of this subsection shall not be available to the member to whom the refund is made.

(4) If a public employer applies for inclusion of a class of employees under ORS 238.035, application for integration under subsection (1) of this section shall be made by the employer and by two-thirds of the class of employees who are to become members of the system, or if the class designated under ORS 238.035 is covered by a collective bargaining agreement, application for the class shall be approved under the terms of the collective bargaining agreement.

(5) If a public employer entering into an integration contract under the provisions of this section continues to maintain the public employer's previously established system for the purpose of providing benefits to some or all of the employer's employees who become members of the system under the integration contract, the board may allow an employee or alternate payee to waive the right to receive all other benefits that would otherwise be paid under this chapter if:

(a) The employee or alternate payee elects to receive a refund of accumulated member contributions along with interest credited to those contributions at the time of refund; and

(b) The employer certifies to the board that the waiver of benefits other than the refund of member contributions is required as a condition of the employee's or alternate payee's receipt of benefits under the previously established system.

(6) A waiver under subsection (5) of this section must be made before an employee's effective date of retirement or the effective date of an alternative payee's election to commence receiving payments. The waiver is irrevocable as to the benefits waived and applies to all future payment of those benefits that would otherwise be made to the employee, the alternate payee or the beneficiaries of the employee or alternate payee. The provisions of subsection (5) of this section apply only to:

(a) Employees of the public employer who become members of the system under the provisions of the integration contract and who are participants in the previously established system of the public employer at the time the integration contract goes into effect; and

(b) Alternate payees of employees described in paragraph (a) of this subsection. [Formerly 237.051; 1997 c.551 §1; 1999 c.130 §6]

**238.685 Method of payment of unfunded obligation under integration contract.** (1) The school district, which is or expects to become a party to a contract of integration described in ORS 238.680 (3), may provide for payment of all or any part of its unfunded obligation for previous service costs with respect to the association by any one or a combination of the following methods:

(a) By agreeing to pay such portion of the obligation to the Public Employees Retirement System over a period of not to exceed 40 years, together with an appropriate rate of interest as determined by the Public

Employees Retirement Board and the board of directors of the school district.

(b) By issuing one or more series of general obligation bonds for the estimated amount of such portion of the obligation and paying it from the proceeds or interest thereon. Except as provided in subsection (2) of this section, the initial authorization for the original issue of such bonds shall require approval of the electors of the district and shall otherwise conform to all requirements of law governing the issuance, sale, redemption, refunding and refinancing of bonds by the school district, the retention, segregation and use of bond proceeds and the levy of taxes for their payment.

(c) By issuing other notes, contracts or evidences of indebtedness for the estimated amount of such portion of the obligation and paying it therewith or from the proceeds or interest thereon. The interest rate on such notes, contracts or evidences of indebtedness shall be such as the board of directors of the school district finds is reasonably competitive with interest rates on bonds which could be issued pursuant to paragraph (b) of this subsection.

(d) By contracting with an insurance company authorized to write annuity contracts in this state to assume and pay the pensions of retired, active or former members of the association.

(2) Such agreement, bonds, notes, contracts or evidences of indebtedness, or any part of them, may be issued or entered into without an election, but in such case:

(a) To the extent the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness are paid from operating taxes within the district's permanent tax rate limit, the school district shall each year divide its operating taxes into two portions, both within the district's permanent tax rate limit, and one of such portions shall be the amount used to pay the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness for such year and the proceeds of such portion shall not be used for other purposes; and

(b) To the extent the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness are paid from revenues other than operating tax proceeds, the school district need not divide its levy as provided in paragraph (a) of this subsection and the principal and interest may be paid out of such other revenues.

(3) Part or all of the agreement, bonds, notes, contracts or evidences of indebtedness authorized by this section may be issued prior to or after the execution of the contract of integration. The validity or enforceability thereof shall not be affected by the terms of the contract of integration or by whether operating taxes are properly apportioned as provided in subsection (2)(a) of this section. [Formerly 237.053; 1997 c.541 §359; 2001 c.945 §81]

**238.690 Integration of retirement plan of mass transit district.** (1) A retirement plan that has been adopted by a mass transit district organized under ORS 267.010 to 267.390 situated in a metropolitan statistical area with a population exceeding 400,000 may be integrated with, or the district may become a participant in, the Public Employees Retirement System in the manner prescribed in subsection (2) of this section.

(2)(a) A proposed form of contract setting forth all the terms, conditions and provisions of the integration or participation shall be a mandatory subject of bargaining subject to the provisions of ORS 243.650 to 243.782.

(b) The proposed contract shall be submitted to a vote of the employees of the mass transit district, or the members of the affected bargaining unit of the applicable labor organization, and the board of directors of the mass transit district. In submitting a proposed contract to its members, the labor organization shall follow the procedure provided in its bylaws for the promulgation and adoption of bylaws.

(c) Adoption by the employees or members of the affected bargaining unit of the applicable labor organization of the proposed contract of integration or participation shall be by an affirmative vote of not less than two-thirds of the affected employees or active members of the affected bargaining unit of the applicable labor organization at the time of the election.

(d) The proposed contract so formulated, approved and adopted shall be submitted to the Public Employees Retirement Board. The board may exercise its authority to negotiate and enter into a contract with the mass transit district that would accomplish the integration or participation without adversely affecting the current operational and capital requirements of the mass transit district. The board may not enter into any contract that prevents those adverse effects by adjusting the level of benefits received by any of the employees of the mass transit district.

(e) A contract of prospective participation does not in any way alter, impair or adversely affect any rights, benefits or privileges that have vested under the provisions of law or collective bargaining agreement in an employee of a mass transit district by virtue of retirement, either on account of disability or on account of having attained

the retirement age, prior to the effective date of the contract of integration or participation.

(f) When a public employer enters into a contract with the board under this section, the public employer shall agree to eventually extend coverage under this chapter to all eligible employees of the employer through subsequent contracts with the board.

(3) For the purposes of this section, "metropolitan statistical area" has that meaning given that term in ORS 267.010. [Formerly 237.037; 2009 c.11 §20]

**(Bonding of Pension Liabilities)**

**238.692 Definitions for ORS 238.692 to 238.698.** As used in ORS 238.692 to 238.698:

(1) "Pension liability" means:

(a) Monetary obligations of a participating public employer for which the employer is or will be required to transmit amounts to the Public Employees Retirement Board under the provisions of ORS 238.225, including any obligations arising out of an integration contract under ORS 238.680, or any other liability of a public body that is attributable to an obligation to pay pensions or other retirement benefits to officers or employees of the public body, whether active or retired; and

(b) Monetary obligations of a public employer arising out of an integration contract under ORS 238.680 for which the employer is required to transmit amounts to the Public Employees Retirement Board.

(2) "Public body" has the meaning given that term in ORS 287A.001.

(3) "State agency" means any officer, board, commission, department, division or institution in the administrative branch of state government. [2001 c.945 §23; 2007 c.783 §77]

**238.694 Certain public bodies authorized to issue bonds to finance pension liabilities; revenue bonds.** (1) The Legislative Assembly finds that authorizing issuance of revenue bonds to finance pension liabilities may reduce the cost of public pensions to taxpayers and that the reduction of those costs to taxpayers is a matter of statewide concern.

(2) Notwithstanding the limitation on indebtedness in ORS 287A.105 or any other limitation on indebtedness or borrowing under state or local law, for the purpose of obtaining funds to pay the pension liability of a public body, the governing body of a public body may authorize and cause the issuance of revenue bonds under ORS chapter 287A.

(3) The governing body of a public body may pledge the full faith and credit and taxing power of the public body to the payment of the principal and interest on bonds issued under ORS 238.692 to 238.698, and any premium on those bonds.

(4) Unless the charter of a county provides a lower limit, a county may issue revenue bonds to finance pension liabilities in an amount that does not exceed five percent of the real market value of the taxable property within the boundaries of the county.

(5) Revenue bonds authorized under this section need not comply with the procedure specified in ORS 287A.150.

(6) A public body that issues revenue bonds under this section may also issue revenue bonds for the purpose of refunding the bonds.

(7) A public body may enter into indentures or other agreements with trustees or escrow agents for the issuance, administration or payment of bonds authorized under this section. [2001 c.945 §24; 2003 c.746 §8; 2005 c.443 §2; 2007 c.783 §78]

**238.695 Intergovernmental agreements for collective issuance, administration or payment of bonds.** (1) Public bodies may enter into intergovernmental agreements for the collective issuance, administration or payment of bonds authorized under ORS 238.694. An agreement for collective issuance, administration or payment of bonds under this subsection may provide for the contribution and pooling of the assets of the public bodies as security for the bonds, and may make provisions for such other matters as the public bodies determine convenient. Notwithstanding ORS 190.080, any intergovernmental entity created by public bodies under this section shall have the power to issue bonds as described in ORS 238.694. The bonds may be issued and sold as parity bonds, issued and sold individually or issued and sold in such combinations or forms as determined to be appropriate by the public bodies.

(2) Proceeds of bonds sold under an intergovernmental agreement entered into under this section, and any other funds or assets of a public body, together with interest or earnings on the proceeds, funds and assets, may be consolidated into one or more funds or accounts and may be pledged to the holders of the bonds.

(3) Public bodies may enter into indentures or other agreements with trustees or escrow agents for the issuance, administration or payment of bonds pursuant to an intergovernmental agreement entered into under this section.

(4) The State Treasurer may cooperate with, assist and provide recommendations to public bodies, and any intergovernmental entity created by public bodies under this sec-

tion, relating to all matters involved in the issuance, administration and payment of bonds. Any expenses incurred by the State Treasurer in providing assistance to public bodies under this section may be paid as an administrative expense of the public body from the proceeds of the bonds issued with the assistance of the State Treasurer. [2001 c.945 §25; 2007 c.783 §79]

**238.696 Debt service trust fund.** (1) A public body, or a group of public bodies that enter into an intergovernmental agreement under ORS 238.695, may establish a debt service trust fund for the purpose of paying the principal and interest on bonds issued under ORS 238.692 to 238.698. The trustee of the debt service trust fund shall hold the moneys paid into the trust fund solely for the purpose of paying the principal and interest on bonds issued under ORS 238.692 to 238.698 and for paying the administrative costs of the trust fund.

(2) Moneys held in a debt service trust fund are subject to the limitations on investment imposed by ORS 294.033 and 294.035.

(3) A public body, or a group of public bodies that enter into an intergovernmental agreement under ORS 238.695, that has established a debt service trust fund under this section may not divert or pledge any moneys paid into the trust fund for any purpose other than the purpose specified in subsection (1) of this section until the total amount of principal and interest on bonds issued by the public body or under the intergovernmental agreement, and any premium on those bonds, is paid. [2001 c.945 §26; 2007 c.783 §80]

**238.698 Funds diversion agreement.** (1) A public body, or a group of public bodies that enter into an intergovernmental agreement under ORS 238.695, that receives funds from any state agency may enter into a funds diversion agreement with the state agency for the purpose of paying the principal and interest on bonds issued under ORS 238.692 to 238.698, and any premium on those bonds. A diversion agreement entered into under this section must provide that:

(a) Moneys payable to the public body or group of public bodies by the state agency from appropriations from the General Fund or any other source of moneys will be paid directly to a debt service trust fund established under ORS 238.696 in amounts equal to the debt service owed by the public body or group of public bodies;

(b) The state agency must pay the amounts required under the funds diversion agreement to the debt service trust fund established under ORS 238.696 pursuant to the schedule specified in the agreement before paying any other amounts to the public body or group of public bodies;

(c) The agreement is irrevocable; and

(d) The agreement will remain in effect until all the bonds issued by the public body or under the intergovernmental agreement are mature or redeemed.

(2) If for any reason a state agency that has entered into a funds diversion agreement is not able to pay moneys to a debt service trust fund as contemplated by the agreement, the state agency shall give notice to the public body or group of public bodies within 30 days after the state agency is aware that the moneys will not be paid.

(3) Nothing in this section, or in any funds diversion agreement entered into by a state agency under this section, may in any manner obligate the state or any state agency:

(a) To pay any amount that a public body is not otherwise entitled to receive under law; or

(b) To pay any principal or interest on bonds issued under ORS 238.692 to 238.698. [2001 c.945 §27; 2007 c.783 §81]

**(Enforcement)**

**238.700 Enforcement of requirements of ORS chapters 238 and 238A.** All provisions of ORS 238.655, 238.705, 238.710 and 238.715 hereby are made applicable for enforcement of the requirements of this chapter and ORS chapter 238A. [Formerly 237.300; 1997 c.249 §71; 2003 c.733 §64]

**238.705 State departments to remit contributions and furnish reports.** (1) All public employers that are members of the system shall promptly and regularly remit to the Public Employees Retirement Board all contributions required of them by law and furnish all reports required by the board.

(2) Any public employer delinquent in remitting contributions shall be charged interest on the total amount of contributions due from it at the rate of one percent per month or fraction thereof during which the public employer is delinquent. Interest so paid shall be deposited in the Public Employees Retirement Fund and shall be used by the board in paying administrative expenses of the system.

(3) If any state officer or agency fails to remit any contribution or other obligation required by law, the Public Employees Retirement Board, within 30 days after the date the request therefor has been made by it by registered mail or by certified mail with return receipt, may certify to the Oregon Department of Administrative Services the fact of such failure and the amount of the delinquent contribution or obligation, together with its request that such amount be set

over from funds of the delinquent officer or agency to the credit of the Public Employees Retirement Fund. A copy of such certification and request shall be furnished the delinquent officer or agency. The department shall, within 10 days after receipt of the request of the board, approve the payment of such amount by the delinquent officer or agency from funds allocated to the officer or agency for the current biennium and draw a warrant for payment of the amount of the contribution or obligation due out of funds in the State Treasury allocated to the use of the delinquent officer or agency.

(4) If any public employer other than a state agency fails to remit any contribution or pay any other obligation due under this chapter or ORS chapter 238A, the board may certify to the department the fact of such failure. Upon receipt of the certification the department shall withhold payment to the public employer of any revenues or funds in the State Treasury in which the public employer is entitled by law to share and which have been apportioned to the public employer until the board certifies to the department that the failure has been remedied. The board shall send a copy of each certification it makes under this subsection to the public employer affected.

(5) Any public employer delinquent in making reports or supplying information concerning its employees in the manner required by the board shall be charged a penalty of the lesser of $2,000 or one percent of the total annual contributions, for each month or fraction thereof during which the employer is delinquent. In addition, the board may send an auditor to the office of the employer to examine its records and to obtain the necessary reports, the entire cost of such audit to be paid by the delinquent employer. Penalties and other charges so paid shall be used by the board in paying administrative expenses of the system. [Formerly 237.301; 2003 c.733 §65]

**238.710 Mandamus against defaulting employer; appeal.** In addition to the remedies otherwise provided by ORS 238.705, the board may, by petition in usual form, apply to the circuit court for the county in which is located the public employer concerned, or the principal office or place of business of the public employer, for, and if warranted, to have issued, writs of mandamus to compel the public employer to supply to the board a true and complete list and employment records of the employer's employees and all information concerning the employees that reasonably may be required and sought by the board in the petition. The writs, among other things, shall direct the defendant to make contributions to the retirement fund on account of the defendant's employees as may appear, from records and information concerning the defendant's employees, to be required by law. Either or both parties thereby aggrieved may appeal to the Court of Appeals from, or from any part of, the judgment of the circuit court in the proceeding, as in ordinary mandamus proceedings. [Formerly 237.311; 2005 c.22 §181]

**238.715 Recovery of overpayments; rules.** (1) If the Public Employees Retirement Board determines that a member of the Public Employees Retirement System or any other person receiving a monthly payment from the Public Employees Retirement Fund has received any amount in excess of the amounts that the member or other person is entitled to under this chapter and ORS chapter 238A, the board may recover the overpayment or other improperly made payment by:

(a) Reducing the monthly payment to the member or other person for as many months as may be determined by the board to be necessary to recover the overpayment or other improperly made payment; or

(b) Reducing the monthly payment to the member or other person by an amount actuarially determined to be adequate to recover the overpayment or other improperly made payment during the period during which the monthly payment will be made to the member or other person.

(2)(a) Any person who receives a payment from the Public Employees Retirement Fund and who is not entitled to receive that payment, including a member of the system who receives an overpayment, holds the improperly made payment in trust subject to the board's recovery of that payment under this section or by a civil action or other proceeding.

(b) The board may recover an improperly made payment in the manner provided by subsection (1) of this section from any person who receives an improperly made payment from the fund and who subsequently becomes entitled to receive a monthly payment from the fund.

(c) The board may recover an improperly made payment by reducing any lump sum payment in the amount necessary to recover the improperly made payment if a person who receives an improperly made payment from the fund subsequently becomes entitled to receive a lump sum payment from the fund.

(3) Unless the member or other person receiving a monthly payment from the fund

authorizes a greater reduction, the board may not reduce the monthly payment made to a member or other person under the provisions of subsection (1) of this section by an amount that is equal to more than 10 percent of the monthly payment.

(4) Before reducing a benefit to recover an overpayment or erroneous payment, or pursuing any other collection action under this section, the board shall give notice of the overpayment or erroneous payment to the person who received the payment. The notice shall describe the manner in which the person who received the payment may appeal the board's determination that an overpayment or erroneous payment was made, the action the board may take if the person does not respond to the notice and the authority of the board to assess interest, penalties or costs of collection.

(5) If the board determines that an overpayment or erroneous payment was not caused by the system or by a participating public employer, the board may assess interest in an amount equal to one percent per month on the balance of the improperly made payment until the payment is fully recovered. The board may also assess to the member or other person all costs incurred by the system in recovering the payment, including attorney fees. Interest and costs may be collected in the manner prescribed in subsections (1) and (2) of this section. The board may waive the interest and costs on an overpayment or other improperly made payment for good cause shown.

(6) Notwithstanding ORS 293.240, the board may waive the recovery of any payment or payments made to a person who was not entitled to receive the payment or payments if the total amount of the overpayment or other improperly made payments is less than $50.

(7) A payment made to a person from the fund may not be recovered by the board unless within six years after the date that the payment was made the board has commenced proceedings to recover the payment. For the purposes of subsection (1) of this section, the board shall be considered to have commenced proceedings to recover the payment upon mailing of notice to the person receiving a monthly payment that the board has determined that an overpayment or other improperly made payment has been made.

(8) The remedies authorized under this section are supplemental to any other remedies that may be available to the board for recovery of amounts incorrectly paid from the fund to members of the system or other persons.

(9) The board shall adopt rules establishing the procedures to be followed by the board in recovering overpayments and erroneous payments under this section. [Formerly 237.312; 2003 c.105 §6; 2003 c.733 §66]

**238.720 Rollover contributions; application against payments improperly made to retirees; rules.** (1) The Public Employees Retirement Board may accept rollover contributions from a retired member solely for the purpose of paying amounts claimed by the board as overpayments or other improperly made payments. 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 against the amounts claimed by the board as overpayments or other improperly made payments.

(3) The board shall adopt rules and establish procedures for determining whether a retired 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 Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental plan and trust under federal income tax law. [2007 c.628 §2]

## (Short Title)

**238.750 Short title.** This chapter and ORS chapter 238A shall be known as the Public Employes' Retirement Act of 1953. [Formerly 237.001; 2003 c.733 §67]

TOC INDEX

# Chapter 238A

**2009 EDITION**

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## GENERAL PROVISIONS

**238A.005 Definitions.** For the purposes of this chapter:

(1) "Active member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

(2) "Actuarial equivalent" means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.

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

(4) "Eligible employee" means a person who performs services for a participating public employer, including elected officials other than judges. "Eligible employee" does not include:

(a) Persons engaged as independent contractors;

(b) Aliens working under a training or educational visa;

(c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190, provided sheltered employment or make-work by a public employer;

(d) Persons categorized by a participating public employer as student employees;

(e) Any person who is an inmate of a state institution;

(f) Employees of foreign trade offices of the Oregon Business Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

(g) An employee actively participating in an alternative retirement program established under ORS 353.250 or an optional retirement plan established under ORS 341.551;

(h) Employees of the Oregon University System who are actively participating in an optional retirement plan offered under ORS 243.800;

(i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003, for membership in the system under the provisions of ORS chapter 238 or other law;

(j) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

(k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who continues to receive retirement benefits while employed; and

(L) Judges.

(5) "Firefighter" means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

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

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

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

(7)(a) "Hour of service" means:

(A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and

(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.

(b) "Hour of service" does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation laws.

(8) "Inactive member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan whose membership has not been terminated, who is not a retired member and who is not employed in a qualifying position.

(9) "Individual account program" means the defined contribution individual account program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(10) "Member" means an eligible employee who has established membership in the pension program or the individual account program of the Oregon Public Service Retirement Plan and whose membership has

not been terminated under ORS 238A.110 or 238A.310.

(11) "Participating public employer" means a public employer as defined in ORS 238.005 that provides retirement benefits for employees of the public employer under the system.

(12) "Pension program" means the defined benefit pension program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(13) "Police officer" means a police officer as described in ORS 238.005.

(14) "Qualifying position" means one or more jobs with one or more participating public employers in which an eligible employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which benefits are not provided under the Oregon Public Service Retirement Plan pursuant to ORS 238A.070 (2).

(15) "Retired member" means a pension program member who is receiving a pension as provided in ORS 238A.180 to 238A.195.

(16)(a) "Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection, but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in taxable income.

(b) "Salary" includes the following amounts:

(A) Payments of employee and employer money into a deferred compensation plan that are made at the election of the employee.

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

(C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit plan by the employer at the election of the employee and that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on May 1, 2009.

(D) Any amount that is contributed to a cash or deferred arrangement by the employer at the election of the employee and that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect on May 1, 2009.

(E) Retroactive payments made to an employee to correct a clerical error, pursuant to an award by a court or by order of or pursuant to 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 the work would have been done.

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

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

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

(c) "Salary" does not include the following amounts:

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

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

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

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

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

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

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

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

(I) Any amount in excess of $200,000 for a calendar year. If any period over which salary is determined is less than 12 months, the $200,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of

which is 12. The board shall adopt rules adjusting this dollar limit to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

(17) "System" means the Public Employees Retirement System. [2003 c.733 §1; 2005 c.152 §1; 2005 c.332 §2; 2005 c.728 §4; 2007 c.804 §77; 2009 c.5 §1; 2009 c.762 §48; 2009 c.909 §1]

**238A.010 Computation of hours of service.** For the purpose of computing hours of service under this chapter, an eligible employee shall be credited with 40 hours of service for each calendar week in which the employee was employed in a qualifying position unless otherwise shown by records maintained by the participating public employer. [2003 c.733 §1a]

## OREGON PUBLIC SERVICE RETIREMENT PLAN

**238A.025 Oregon Public Service Retirement Plan established.** (1) The Oregon Public Service Retirement Plan is established. The purpose of the Oregon Public Service Retirement Plan is to provide career public employees with a secure and fair retirement income at an affordable, stable and predictable cost to the taxpayers. The Oregon Public Service Retirement Plan is composed of a pension program and an individual account program. The pension program and the individual account program are separate accounts for purposes of federal income tax qualification, and the assets of each program must be held as part of the trust established by ORS 238.660 for the exclusive benefit of the participants and beneficiaries. It is the intent of the Legislative Assembly that pursuant to section 414(k) of the Internal Revenue Code the individual account program be established and maintained as a tax-qualified defined contribution governmental plan for the purposes of sections 72(d) and 415 of the Internal Revenue Code. The Public Employees Retirement Board may create separate accounts within the Public Employees Retirement Fund for the pension program and the individual account program.

(2) Notwithstanding any provision of ORS chapter 238, any person who is employed by a participating public employer on or after August 29, 2003, and who has not established membership in the Public Employees Retirement System before August 29, 2003, is entitled to receive only the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers on and after August 29, 2003, and has no right or claim to any benefit under ORS chapter 238 except as specifically provided by this chapter.

(3) Any person who is a member of the Public Employees Retirement System on August 28, 2003, is entitled to receive the benefits provided by ORS chapter 238 for all service performed before, on and after August 29, 2003, unless the person's membership in the system is subsequently terminated under ORS 238.095. If the person's membership in the system is terminated under ORS 238.095 on or after August 29, 2003, the person is entitled to receive the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers after the termination of membership.

(4) A person establishes membership in the system before August 29, 2003, for the purposes of this section if:

(a) The person is a member of the system, or a judge member of the system, on August 28, 2003; or

(b) The person performed any period of service for a participating public employer before August 29, 2003, that is credited to the six-month period of employment required of an employee under ORS 238.015 before an employee may become a member of the system.

(5) Except as provided in this chapter, ORS chapter 238 does not apply to the Oregon Public Service Retirement Plan.

(6) The provisions of this section do not apply to a person elected or appointed as a judge as defined in ORS 238.500. [2003 c.733 §2; 2005 c.332 §6; 2005 c.808 §9; 2007 c.624 §1; 2007 c.769 §1a]

**238A.030 Information technology system.** Subject to such direction and oversight as may be provided by the Legislative Assembly, the Public Employees Retirement Board shall take all steps necessary to develop and implement a dedicated information technology system to manage the Oregon Public Service Retirement Plan established by ORS chapter 238A. The board shall ensure that the essential record keeping components of the information technology system are in operation as soon as practicable. The board shall ensure that the information technology system is designed to support the current and future business and technology needs of the Public Employees Retirement System arising out of the implementation of ORS chapter 238A. [2003 c.733 §83]

**Note:** 238A.030 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 238A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## ADMINISTRATION

**238A.050 Oregon Public Service Retirement Plan part of Public Employees Retirement System.** (1) The Oregon Public Service Retirement Plan is part of the Public Employees Retirement System and is admin-

istered by the Public Employees Retirement Board.

(2) ORS 238.225, 238.229, 238.231, 238.445, 238.450, 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630, 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696, 238.698, 238.700, 238.705, 238.710 and 238.715 apply to the Oregon Public Service Retirement Plan.

(3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4) of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the provisions of ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the individual account program and pension program differently than the other assets of the Public Employees Retirement System.

(4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the limitations imposed by ORS 293.726 (6).

(5) The board may contract with a private provider for the administration of the individual account program. The board is not subject to the provisions of ORS chapter 279A or 279B in awarding a contract under the provisions of this subsection. The board shall establish procedures for inviting proposals and awarding contracts under this subsection. [2003 c.733 §§3,3a; 2005 c.808 §§15,16]

## PARTICIPATION BY PUBLIC EMPLOYERS

**238A.070 Participation generally.** (1) All public employers participating in the Public Employees Retirement System on August 29, 2003:

(a) Shall continue to be participating public employers for the purpose of the Oregon Public Service Retirement Plan;

(b) Shall provide benefits under the pension program established under ORS 238A.100 to 238A.245 for eligible employees who are members of the pension program; and

(c) Shall participate in the individual account program.

(2) Any participating public employer that provided retirement benefits under ORS chapter 238 for some but not all of the employees of the participating public employer on August 28, 2003, need not provide benefits under the Oregon Public Service Retirement Plan for any class of employees who were not members of the system on August 28, 2003.

(3) Any public employer that is not a participating public employer on August 28, 2003, may become a participating public employer under the pension program or the individual account program, or both. A public employer may become a participating public employer under this subsection only for the purposes of service performed by eligible employees of the public employer on or after the date the public employer elects to participate in the program. [2003 c.733 §4]

## PENSION PROGRAM

### (Membership)

**238A.100 Establishing membership under pension program.** (1) Except as provided by subsection (2) of this section, an eligible employee who is employed in a qualifying position on or after August 29, 2003, by a public employer that is participating in the pension program and who will not receive benefits under ORS chapter 238 for service with the participating public employer pursuant to the provisions of ORS 238A.025 becomes a member of the pension program on the first day of the month after the employee completes six full calendar months of employment. The six-month requirement may not be interrupted by more than 30 consecutive working days.

(2) A person who is elected or appointed to an office with a fixed term other than as a member of the Legislative Assembly, or who is appointed by the Governor to an office as head of a department, may elect not to become a member of the pension program by giving the Public Employees Retirement Board written notice not later than 30 days after taking office. An election under this subsection also operates as an election not to become a member of the individual account program. An election under this subsection is irrevocable during the term of office for which the election is made. [2003 c.733 §5]

**238A.110 Termination of membership.** Membership under the pension program terminates when:

(1) A member dies;

(2) A member withdraws under ORS 238A.120; or

(3) A member forfeits retirement credit under ORS 238A.145. [2003 c.733 §6]

### (Vesting)

**238A.115 Vesting.** (1) A member of the pension program becomes vested in the pension program on the earliest of the following dates:

(a) The date on which the member completes at least 600 hours of service in each of five calendar years. The five calendar years need not be consecutive, but are subject to the provisions of subsection (2) of this section.

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

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

(2) If a member of the pension program who is not vested in the pension program performs fewer than 600 hours of service in each of five consecutive calendar years, hours of service performed before the first calendar year of the period of five consecutive calendar years shall be disregarded for purposes of determining whether the member is vested under subsection (1)(a) of this section.

(3) Solely for purposes of determining whether a member is vested under this section, hours of service include creditable service, as defined in ORS 238.005, performed by the person before the person became an eligible employee, as long as the membership of the person under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes an eligible employee. [2003 c.733 §7]

**(Withdrawal)**

**238A.120 Withdrawal from pension program by vested inactive member.** (1) A vested inactive member may withdraw from the pension program if:

(a) The actuarial equivalent of the member's benefit under the pension program at the time of withdrawal is $5,000 or less; and

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

(2) Upon withdrawal under this section, the Public Employees Retirement Board shall pay the withdrawing member the actuarial equivalent of the member's benefit in a lump sum.

(3) If a vested inactive member withdraws from the pension program under this section and is thereafter reemployed by a participating public employer:

(a) The person may reestablish membership in the pension program only for the purpose of service performed after the person is reemployed; and

(b) Any service performed before the withdrawal may not be credited toward the period of service required by ORS 238A.100 or 238A.115 or toward the accrual of retirement credit under ORS 238A.140, 238A.150 or 238A.155.

(4) A member who has an individual account or accounts in the individual account program established under ORS 238A.025 may withdraw from the pension program under this section only if the member also withdraws all individual accounts pursuant to ORS 238A.375. A member who has a member account established under ORS chapter 238 may withdraw from the pension program under this section only if the member also withdraws that member account in the manner provided by ORS 238.265. A member who has an account established under ORS 238.440 may withdraw from the pension program under this section only if the member also withdraws the account established under ORS 238.440.

(5) For the purposes of this section, the actuarial equivalent of a member's benefit does not include any value attributable to adjustments to the benefit under ORS 238A.210. [2003 c.733 §8; 2005 c.152 §2; 2007 c.52 §2]

**(Computation of Benefit)**

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

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

(b) For service as other than a police officer or firefighter, 1.5 percent of final average salary multiplied by the number of years of retirement credit attributable to service as other than a police officer or firefighter.

(2) Notwithstanding any provision of ORS 238A.100 to 238A.245, the annual benefit payable to a member under the pension program and under any other tax-qualified defined benefit plan maintained by the participating public employer may not exceed the applicable limitations set forth in 26 U.S.C. 415(b), as in effect on May 1, 2009. The Public Employees Retirement Board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect cost-of-

living adjustments authorized by the Internal Revenue Service.

(3) The board shall make no actuarial adjustment in a member's pension calculated under this section by reason of the member's retirement after normal retirement age. [2003 c.733 §9; 2009 c.5 §2; 2009 c.909 §2]

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

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

(b) One-third of the total salary paid to an active member in the last 36 calendar months of membership before the effective date of retirement of the member.

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

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

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

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

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

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

(b) One-third of the total salary earned by an active member in the last 36 calendar months of membership before the effective date of retirement of the member.

(4) For the purposes of calculating the final average salary of a member under this section, the salary of the member does not include any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same class of employees as established by rule of the Public Employees Retirement Board. The Oregon Department of Administrative Services shall establish by rule more than one overtime average for a class of state employees based on the geographic placement of the employees. [2003 c.733 §10; 2005 c.332 §16; 2005 c.808 §34; 2007 c.769 §9]

**(Retirement Credit)**

**238A.140 Accrual of retirement credit.** (1) An active member of the pension program accrues one year of retirement credit for each complete year of service and one-twelfth of a year of retirement credit for each full month and each major fraction of a month of service.

(2) An active member who is a school employee shall be credited with at least six months of retirement credit if the member performs service for a major fraction of each month of a school year that falls between January 1 and June 30, and at least six months of retirement credit if the member performs service for a major fraction of each month of a school year that falls between July 1 and December 31.

(3) When an eligible employee becomes a member under ORS 238A.100, the board shall credit the eligible employee with retirement credit for the period of employment required of the employee under ORS 238A.100.

(4) A member may not accrue more than one full year of retirement credit in any calendar year.

(5) For purposes of this section, "school employee" means:

(a) A person who is employed by a common school district, a union high school district or an education service district;

(b) An employee of the State Board of Higher Education or the Oregon Health and Science University who is engaged in teaching or other school activity at an institution of higher education;

(c) An employee of the Department of Human Services, the Oregon Youth Authority, the Department of Corrections or the State Board of Education who is engaged in teaching or other school activity at an institution supervised by the authority, board or department; and

(d) An employee of a community college district other than an academic employee. [2003 c.733 §11; 2005 c.332 §§4,21; 2007 c.769 §8]

**238A.142 Accrual by academic employees of community college.** (1) An academic employee of a community college who during a calendar year is employed 0.375 full-time equivalent on a 12-month basis, or is employed 0.50 full-time equivalent on a nine-month basis, is considered to have performed 600 hours of service in the calendar year for all purposes under this chapter.

(2) The governing body of a community college shall determine the duties of an academic employee of the community college that constitute a full-time equivalent in any discipline or academic activity for the purposes of this section. [2005 c.332 §20; 2007 c.769 §10]

**238A.145 Loss of retirement credit.** (1) A pension program member who is not vested forfeits all retirement credit if the member performs fewer than 600 hours of service in each of five consecutive calendar years. A forfeiture under this section takes effect at the end of the fifth calendar year.

(2) If a pension program member forfeits retirement credit under this section and is subsequently reemployed by a participating public employer:

(a) The person may acquire retirement credit under the pension program only for the purpose of service performed after the person is reemployed; and

(b) Any service performed before the forfeiture may not be credited toward the period of service required by ORS 238A.100 or 238A.115, or toward the accrual of retirement credit under ORS 238A.140, 238A.150 or 238A.155. [2003 c.733 §12]

**238A.150 Retirement credit for service in uniformed services; rules.** (1) Notwithstanding any other provision of ORS 238A.100 to 238A.245, an eligible employee who leaves a qualifying position for the purpose of performing service in the uniformed services, and who subsequently returns to employment with a participating public employer with reemployment rights under federal law, is entitled to accrue retirement credit, credit toward the probationary period required by ORS 238A.100 and credit toward the vesting requirements of ORS 238A.115 under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing benefits and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to benefits and service credit for any period of service in the uniformed services, including 26 U.S.C. 414(u), as in effect on May 1, 2009. Benefits and service credit under rules adopted by the board pursuant to this subsection may not exceed benefits and service credit required under federal law for periods of service in the uniformed services. [2003 c.733 §13; 2009 c.5 §3; 2009 c.909 §3]

**238A.155 Retirement credit for periods of disability.** (1) Notwithstanding any other provision of ORS 238A.100 to 238A.245, an active member of the pension program described in subsection (2) of this section who becomes disabled shall accrue retirement credit and hours of service credit for vesting purposes for the period during which the member is disabled.

(2) The provisions of this section apply only to:

(a) A member who has accrued 10 years or more of retirement credit before the member becomes disabled; or

(b) A member who becomes disabled by reason of injury or disease sustained while in the actual performance of duty.

(3) Retirement credit accrues under this section only for as long as the member remains disabled or until the member reaches the normal retirement age under ORS 238A.160.

(4) If a disabled member does not return to employment with a participating public employer after the period of disability, the member shall receive a pension under ORS 238A.180, 238A.185 or 238A.190 upon retirement based on an adjusted salary. The adjusted salary shall be the salary paid to the disabled member on the date the member left active employment with the participating public employer by reason of disability, adjusted for each year after the member left employment and before the member's effective date of retirement to reflect cost-of-living changes, based on the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. Adjustments under this subsection may not exceed a two percent increase or decrease for any year. An adjustment shall be made under this subsection only for calendar years in which the

member is disabled for at least six months during the year.

(5) A pension program member is considered to be disabled for the purpose of this section if the member is found, after being examined by one or more physicians selected by the Public Employees Retirement Board, to be mentally or physically incapacitated for an extended duration and unable to perform any work for which qualified, by reason of injury or disease that was not intentionally self-inflicted. [2003 c.733 §14]

**238A.157** [2005 c.332 §12; repealed by 2007 c.769 §7]

**(Retirement)**

**238A.160 Normal retirement age; normal retirement date.** (1) Except as provided in subsections (2) and (3) of this section, normal retirement age for a member of the pension program is the earlier of:

(a) 65 years of age; or

(b) 58 years of age if the member has 30 years or more of retirement credit.

(2) Normal retirement age for a member of the pension program who retires from service as a police officer or firefighter, and who has held a position as a police officer or firefighter continuously for a period of not less than five years immediately preceding the effective date of retirement, is the earlier of:

(a) 60 years of age; or

(b) 53 years of age if the member has 25 years or more of retirement credit.

(3) Normal retirement age for a member of the pension program who retires from service as a school employee as defined by ORS 238A.140 is the earlier of:

(a) 65 years of age; or

(b) 58 years of age if the member has been an active member in 30 or more calendar years.

(4) The normal retirement date of a member is the first day of the month beginning on or after the date the member reaches normal retirement age. [2003 c.733 §15; 2005 c.808 §35]

**238A.165 Earliest retirement age; earliest retirement date.** (1) Except as provided in this section, earliest retirement age for a member of the pension program is 55 years of age.

(2) Earliest retirement age for a member of the pension program who retires from service as a police officer or firefighter is 50 years of age if the member has held a position as a police officer or firefighter continuously for a period of not less than five years immediately before the effective date of retirement. Earliest retirement date for a member described in this subsection is not later than the date the member reaches 55 years of age.

(3) If a member of the pension program has 25 years or more of retirement credit as a telecommunicator, as defined in ORS 181.610, earliest retirement age for the member is 55 years of age or the age of the member when the member acquires a total of 25 years or more of retirement credit as a telecommunicator, whichever occurs first. A member who retires under this subsection before attaining the age of 55 shall not receive a cost-of-living adjustment under ORS 238A.210 until the member attains the age of 55.

(4) A member of the pension program who has reached earliest retirement age may retire on an early retirement date that is the first day of any month on or after the member has reached earliest retirement age. [2003 c.733 §16; 2005 c.332 §13; 2007 c.404 §2; 2007 c.769 §2]

**238A.170 Latest retirement date; required minimum distributions; rules.** (1) An active member of the pension program who is 70-1/2 years of age or older must retire not later than April 1 of the calendar year following the calendar year in which the member terminates employment with all participating public employers. An inactive member of the pension program must retire not later than April 1 of the calendar year following the calendar year in which the member attains 70-1/2 years of age.

(2) Notwithstanding any other provision of ORS 238A.100 to 238A.245, the entire interest of a member of the pension program must be distributed over a time period commencing no later than the required beginning date set forth in subsection (1) of this section, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on May 1, 2009. The Public Employees Retirement Board shall adopt rules implementing those minimum distribution requirements. [2003 c.733 §17; 2009 c.5 §4; 2009 c.909 §4]

**(Pension)**

**238A.180 Normal retirement benefit.** Upon retiring on normal retirement date or thereafter, a member of the pension program who is vested shall be paid an annual pension for the life of the member, calculated as provided in ORS 238A.125. The annual pension provided for under this section shall be paid in equal monthly installments, payable as of the first day of each calendar month, beginning on the later of the member's normal retirement date or the member's effective date of retirement and ending on the

first day of the month in which the member dies. [2003 c.733 §18]

**238A.185 Early retirement.** A member of the pension program who is vested may retire with a reduced pension that is the actuarial equivalent of the pension provided for in ORS 238A.180 at any time on or after the member's earliest retirement date as described in ORS 238A.165. [2003 c.733 §19]

**238A.190 Survivorship benefits.** (1) Before the effective date of retirement of a member of the pension program, the member may elect to convert the pension calculated under ORS 238A.180 or 238A.185 into the actuarial equivalent pension as follows:

(a) A pension payable monthly during the member's life and, after the death of the member, continuing at the same monthly amount for the life of a beneficiary named by the member in a written designation filed with the Public Employees Retirement Board at the time of election.

(b) A pension payable monthly during the member's life and, subject to modification under subsection (2) of this section, after the death of the member, continuing at the same monthly amount for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.

(c) A pension payable monthly during the member's life and, after the death of the member, continuing at one-half of the monthly amount paid to the member for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.

(d) A pension payable monthly during the member's life and, subject to modification under subsection (2) of this section, after the death of the member, continuing at one-half of the monthly amount paid to the member for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.

(2) A retired member who elects to receive a pension under subsection (1)(b) or (d) of this section shall receive the pension that the member would have received on the effective date of retirement under ORS 238A.180 or 238A.185 adjusted by the actual amount of any cost-of-living or other post-retirement adjustments made to the original allowance since the effective date of retirement, if:

(a) The spouse or other beneficiary dies after the member retires; or

(b) The marriage relationship or other relationship with the beneficiary is terminated after the member retires.

(3) An increased benefit under subsection (2) of this section is first effective on the first day of the month following the date on which one of the events specified in subsection (2) of this section occurs.

(4) If a member of the pension program is married on the effective date of retirement, or there exists any other person on the effective date of retirement who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits, the pension payable to the member shall be as provided in subsection (1)(c) of this section with the spouse or other person as beneficiary, unless:

(a) The member has selected a different pension provided for in subsection (1) of this section with the spouse or other person as beneficiary; or

(b) The member submits to the board a document signed by the spouse or other person, acknowledged by a notary public, consenting to a different option or a different beneficiary.

(5) Subsection (4) of this section does not apply to a pension benefit that is paid in a lump sum under ORS 238A.195. [2003 c.733 §20; 2005 c.332 §14]

**238A.195 Cash out of small benefits.** If the monthly pension benefit payable to a member of the pension program under ORS 238A.180 is less than $200, or the monthly death benefit payable to the beneficiary of a deceased member under ORS 238A.230 is less than $200, the Public Employees Retirement Board shall convert the benefit into a lump sum that represents the actuarial equivalent of the present value of the pension or death benefit and pay that amount to the member or the deceased member's beneficiary in lieu of a pension or death benefit under ORS 238A.100 to 238A.245. [2003 c.733 §21]

**238A.200 Actuarial equivalency factor tables.** (1) Once every two calendar years, the Public Employees Retirement Board shall adopt actuarial equivalency factor tables for the purpose of computing the payments to be made to members of the pension program and their beneficiaries and alternate payees under ORS 238.465. The tables may be adopted in conjunction with the biennial evaluation of the Public Employees Retirement System required by ORS 238.605. Tables adopted under this section must use the best actuarial information on mortality available at the time the board adopts the tables, as provided by the actuary engaged by the board. Actuarial equivalency factor tables adopted under this section become effective on January 1 of the calendar year following adoption of the tables by the board. All computations of payments must use the actuarial equivalency factor tables that are in effect on:

(a) The effective date of retirement for any member or alternate payee;

(b) The date that the first payment is due for any person receiving a death benefit under ORS 238A.230; or

(c) The date that the first payment is due after any recalculation of payments that is not attributable to error, including but not limited to recalculations under ORS 238.465 (2).

(2) The board may not defer or delay implementation of the actuarial equivalency factor tables adopted under this section. [2003 c.733 §22]

**(Cost-of-Living Adjustment)**

**238A.210 Cost-of-living adjustment.** (1) As soon as practicable after January 1 each year, the Public Employees Retirement Board shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. Before July 1 each year, the board shall adjust every pension payable under ORS 238A.180, 238A.185 and 238A.190, every disability benefit under ORS 238A.235 and every death benefit payable under ORS 238A.230 by multiplying the monthly payment by the percentage figure determined by the board. If a person has been receiving a pension or benefit for less than 12 months on July 1 of a calendar year, the board shall make a pro rata reduction of the adjustment based on the number of months that the pension or benefit was received before July 1 of the year. The adjustment shall be made for the payments payable on August 1 and thereafter.

(2) An increase or decrease in the benefit payments under this section may not exceed two percent in any year. A pension or death benefit may not be adjusted to an amount that is less than the amount that would have been payable if no cost-of-living adjustment had been made since the pension or death benefit first became payable. [2003 c.733 §23]

**(Employer Contributions)**

**238A.220 Employer contributions.** (1) A participating public employer shall make employer contributions to the Public Employees Retirement Board at intervals designated by the board in the amounts determined by the board under ORS 238.225. All participating public employers shall be considered to be a single employer for the purposes of the employer contributions under ORS 238.225 that are required for funding the pension program established under ORS 238A.025.

(2) For the purpose of the actuarial computation required under ORS 238.225, the board shall separately establish the liability of participating public employers for police officers and firefighters under the pension program and shall require that public employers that employ police officers and firefighters who are members of the pension program make contributions for those employees based on the liability established under this subsection. [2003 c.733 §24; 2005 c.808 §17]

**(Death Benefit)**

**238A.230 Death benefit; rules.** (1) If a member of the pension program who is vested dies before the member's effective date of retirement, the Public Employees Retirement Board shall pay the death benefit provided for in this section to the spouse of the member or to any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits.

(2)(a) The death benefit to be paid under this section shall be for the life of the spouse or other person who is constitutionally required to be treated in the same manner as a spouse, and shall be the actuarial equivalent of 50 percent of the pension that would otherwise have been paid to the deceased member.

(b) For the purpose of paragraph (a) of this subsection, the amount of the pension that would otherwise have been paid to the deceased member shall be calculated:

(A) As of the date of death if the member dies after the earliest retirement date for the member under ORS 238A.165; or

(B) As if the member became an inactive member on the date of death and thereafter retired at the earliest retirement date if the member dies before the earliest retirement date for the member under ORS 238A.165.

(3) The death benefit provided under this section is first effective on the first day of the month following the date of death of the member. The surviving spouse or other person entitled to the death benefit may elect to delay payment of the death benefit, but payment must commence no later than December 31 of the calendar year in which the member would have reached 70-1/2 years of age.

(4) Notwithstanding any other provision of ORS 238A.100 to 238A.245, distributions of death benefits under the pension program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on May 1, 2009. The board shall adopt

rules implementing those minimum distribution requirements. [2003 c.733 §25; 2005 c.332 §15; 2009 c.5 §5; 2009 c.909 §5]

**(Disability Benefit)**

**238A.235 Disability benefit.** (1) An active member of the pension program described in subsection (2) of this section who becomes disabled shall receive a disability benefit in the amount of 45 percent of the salary of the member determined as of the last full month of employment before the disability commences.

(2) The provisions of this section apply only to:

(a) A member, other than a school employee as defined by ORS 238A.140, who has accrued 10 years or more of retirement credit before the member becomes disabled;

(b) A member who is a school employee as defined by ORS 238A.140 and who was an active member in 10 or more calendar years before the member becomes disabled; or

(c) A member who becomes disabled by reason of injury or disease sustained while in the actual performance of duty.

(3) A disability benefit under this section shall be paid until:

(a) The member is no longer disabled; or

(b) The member attains normal retirement age under ORS 238A.160.

(4) A member is considered to be disabled for the purpose of this section if the member is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration and unable to perform any work for which qualified, by reason of injury or disease that was not intentionally self-inflicted. [2003 c.733 §25a; 2005 c.808 §36; 2009 c.103 §3]

**Note:** Section 4, chapter 103, Oregon Laws 2009, provides:

**Sec. 4.** The amendments to ORS 238A.235 by section 3 of this 2009 Act apply to all disability benefits paid on or after the operative date specified in section 5 of this 2009 Act [January 1, 2010]. As soon as possible after the effective date of this 2009 Act [May 21, 2009], the Public Employees Retirement Board shall recalculate any disability benefit being paid on the effective date of this 2009 Act, and the recalculated disability benefit shall be effective for the month of December 2009 and payable January 1, 2010. [2009 c.103 §4]

**238A.240 Funding of disability benefit.** (1) A participating public employer shall contribute to the pension program, at intervals designated by the Public Employees Retirement Board, all amounts determined by the board to be actuarially necessary to adequately fund the disability benefits to be provided under ORS 238A.235 and the reasonable costs of administering the provision of those benefits. The board shall periodically determine the liabilities attributable to the disability benefits and shall set the amount of contributions to be made by participating public employers, and by other public employers who are required to make contributions on behalf of members, to ensure that those liabilities will be funded no more than 40 years after the date on which the determination is made. All participating public employers shall be considered to be a single employer for the purposes of the contributions required under this section.

(2) For the purpose of the actuarial computation required under subsection (1) of this section, the board shall separately establish the liability of participating public employers for police officers and firefighters, and shall require that public employers that employ police officers and firefighters make contributions for those employees based on the liability established under this section. [2003 c.733 §25b]

**(Reemployment of Retired Members)**

**238A.245 Reemployment after commencement of pension benefits.** (1) Except as provided in subsection (3) of this section, the Public Employees Retirement Board shall cease making pension payments to a retired member of the pension program who is reemployed by a participating public employer in a qualifying position. A retired member of the pension program who is employed in a qualifying position becomes an active member of the pension program without serving the probationary period provided for in ORS 238A.100.

(2) If a retired member of the pension program is reemployed under the provisions of this section, any option chosen by the member under ORS 238A.190 is canceled, and upon retiring thereafter the member may elect any option provided for in ORS 238A.180 and 238A.190. The board shall recalculate the pension of the member upon subsequent retirement.

(3) A retired member of the pension program who becomes a member of the Legislative Assembly shall continue to receive the pension elected by the member. A retired member of the pension program who becomes a member of the Legislative Assembly may not elect under ORS 237.650 to become an active member of the Oregon Public Service Retirement Plan or a legislator member of the state deferred compensation plan. [2003 c.733 §26]

## INDIVIDUAL ACCOUNT PROGRAM

### (Membership)

**238A.300 Establishing membership under individual account program.** Except as provided in ORS 238A.100 (2), an eligible employee who is employed in a qualifying position on or after August 29, 2003, by a public employer that is participating in the individual account program and who will not receive benefits under ORS chapter 238 for service with the participating public employer pursuant to the provisions of ORS 238A.025 becomes a member of the individual account program on the first day of the month after the employee completes six full calendar months of employment. The six-month probationary period may not be interrupted by more than 30 consecutive working days. [2003 c.733 §29]

**238A.305 Persons establishing membership in system before August 29, 2003.** (1) Except as provided in subsection (2) of this section, all members of the Public Employees Retirement System who established membership in the Public Employees Retirement System before August 29, 2003, as described in ORS 238A.025 become members of the individual account program on January 1, 2004.

(2) A member of the Public Employees Retirement System may not be a member of the individual account program during any period of time during which the member is required to make contributions to the system under ORS 238.200.

(3) Solely for the purpose of determining the amount of the employee contribution for persons who become members of the individual account program under this section, whether paid by the employee or by the employer, the Public Employees Retirement Board shall use the definition of "salary" provided by ORS 238.005. [2003 c.733 §33; 2005 c.332 §17; 2007 c.769 §3]

**238A.310 Termination of membership.** Membership under the individual account program terminates when:

(1) A member dies; or

(2) An inactive member receives a distribution of the vested accounts of the member under ORS 238A.375. [2003 c.733 §30]

### (Vesting)

**238A.320 Vesting.** (1) A member of the individual account program becomes vested in the employee account established for the member under ORS 238A.350 (2) on the date the employee account is established.

(2) A member who makes rollover contributions becomes vested in the rollover account established for the member under ORS 238A.350 (4) on the date the rollover account is established.

(3) If an employer makes employer contributions for a member under ORS 238A.340, the member becomes vested in the employer account established under ORS 238A.350 (3) on the earliest of the following dates:

(a) The date on which the member completes at least 600 hours of service in each of five calendar years;

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

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

(d) The date on which an active member becomes disabled, as described in ORS 238A.155 (4); or

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

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

(5) Solely for purposes of determining whether a member is vested under subsection (3)(a) of this section, hours of service include creditable service, as defined in ORS 238.005, performed by the person before the person became an eligible employee, as long as the membership of the person under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes an eligible employee. [2003 c.733 §31]

### (Employee Contributions)

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

(2) Employee contributions made by a member of the individual account program under this section shall be credited by the board to the employee account established for the member under ORS 238A.350 (2). [2003 c.733 §32]

**238A.335 Employer payment of employee contribution.** (1) A participating public employer may agree, by a written employment policy or by a collective bargaining agreement, to pay the employee contribution

required under ORS 238A.330. The policy or agreement need not include all members of the individual account program employed by the employer.

(2) An agreement under this section to pay the required employee contribution may provide that:

(a) Employee compensation be reduced to generate the funds needed to make the employee contributions; or

(b) Additional amounts be paid by the employer for the purpose of making the employee contributions, and employee compensation not be reduced for the purpose of generating the funds needed to make the employee contributions.

(3) A participating public employer must give written notice to the Public Employees Retirement Board at the time that a written employment policy or collective bargaining agreement described in subsection (1) of this section is adopted or changed. The notice must specifically indicate whether the agreement is as described in subsection (2)(a) or (b) 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. [2003 c.733 §34]

**(Employer Contributions)**

**238A.340 Employer contributions.** (1) A participating public employer may agree, by a written employment policy or agreement, to make employer contributions for members of the individual account program employed by the employer. The percentage of salary paid as employer contributions may not be less than one percent of salary or more than six percent of salary, and must be a whole number. A participating public employer may make an agreement under this section for specific groups of employees employed by the public employer.

(2) If a participating public employer makes employer contributions under this section and the member for which the contributions are made fails to vest in the employer account under the provisions of ORS 238A.320, the Public Employees Retirement Board shall apply the contributions in the employer account against other obligations of the employer under the Oregon Public Service Retirement Plan. [2003 c.733 §36]

**(Individual Accounts)**

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

(2) The board shall establish an employee account, which shall consist of the employee contributions made by or on behalf of the member as adjusted under subsection (1) of this section.

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

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

(5) The board shall provide an annual statement to each active and inactive member of the program that reflects the amount credited to the accounts established under this section. The statement shall reflect whether the member is vested in the employer account under the provisions of ORS 238A.320. [2003 c.733 §37]

**(Rollover Contributions)**

**238A.360 Rollover contributions; rules.** (1) The Public Employees Retirement Board may accept rollover contributions from a member of the individual account program or from an eligible retirement plan from which the member is entitled to an eligible rollover distribution. The board may accept rollover contributions under this section only if the amounts contributed qualify as eligible rollover distributions under the federal income tax laws governing tax-qualified retirement plans and, if the rollover contribution is made by the member, the contribution is paid to the individual account program within the time limits established by the federal income tax laws governing tax-qualified retirement plans.

(2) The board shall adopt rules and establish procedures for determining whether to accept a rollover contribution under this section and shall require such documentation

as may be necessary to ensure that the receipt of a rollover contribution does not jeopardize the status of the individual account program as a tax-qualified governmental plan. [2003 c.733 §38]

**(Limitation on Contributions)**

**238A.370 Limitation on contributions; rules.** Notwithstanding any other provision of ORS 238A.300 to 238A.415, the annual addition to the employee and employer accounts of a member of the individual account program for a calendar year, together with the annual additions to the accounts of the member under any other defined contribution plan maintained by the participating public employer for a calendar year, may not exceed the lesser of $40,000, or 100 percent of the member's compensation for that calendar year. For purposes of this section, "annual addition" has the meaning given that term in 26 U.S.C. 415(c)(2), as in effect on May 1, 2009, and "compensation" has the meaning given the term "participant's compensation" in 26 U.S.C. 415(c)(3), as in effect on May 1, 2009. The Public Employees Retirement Board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect cost-of-living adjustments authorized by the Internal Revenue Service. [2003 c.733 §39; 2009 c.5 §6; 2009 c.909 §6]

**(Withdrawal by Inactive Member)**

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

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

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

(4) A member who is vested in the pension program established under this chapter and who is eligible to withdraw from the pension program under ORS 238A.120 may make an election under this section only if the member also withdraws from the pension program. A member who has a member account established under ORS chapter 238 may make an election under this section only if the member also withdraws that member account in the manner provided by ORS 238.265. A member who has an account established under ORS 238.440 may make an election under this section only if the member also withdraws the account established under ORS 238.440.

(5) If an inactive member receives a distribution under subsection (1) of this section and is subsequently reemployed by a participating public employer, any service performed before the date the member became an inactive member may not be used toward the period of service required for vesting in the employer account under ORS 238A.320. [2003 c.733 §40; 2005 c.152 §3; 2007 c.52 §3]

**(Defined Contribution Benefit)**

**238A.400 Payment of accounts at retirement; rules.** (1) Upon retirement on or after the earliest retirement date, as described in ORS 238A.165, a member of the individual account program shall receive in a lump sum the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320.

(2) In lieu of a lump sum payment under subsection (1) of this section, a member of the individual account program may elect to receive the amounts in the member's employee account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, in substantially equal installments paid over a period of 5, 10, 15 or 20 years, or over a period that is equal to the anticipated life span of the member as actuarially determined by the Public Employees Retirement Board. Installments may be made on a monthly, quarterly or annual basis. In no event may the period selected by the member exceed the time allowed by the minimum distribution requirements described in subsection (5) of this section. The board shall by rule establish the manner in which installments will be adjusted to reflect investment gains and losses on the unpaid balance during the payout period elected by the member under this subsection. The board by rule may establish minimum monthly amounts payable under this subsection. The board may require that a lump sum payment, or an installment schedule different than the schedules provided for in this subsection, be used to pay the vested amounts in the member's accounts if those amounts are not

adequate to generate the minimum monthly amounts specified by the rule.

(3) A member of the individual account program electing to receive installments under subsection (2) of this section must designate a beneficiary or beneficiaries. In the event the member dies before all amounts in the employee and vested employer accounts are paid, all remaining installment payments shall be made to the beneficiary or beneficiaries designated by the member. A beneficiary may elect to receive a lump sum distribution of the remaining amounts.

(4) A member who is entitled to receive retirement benefits under ORS chapter 238 may receive vested amounts in the member's employee account, rollover account and employer account in the manner provided by this section when the member retires for service under the provisions of ORS chapter 238.

(5) Notwithstanding any other provision of ORS 238A.300 to 238A.415, the entire interest of a member of the individual account program must be distributed over a time period commencing no later than the latest retirement date set forth in ORS 238A.170, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on May 1, 2009. The board shall adopt rules implementing those minimum distribution requirements. [2003 c.733 §41; 2005 c.152 §10; 2007 c.71 §75; 2007 c.412 §1; 2009 c.5 §7; 2009 c.909 §7]

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

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

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

(a) The member's surviving spouse or other person who is constitutionally required to be treated in the same manner as a spouse;

(b) The member's surviving children, in equal shares; or

(c) The member's estate.

(4) The entire amount of a deceased member's vested accounts must be distributed by December 31 of the fifth calendar year after the year in which the member died. Notwithstanding any other provision of this chapter, distributions of death benefits under the individual account program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on May 1, 2009. The Public Employees Retirement Board shall adopt rules implementing those minimum distribution requirements. [2003 c.733 §42; 2009 c.5 §8; 2009 c.909 §8]

**238A.415 Credit for service in uniformed services; rules.** (1) Notwithstanding any other provision of ORS 238A.300 to 238A.415, an eligible employee who leaves a qualifying position for the purpose of performing service in the uniformed services, and who subsequently returns to employment with a participating public employer with reemployment rights under federal law, is entitled to credit toward the probationary period required by ORS 238A.300, credit toward the vesting requirements of ORS 238A.320 and contributions under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing contributions and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal

law relating to benefits and service credit for any period of service in the uniformed services, including 26 U.S.C. 414(u), as in effect on May 1, 2009. Contributions and service credit under rules adopted by the board pursuant to this subsection may not exceed contributions and service credit required under federal law for periods of service in the uniformed services. [2003 c.733 §43; 2009 c.5 §9; 2009 c.909 §9]

## DIRECT ROLLOVERS

**238A.430 Direct rollovers; rules.** (1) To the extent required by law, and except as otherwise provided by rules adopted by the Public Employees Retirement Board under subsection (4) of this section, any portion of a distribution of benefits described in subsection (2) of this section shall, at the election of and in lieu of distribution to the distributee, be paid directly to an eligible retirement plan specified by the distributee.

(2) The provisions of subsection (1) of this section apply to a distribution of any benefit under the pension program or the individual account program except:

(a) A distribution that is one of a series of substantially equal periodic payments made at least annually for the life or life expectancy of the distributee, or for the joint lives or life expectancies of the distributee and a designated beneficiary;

(b) A distribution that is one of a series of substantially equal periodic payments made at least annually for a specified period of 10 years or more; and

(c) A distribution to the extent that the distribution is required under 26 U.S.C. 401(a)(9).

(3) The provisions of subsection (1) of this section apply to any portion of a distribution of benefits under the pension program or the individual account program even though the portion consists of after-tax employee contributions that are not includable in gross income. Any portion of a distribution that consists of after-tax employee contributions that are not includable in gross income may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution or defined benefit plan described in 26 U.S.C. 401(a) or 403(b) that agrees to account separately for amounts transferred, including accounting separately for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income. The amount transferred shall be treated as consisting first of the portion of the distribution that is includable in gross income, determined without regard to 26 U.S.C. 402(c)(1).

(4) The board shall adopt rules implementing the direct rollover requirements of 26 U.S.C. 401(a)(31) and the regulations implementing that section, and may adopt administrative exceptions to the direct rollover requirements to the extent permitted by 26 U.S.C. 401(a)(31) and the regulations implementing that section.

(5) All references in this section to federal laws and regulations are to the laws and regulations in effect on May 1, 2009.

(6) For purposes of this section:

(a) "Distributee" means a member, a member's surviving spouse or a member's alternate payee under ORS 238.465.

(b) "Eligible retirement plan" means:

(A) An individual retirement account described in 26 U.S.C. 408(a);

(B) An individual retirement annuity described in 26 U.S.C. 408(b), other than an endowment contract;

(C) A qualified trust under 26 U.S.C. 401(a), that is a defined contribution or defined benefit plan and permits the acceptance of rollover contributions;

(D) An annuity plan described in 26 U.S.C. 403(a);

(E) An eligible deferred compensation plan described in 26 U.S.C. 457(b) that is maintained by an eligible governmental employer described in 26 U.S.C. 457(e)(1)(A) and that agrees to account separately for amounts transferred into such plan from the distributing plan; or

(F) An annuity contract described in 26 U.S.C. 403(b). [2003 c.733 §44; 2009 c.5 §10; 2009 c.909 §10]

**238A.435 Distribution of death benefit as rollover distribution.** (1) If a benefit is payable under this chapter to a beneficiary by reason of the death of a member of the system, the beneficiary may elect to have all or part of the distribution of the death benefit paid in an eligible rollover distribution to an individual retirement plan described in 26 U.S.C. 408(a), or an individual retirement annuity, other than an endowment contract, described in 26 U.S.C. 408(b), if the plan or annuity is established for the purpose of receiving the eligible rollover distribution on behalf of the designated beneficiary.

(2) Subsection (1) of this section applies to an eligible rollover distribution of death benefits to a beneficiary who is not treated as the spouse of the decedent for federal tax purposes and who is the decedent's designated beneficiary for the purposes of the minimum required distribution requirements

of 26 U.S.C. 401(a)(9). To the extent provided by rules of the Public Employees Retirement Board, a trust maintained for the benefit of one or more beneficiaries must be treated by the board in the same manner as a trust that is designated as a beneficiary for the purposes of the minimum required distribution requirements of 26 U.S.C. 401(a)(9).

(3) As used in this section, "eligible rollover distribution" has the meaning given that term in 26 U.S.C. 402(c)(4), as in effect on January 1, 2008. [2007 c.628 §6]

## RULES

**238A.450 Rules for Oregon Public Service Retirement Plan.** (1) The Public Employees Retirement Board shall adopt rules for the administration of this chapter.

(2) All rules adopted by the board under this section become part of the written plan document for the Public Employees Retirement System that is required to maintain the status of the pension program and the individual account program as parts of a tax-qualified governmental retirement plan under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [2003 c.733 §44a; 2005 c.808 §19]

## CHANGES TO OREGON PUBLIC SERVICE RETIREMENT PLAN

**238A.460 Limitation on powers of board, director and staff.** (1) The Public Employees Retirement Board, the director employed by the board and staff employed by the board may not adopt any rule or take any administrative action that has the effect of increasing the total liability for benefits under this chapter that is in excess of one-tenth of one percent.

(2) Subsection (1) of this section does not apply to any rule or administrative action necessary to maintain qualification of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [2003 c.733 §44b]

**238A.465 Legislative intent relating to increased benefits.** It is the intent of the Legislative Assembly that any increase in benefits under the Oregon Public Service Retirement Plan be provided through changes in the individual account program and not through changes in the pension program. [2003 c.733 §44d]

**238A.470 Contract rights under Oregon Public Service Retirement Plan.** The Legislative Assembly may change the benefits payable to persons who become members of the Public Employees Retirement System on or after August 29, 2003, as described in ORS 238A.025, as long as the change applies only to benefits attributable to service performed and salary earned on or after the date the change is made. [2003 c.733 §45]

**238A.475 Application of legislative changes to legislators.** Any law enacted after January 1, 2004, that has the effect of increasing the total liability for benefits under this chapter that is in excess of one-tenth of one percent does not apply to service by members of the Legislative Assembly that entitles those members to benefits under the Oregon Public Service Retirement Plan. [2003 c.733 §44c]

TOC INDEX

# Chapter 243

**(Partial)**

**2009 EDITION**

**NOTE:** This publication includes only those portions of ORS chapter 243 relating to deferred compensation plans and an optional retirement plan for higher education employees.

## Public Employee Rights and Benefits


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## DEFERRED COMPENSATION PLANS

### (Definitions)

**243.401 Definitions for ORS 243.401 to 243.507.** As used in ORS 243.401 to 243.507:

(1) "Board" means the Public Employees Retirement Board described in ORS 238.630.

(2) "Council" means the Oregon Investment Council created by ORS 293.706.

(3) "Deferred compensation contract" means a written agreement entered into by the state and an eligible state employee under the provisions of ORS 243.440.

(4) "Deferred compensation investment program" means the program established by the Oregon Investment Council under ORS 243.421, for investment of assets of the Deferred Compensation Fund.

(5) "Deferred compensation plan" means a plan established by the state or a local government for the deferral of compensation payable to employees of the state or local government and for the deferral of income taxation on that compensation.

(6) "Eligible state employee" means an officer or employee of a state board, commission, department or other instrumentality of state government, including, but not limited to, all officers and employees of the executive, judicial and legislative branches of state government, but excluding:

(a) Persons engaged as independent contractors, except as otherwise specifically allowed by statute;

(b) Persons who are employed in emergency work and whose periods of employment are on an intermittent or irregular basis; and

(c) Persons who are provided sheltered employment or make-work by the state in an employment or industries program maintained for the benefit of such individuals.

(7) "Fund" means the Deferred Compensation Fund established under ORS 243.411.

(8) "Local government" means a city, county, municipal or public corporation, any political subdivision of the state or any instrumentality thereof, or an agency created by two or more such political subdivisions to provide themselves governmental services.

(9) "Local government deferred compensation plan" means a deferred compensation plan that is established and administered by a local government.

(10) "Local plan participant" means a person participating in a local government deferred compensation plan.

(11) "Participating local government" means a local government that invests all or part of the assets of the deferred compensation plan established by the local government through the deferred compensation investment program.

(12) "State deferred compensation plan" means the deferred compensation plan described in ORS 243.435 for eligible state employees.

(13) "State plan participant" means a person participating in the state deferred compensation plan, either through current or past deferrals of compensation.

(14) "System" means the Public Employees Retirement System established in ORS 238.600. [1997 c.179 §2 (enacted in lieu of 243.400)]

### (Deferred Compensation Fund)

**243.411 Deferred Compensation Fund.** (1) The Deferred Compensation Fund is created, separate and distinct from the General Fund, for the purpose of holding and investing assets of the state deferred compensation plan and the assets of the deferred compensation plans of participating local governments. Interest and any other earnings of the Deferred Compensation Fund shall be credited to the fund. Moneys in the fund may be used only for the purposes of implementing and administering ORS 243.401 to 243.507.

(2) Subject to rules adopted by the Public Employees Retirement Board under ORS 243.470, the assets of the Deferred Compensation Fund may be commingled with the assets of the Public Employees Retirement Fund for investment purposes in a group trust or by other means.

(3) The limitations imposed on the use of the Deferred Compensation Fund by subsection (1) of this section do not affect any law of this state that authorizes the manner in which moneys in the fund may be invested. [1997 c.179 §3]

**243.416 State Treasurer as fund custodian; administration.** The Deferred Compensation Fund shall be held by the State Treasurer, who shall be custodian of the fund. Another person may be appointed as custodian of the fund if the State Treasurer and the Public Employees Retirement Board agree to the appointment. On request from the Director of the Public Employees Retirement System or the director's designee, the Oregon Department of Administrative Services shall draw warrants and issue payments on the Deferred Compensation Fund for the payment of benefits, the payment of expenses incurred by the system in the administration of ORS 243.401 to ORS 243.507, and the payment of refunds or other amounts that by reason of excessive contributions or other error are owed to state plan partic-

ipants or local plan participants or the beneficiaries of those participants. [1997 c.179 §4]

**243.421 Investment program for fund; securities law not applicable.** (1) The Oregon Investment Council shall establish a program for investment of moneys in the Deferred Compensation Fund. The program shall include policies and procedures for the investment of moneys in the fund. The program and all investments of moneys under the program are subject to the provisions of ORS 293.701 to 293.820.

(2) The council shall provide to the Public Employees Retirement Board a description of the investment options set forth in the council's policies and procedures for the investment of moneys in the fund, the applicable benchmark for each option and a description of the characteristics of each benchmark.

(3) The provisions of ORS chapter 59 that require registration of securities do not apply to any share, participation or other interest in the state deferred compensation plan or in the Deferred Compensation Fund. The provisions of ORS chapter 59 requiring licensing of certain persons as broker-dealers or as investment advisors do not apply to any of the following persons or entities for the purposes of implementing and administering the deferred compensation investment program established under this section:

(a) The council.

(b) The Public Employees Retirement Board.

(c) The Public Employees Retirement System.

(d) The State Treasurer.

(e) Any officer or employee of the persons or entities described in paragraphs (a) to (d) of this subsection. [1997 c.179 §5]

**243.426 Accounts; use for administrative expenses.** On request from the Public Employees Retirement Board, the State Treasurer shall establish all accounts in the Deferred Compensation Fund that are necessary to administer the provisions of ORS 243.401 to 243.507. The accounts shall be established and maintained with the charges assessed under ORS 243.472 against the account balances of the state plan participants and the funds invested by participating local governments. The moneys held in the accounts established by the board may be used only for payment of the administrative expenses incurred by the system, the State Treasurer and the Oregon Investment Council in administering the provisions of ORS 243.401 to 243.507. [1997 c.179 §6]

**243.428 Forfeited payments; use of moneys.** (1) If a warrant, check or order is issued for the payment of a deferred compensation benefit under the state deferred compensation plan, or for payment of a refund under the state deferred compensation plan, and the warrant, check or order is canceled, declared void or otherwise made unpayable, the payment shall be forfeited and the amount of the payment shall be returned or credited to the Deferred Compensation Fund. The amount forfeited may be used for the payment of administrative expenses of the state deferred compensation plan. Any amounts forfeited under this section shall be restored to the fund and paid to the payee, without interest, if the payee is located and files a claim for the benefit. The amount so paid shall be restored from other forfeited amounts or paid as an administrative expense of the state deferred compensation plan. The Public Employees Retirement Board may reissue the warrant, check or order for payment without bond if the payee is located after the warrant, check or order is canceled, declared void or otherwise made unpayable. Benefit payments forfeited under this subsection are not subject to ORS 98.302 to 98.436.

(2) The amount of any warrant, check or order for the payment of employee benefit withdrawals or refunds under a local government deferred compensation plan that is canceled, declared void or otherwise made unpayable shall be credited to the account of the applicable local government deferred compensation plan held in the Deferred Compensation Fund. The state shall not be liable under this subsection to a payee, or to a payee's beneficiaries, in the event a warrant, check or order for payment is not reissued to the payee or the payee's beneficiaries. [1997 c.179 §7]

**(State Deferred Compensation Plan)**

**243.435 Plan contents; assets held in trust; use of moneys; recovery of overpayments; assignment of benefits prohibited.** (1) The Public Employees Retirement Board shall administer the state deferred compensation plan described in ORS 243.401 to 243.507 on behalf of the state for the benefit of eligible state employees.

(2) All assets of the state deferred compensation plan are held in trust for the exclusive benefit of the state plan participants and their beneficiaries. Except as otherwise provided by law, the Public Employees Retirement Board is declared to be the trustee of the assets of the state deferred compensation plan.

(3) The State of Oregon has no proprietary interest in the assets of the state de-

ferred compensation plan or in payments of deferred compensation made to the plan by state plan participants. The state disclaims any right to reclaim payments made to the plan and waives any right of reclamation the state may have to the plan assets. This subsection does not limit the ability of the board to alter or refund an erroneously made employer payment.

(4) All moneys paid into the plan shall be deposited into the Deferred Compensation Fund.

(5) The assets of the state deferred compensation plan that are held in the Deferred Compensation Fund may be used only for the payment of benefits under the plan and for payment of expenses or refund liabilities incurred by the system in administration of the state deferred compensation plan.

(6) If the board determines that a state plan participant or any other person has received any amount in excess of the amounts that the participant or other person is entitled to receive under ORS 243.401 to 243.507, the board may recover the overpayment or other improperly paid amount in the same manner as provided for the recovery of overpayments from the Public Employees Retirement Fund under ORS 238.715.

(7) A state plan participant may not assign, anticipate, alienate, sell, transfer, pledge or in any way encumber any of the rights a participant may have under the state deferred compensation plan, and the state shall reject and refuse to honor any such purported action with respect to those rights. [1997 c.179 §8]

**243.440 Salary reduction for deferred compensation plan; amount; payment.** (1) The state and an eligible state employee may enter into a written deferred compensation contract that provides that a specified portion of the compensation payable to the employee for services rendered by the employee will not be paid or otherwise made available at the time the services are rendered but instead will be paid or otherwise made available at some future date. The deferred compensation contract must specify the amount by which the employee's compensation will be reduced each month for the purpose of funding the deferred compensation benefit for the employee. The amount of the reduction may not be less than $25 per month and may not exceed the maximum amount allowable under rules adopted by the Public Employees Retirement Board under ORS 243.470.

(2) The state officer or official authorized to disburse moneys in payment of salaries and wages of employees is authorized, upon written request of an eligible state employee, to reduce each month the salary of the eligible state employee by an amount of money designated by that employee in the employee's deferred compensation contract. The state officer or official may pay that amount to the Public Employees Retirement System for deposit in the Deferred Compensation Fund. [1977 c.721 §5; 1983 c.789 §3; 1991 c.618 §4; 1997 c.179 §9]

**243.445 Employee choice of plans; choice not binding; change in value of employee assets not to affect net worth of state.** (1) When an eligible state employee agrees to participate in the state deferred compensation plan under ORS 243.401 to 243.507, the employee may indicate a preference with respect to the mode of investment or deposit to be used by the state in investing or depositing the deferred income under the plan. The preference indicated by the employee is not binding on the state.

(2) Any change in the net value of the assets of an eligible state employee invested under the state deferred compensation plan shall result in a commensurate change in the total amount distributable to the employee or the beneficiary of the employee, and shall not result in any increase or decrease in the net worth of the state. [1977 c.721 §11; 1983 c.789 §4; 1991 c.618 §5; 1997 c.179 §10]

**243.450 Disclosure statement; contents.** The Public Employees Retirement System shall give each eligible state employee who enters into a deferred compensation contract under the state deferred compensation plan, prior to the deferral of any part of that employee's salary, a disclosure statement in writing that contains information regarding the options available under the plan for the investment of deferred compensation, including the probable income and probable safety of the moneys deferred, that persons of reasonable prudence and discretion require when determining the permanent disposition of their funds. [1977 c.721 §12; 1991 c.618 §6; 1997 c.179 §11]

**243.460 Effect of deferred compensation on current taxable income and on retirement programs.** (1) The amount by which an eligible state employee's salary is reduced under ORS 243.440 shall continue to be included as regular compensation for the purpose of computing the retirement, pension and Social Security benefits earned by the employee, but that amount shall not be considered current taxable income for the purpose of computing federal and state income taxes withheld on behalf of the employee.

(2) The state deferred compensation plan established by ORS 243.401 to 243.507 supplements all other retirement and pension systems established by the State of Oregon, and participation by an eligible state employee in the state deferred compensation

plan shall not cause a reduction of any retirement or pension benefits provided to the employee by law. [1977 c.721 §6; 1997 c.179 §12]

**243.465 Rollover distribution of deferred amounts to beneficiary.** (1) If a benefit is payable under the state deferred compensation plan described in ORS 243.401 to 243.507 to a beneficiary by reason of the death of an eligible state employee participating in the plan, the beneficiary may elect to have all or part of the distribution of deferred amounts paid as an eligible rollover distribution to an individual retirement plan described in 26 U.S.C. 408(a), or an individual retirement annuity, other than an endowment contract, described in 26 U.S.C. 408(b), if the plan or annuity is established for the purpose of receiving the eligible rollover distribution on behalf of the designated beneficiary.

(2) Subsection (1) of this section applies to an eligible rollover distribution of deferred amounts to a beneficiary who is not treated as the spouse of the decedent for federal tax purposes and who is the decedent's designated beneficiary for the purposes of the minimum required distribution requirements of 26 U.S.C. 401(a)(9). To the extent provided by rules of the Public Employees Retirement Board, a trust maintained for the benefit of one or more beneficiaries must be treated by the board in the same manner as a trust that is designated as a beneficiary for the purposes of the minimum required distribution requirements of 26 U.S.C. 401(a)(9).

(3) As used in this section, "eligible rollover distribution" has the meaning given that term in 26 U.S.C. 402(c)(4), as in effect on January 1, 2008. [2007 c.628 §8]

**243.470 Administration of deferred compensation program; rules.** (1) Subject to ORS chapter 183, the Public Employees Retirement Board may adopt rules necessary to implement the provisions of ORS 243.401 to 243.507 and determine the terms and conditions of eligible state employee participation and coverage. Rules adopted by the board under this subsection shall establish the terms and conditions of deferred compensation contracts for eligible state employees.

(2) The Public Employees Retirement System shall adopt forms and maintain accounts and records necessary and appropriate to the efficient administration of ORS 243.401 to 243.507 or which may be required by agencies of the State of Oregon or the United States.

(3) The board shall adopt rules and take all actions necessary to maintain compliance of the state deferred compensation plan with requirements for governmental deferred compensation plans imposed by the Internal Revenue Code and by regulations adopted pursuant to the Internal Revenue Code.

(4) The Public Employees Retirement System may contract with a private corporation or institution able and qualified to provide consolidated billing services, state plan participant enrollment services, educational services, state plan participant accounts, data processing, record keeping and other related services that are necessary or appropriate to the administration of the state deferred compensation plan under ORS 243.401 to 243.507. [1977 c.721 §8; 1983 c.789 §5; 1991 c.618 §7; 1997 c.179 §13]

**243.472 Costs of plan administration assessed against participants; apportionment of expenses; expenses not board budgeted items.** (1) ORS 243.401 to 243.507 shall be implemented and administered by the Public Employees Retirement Board so that no expense is incurred by the State of Oregon or the Public Employees Retirement Fund and so that the State of Oregon and the Public Employees Retirement System incur no liabilities other than those liabilities that may be imposed under ORS 243.401 to 243.507 or other law. In addition to the amounts that may be deducted by the State Treasurer pursuant to ORS 293.718, the Public Employees Retirement System may assess a charge against the accounts of state plan participants in the Deferred Compensation Fund. The charge may not exceed two percent of the balances of those accounts. Funds collected pursuant to the charge are continuously appropriated for and shall be used only to cover the costs incurred by the system to administer the state deferred compensation plan, to issue refunds and to pay costs incurred in investing the plan assets.

(2) For the purpose of implementing and administering the provisions of ORS 243.401 to 243.507, including implementation and administration of service agreements entered into with local governments under ORS 243.478, the Public Employees Retirement Board may designate fiscal periods. The board may apportion extraordinary expenses incurred during any fiscal period, including but not limited to expenses for equipment and actuarial studies, to subsequent fiscal periods for purposes of equitably distributing the burden of the expenses. The board may carry forward unexpended fees collected in one fiscal period to a later fiscal period for the payment of future expenses.

(3) In the event the assessment provided for in subsection (1) of this section is inadequate to meet the administrative expenses incurred by the system for the state deferred compensation plan, and these expenses are not carried over to another fiscal period, the

excess expenses may be paid by an additional one-time assessment against the account balances of state plan participants in the Deferred Compensation Fund. The additional assessment shall be in an amount determined by the Public Employees Retirement Board to be sufficient to pay the excess expenses in the fiscal period in which the assessment is made. The one-time assessment is in addition to the regular assessment provided for in subsection (1) of this section.

(4) Deferred compensation benefit payments, and amounts payable as refunds, shall not for any purpose be deemed expenses of the board and shall not be included in its biennial departmental budget. [1997 c.179 §14; 2001 c.716 §23]

**(Local Government Deferred Compensation Plans)**

**243.474 Investment of local government plan assets through investment program; agreement with Public Employees Retirement System; charges against participants.** (1) A local government that establishes a deferred compensation plan may invest all or part of the plan's assets through the deferred compensation investment program established by the Oregon Investment Council under ORS 243.421. Plan assets of a local government deferred compensation plan invested through the deferred compensation investment program are not subject to the limitations on investment imposed by ORS 294.033 and 294.035. Local governments that invest through the deferred compensation investment program are subject to the policies and procedures established by the council for the administration of the program.

(2) A local government that wishes to become a participating local government pursuant to this section must enter into a written agreement with the Public Employees Retirement System. The agreement must set forth the terms of the investment and the record keeping and related services to be performed by the system for the invested funds. The Public Employees Retirement Board may require that the local government enter into a service agreement under ORS 243.478 as a condition of an agreement under this subsection. If the local government and the system cannot reach an agreement under the provisions of this subsection, the local government may not become a participating local government.

(3) All funds invested by the council for a participating local government must be accounted for separately. Investment of funds under this section must be implemented and administered so that the State of Oregon incurs no expense or liability other than those liabilities that may be imposed under ORS 243.401 to 243.507 or other law.

(4) In addition to those amounts that may be deducted by the State Treasurer pursuant to ORS 293.718, the system may assess a charge against the total account balances of all participating local governments that is sufficient to reimburse the system for any additional costs of investing funds for participating local governments. The Public Employees Retirement Board shall not act as a trustee or be considered the trustee of any trust established by a local government deferred compensation plan.

(5) The terms of the agreement provided for in subsection (2) of this section shall govern the nature and extent of the information that must be provided to local government officers and employees about the investment of deferred compensation through the deferred compensation investment program. [1997 c.179 §15]

**243.476 Compliance with federal requirements.** (1) As a condition of allowing a local government to become a participating local government, and at any time thereafter, the Oregon Investment Council, the Public Employees Retirement Board or the Director of the Public Employees Retirement System may require that the local government provide proof that the local government deferred compensation plan complies with the provisions of section 457 of the Internal Revenue Code, as amended, that apply to governmental plans, including but not limited to any required declaration of trust related to plan assets and appointment of a trustee. The council, board or director may require an opinion of counsel or other assurance satisfactory to the council, board or director that participation of a local government deferred compensation plan in the deferred compensation investment program does not cause the State of Oregon, its agencies or employees to violate any federal or state laws or regulations related to investments and securities.

(2) Participating local governments shall take all actions that the Oregon Investment Council, the Public Employees Retirement Board or the Director of the Public Employees Retirement System, in their discretion, deem necessary for compliance by the deferred compensation investment program with all applicable federal and state laws or for qualification of the program for any exemptions from regulation available under those laws, including but not limited to the federal Securities Act of 1933, as amended, the Investment Company Act of 1940, as amended, and ORS chapter 59. [1997 c.179 §16]

**243.478 Plan administration agreements; costs.** (1) A participating local government and the Public Employees Retirement System may enter into a written agreement for the system to provide consolidated billing services, participant enrollment services, participant accounts, data processing, record keeping and other related services that are necessary or appropriate to the administration of the local government deferred compensation plan. The agreement may provide that the services be provided directly by the system or through contracts with other providers.

(2) Agreements under this section must require that the participating local government remain the responsible administrator for the local government deferred compensation plan. The agreement may provide any additional terms and conditions that the system determines necessary for the purposes of offering the services described in subsection (1) of this section to local government deferred compensation plans, including proof of compliance under ORS 243.476. The system may require that participating local governments that enter into agreements with the system under this section have uniform provisions on plan administration and record keeping.

(3) The system may assess a charge, in an amount to be determined by the system, against the total account balances in the Deferred Compensation Fund of all local governments that have entered into service agreements under this section. The charge imposed under this subsection is in addition to any charges that may be assessed against local governments by the system under ORS 243.474 or deducted by the State Treasurer under ORS 293.718.

(4) In the event the assessment provided for in subsection (3) of this section is inadequate to meet the administrative expenses incurred by the system for local government deferred compensation plans during a fiscal period, and the expenses are not carried over to another fiscal period pursuant to ORS 243.472 (2), the excess expenses may be paid by an additional one-time assessment against the account balances in the Deferred Compensation Fund of participating local governments that have entered into service agreements under this section. [1997 c.179 §17]

**(Immunities)**

**243.482 Immunity of governmental agencies from liability for plan administration or investment of funds.** (1) A civil action for damages may not be brought against the state, the State Treasurer, the Oregon Investment Council, the Public Employees Retirement Board, or the officers or employees of the board by reason of:

(a) A breach of any duty in administering or investing of funds in the Deferred Compensation Fund;

(b) A breach of any duty in administering or investing of the funds of participating local governments; or

(c) Any losses suffered by a state plan participant or local plan participant or the beneficiaries of those participants because of the participant's choice of an investment option available through the deferred compensation investment program established under ORS 243.421.

(2) Any claim that the council, the board, the State Treasurer or the system, or any of their officers or employees, violated federal or state securities laws, including antifraud provisions, in the implementation or administration of ORS 243.401 to 243.507 is subject to the provisions of ORS 30.260 to 30.300. With respect to such claims, the state shall defend, save harmless and indemnify the State Treasurer, the system, members of the council, the board, and their officers and employees, as provided for other torts under the provisions of ORS 30.260 to 30.300.

(3) The limitations on liability established by this section do not include an exemption from any liability that may be imposed under the provisions of ORS chapter 59. Except to the extent that the state deferred compensation plan and the deferred compensation investment program are exempted from registration and licensing requirements under ORS 243.421, ORS chapter 59 applies to the administration and investment of the Deferred Compensation Fund, the state deferred compensation plan, local government deferred compensation plans and the deferred compensation investment program. [1997 c.179 §18]

**(Deferred Compensation Advisory Committee)**

**243.505 Deferred Compensation Advisory Committee.** (1) The Deferred Compensation Advisory Committee shall be appointed by the Public Employees Retirement Board, consisting of seven members with knowledge of deferred compensation plans.

(2) At the direction of the board, the committee shall advise the Public Employees Retirement Board on policies and procedures and such other matters as the board may request.

(3) The term of office of each member is three years, but a member serves at the pleasure of the board. Before the expiration of the term of a member, the board shall ap-

point a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the Deferred Compensation Advisory Committee is entitled to compensation and expenses as provided in ORS 292.495.

(5) The Deferred Compensation Advisory Committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the committee determines.

(6) A majority of the members of the committee constitutes a quorum for the transaction of business.

(7) The Deferred Compensation Advisory Committee may meet at a place, day and hour determined by the committee. The committee also may meet at other times and places specified by the call of the chairperson or of a majority of the members of the committee. [1991 c.618 §10; 1997 c.179 §19; 1999 c.406 §1]

**(Payment of Deferred Compensation to Alternate Payee)**

**243.507 Payment of deferred compensation to alternate payee under judgment or order; procedure; compliance with state and federal requirements; administrative expenses; limitations; rules.** (1) Notwithstanding any other provision of law, deferred compensation under a deferred compensation plan that would otherwise be paid by a public employer to an eligible employee shall be paid, in whole or in part, to an alternate payee if and to the extent expressly provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation. Any payment under this subsection to an alternate payee bars recovery by any other person.

(2) A judgment, order or agreement providing for payment to an alternate payee under subsection (1) of this section may also provide:

(a) That payments to the alternate payee may commence earlier than the date the employee would be eligible to receive payments under the provisions of the deferred compensation plan.

(b) That the alternate payee may elect to receive payment in any manner available to the employee under the deferred compensation plan, without regard to the form of payment elected by the employee.

(c) That the alternate payee's life is the measuring life for the purposes of measuring payments to the alternate payee under the form of payment selected by the alternate payee.

(d) That all or a portion of the deferred compensation account of the eligible employee be segregated in an account in the name of and for the benefit of the alternate payee, and that the alternate payee have the same rights and privileges as an eligible employee only concerning the investment or deposit of funds under the deferred compensation plan.

(3) Subsection (1) of this section applies only to payments of deferred compensation made after the date of receipt by the administrator of the deferred compensation plan of written notice of the judgment, order or agreement and such additional information and documentation as the plan administrator may prescribe.

(4)(a) Payment of all or any part of deferred compensation to an alternate payee who is a child or dependent of the employee shall be reported for state and federal income tax purposes as payment to the eligible employee. Any amount required to be withheld for state or federal income tax purposes shall be withheld from the payment to the alternate payee.

(b) Payment of all or any part of deferred compensation to an alternate payee who is the spouse or former spouse of the employee shall be reported for state and federal income tax purposes as payment to the alternate payee. Any amount required to be withheld for state or federal income tax purposes shall be withheld from the payment to the alternate payee.

(5) If an eligible employee transfers from a deferred compensation plan of a public employer to a deferred compensation plan established by another public employer, the new employer is not required to accept as part of the transfer any portion of the eligible employee's account with the former employer that is subject to judgment, order or agreement requiring payment of that portion of the eligible employee's account to an alternate payee.

(6) If an eligible employee transfers from a deferred compensation plan of a public employer to a deferred compensation plan established by another public employer, the employee's previous employer shall not transfer to the plan established by the new employer any portion of the eligible employee's account that is subject to a judg-

ment, order or agreement requiring payment of that portion of the eligible employee's account to an alternate payee.

(7) The Public Employees Retirement Board, or the plan administrator for any local government deferred compensation plan, may adopt rules, policies or other regulations for the purpose of maintaining compliance of a deferred compensation plan with section 457 of the Internal Revenue Code or any other provision of federal law that affects the tax qualification of a deferred compensation plan. Rules, policies or other regulations adopted under this subsection may vary from the express language of this section if the rules, policies or other regulations are required for the purpose of maintaining compliance of a deferred compensation plan with section 457 of the Internal Revenue Code or any other provision of federal law that affects the tax qualification of a deferred compensation plan.

(8) Any public employer or deferred compensation plan that is required by the provisions of this section to make a payment to an alternate payee shall charge and collect out of the deferred compensation payable to the eligible employee and the alternate payee actual and reasonable administrative expenses and related costs incurred by the public employer or deferred compensation plan in obtaining data and making calculations that are necessary by reason of the provisions of this section. A public employer or deferred compensation plan may not charge more than $300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. A public employer or deferred compensation plan that charges and collects administrative expenses and related costs under the provisions of this subsection shall allocate those expenses and costs between the eligible employee and the alternate payee based on the fraction of the benefit received by the member or alternate payee.

(9) As used in this section:

(a) "Alternate payee" means a spouse, former spouse, child or other dependent of a member.

(b) "Court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia.

(c) "Eligible employee" means a state plan participant or local plan participant.

(d) "Public employer" means the state or a local government that establishes a deferred compensation plan. [1993 c.715 §5; 1997 c.179 §32; 2003 c.576 §406; 2007 c.54 §1]

## OPTIONAL RETIREMENT PLAN FOR HIGHER EDUCATION EMPLOYEES

**243.800 Optional retirement plan for certain academic and administrative higher education employees.** (1) Notwithstanding any provision of ORS chapter 238 or 238A or ORS 243.910 to 243.945, the State Board of Higher Education shall 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. The State Board of Higher Education shall establish selection criteria for the purpose of this subsection.

(3) An administrative or academic employee may make an irrevocable election to participate in the Optional Retirement Plan within six months after being employed. An election under this subsection is effective on the first day of the month following six full months of employment.

(4) An administrative or academic employee who does not elect to participate in the Optional Retirement Plan:

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

(b) Continues to be assisted by the State Board of Higher Education under ORS 243.920 if the employee is being so assisted.

(5) Except as provided in subsection (6) of this section, employees who elect to participate in the Optional Retirement Plan are ineligible for active membership in the Public Employees Retirement System or for any assistance by the 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 Op-

tional Retirement Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is not vested shall be considered by the Public Employees Retirement Board to be a terminated member under the provisions of ORS 238.095 as of the effective date of the election, and the amount 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, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is vested shall be considered to be an inactive member by the Public Employees Retirement Board and shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes a written request to the Public Employees Retirement Board for a transfer of the amounts credited to the member account of the member to the Optional Retirement Plan. A request for a transfer must be made at the time the member elects to participate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer all amounts credited to the member account of the member directly to the Optional Retirement Plan, and shall terminate all rights, privileges and options of the employee under ORS chapter 238.

(c) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is not a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be considered to be a terminated member of the pension program by the Public Employees Retirement Board as of the effective date of the election.

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

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

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

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

(8) An employee participating in the Optional Retirement Plan 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 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, before any offset under ORS 238.229 (2), if the employee had not elected to participate in the Optional Retirement Plan.

(10) Both employee and employer contributions to an Optional Retirement Plan shall be remitted directly to the companies that have issued annuity contracts to the participating employees or directly to the mutual funds.

(11) Benefits under the Optional Retirement Plan are payable to employees who elect to participate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accordance with the terms of the annuity contracts or the terms of the contract with the mutual fund. Employees electing to participate in the plan agree that benefits payable under the plan are not obligations of the State of Oregon or of the Public Employees Retirement System. [Formerly 243.775; 2001 c.945 §66; 2003 c.67 §34; 2003 c.733 §69; 2005 c.611 §1; 2007 c.71 §76; 2007 c.769 §5]

**Note:** 243.800 was added to and made a part of ORS chapter 243 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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# Enrolled
# Senate Bill 897

Sponsored by COMMITTEE ON COMMERCE AND WORKFORCE DEVELOPMENT

CHAPTER .....

AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 238.005, 238.640, 238A.005 and 238A.050; limiting expenditures; and declaring an emergency.

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

## MEMBERSHIP OF PUBLIC EMPLOYEES RETIREMENT BOARD

**SECTION 1.** ORS 238.640 is amended to read:

238.640. (1) All members of the Public Employees Retirement Board must be at least 21 years of age, be citizens of the United States and have been residents of the state for at least two years immediately preceding appointment to the board.

(2) One member of the board must be:

(a) An employee of the state in a management position at the time of appointment and throughout the term of appointment; or

(b) A person who holds an elective office, by election or appointment, in the governing body of a participating public employer, other than the state.

(3) One member **of the board** must be **either:**

**(a) A retired member of the Public Employees Retirement System who retired from a position in an appropriate bargaining unit as defined in ORS 243.650; or**

**(b)** A public employee, as defined in ORS 243.650, who is in an appropriate bargaining unit, as defined in ORS 243.650, and who has an exclusive representative at the time of the member's appointment and throughout the term of the member. Membership on the board does not affect the status of the person as a public employee, as defined in ORS 243.650.

(4) Three members of the board must have experience in business management, pension management or investing. A member appointed under this subsection may not be a member of the Public Employees Retirement System or a beneficiary of a member of the system, and may not have any interest in benefits provided by the system.

(5) Notwithstanding the qualifications established for members of the board under this section, all members of the board have the same fiduciary duties and must exercise the same degree of independent judgment.

(6) Any vacancy on the board shall be filled by appointment for the unexpired term of the member replaced. Members of the board may be reappointed.

(7) Except as provided in subsection (8) of this section, a member of the board is entitled to compensation and expenses as provided in ORS 292.495 from the Public Employees Retirement Fund.

(8) Any member of the board who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the board. The wages or salary of the member shall not be reduced during periods that the member is released from duty for the purpose of conducting the official business of the board. The board shall reimburse a public employer for the cost of continuing the wages or salary of the member while the member is released from duty under this subsection. A member who continues to receive wages or salary under the provisions of this subsection shall not receive compensation under ORS 292.495, but shall receive travel and other expenses provided for under ORS 292.495. The provisions of this subsection do not apply to any person who is a member of the board and who holds another office that is subject to the provisions of section 10, Article II of the Oregon Constitution, prohibiting the holding of more than one lucrative office.

## VERIFICATION OF RETIREMENT BENEFITS

**SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS chapter 238.**

**SECTION 3. (1) Not earlier than two years before a member's earliest service retirement age, a member may request a verification of retirement data from the Public Employees Retirement Board. Upon receiving a request under this section, the board shall notify all of the member's participating public employers of the request. In a manner specified by rules of the board, the board shall allow those employers a reasonable time to confirm the records relating to the member that were provided to the board before the request was made. The board shall thereafter provide a verification to the member that includes the following data, as reflected in the records of the Public Employees Retirement System:**

**(a) The service information reported by the member's employers and the number of years and months of creditable service or retirement credit derived from that information, determined as of a date specified in the verification.**

**(b) The salary data reported by the member's employers for each calendar year, and the final average salary for the member derived from that data.**

**(c) If applicable, the member's regular account balance, and any variable account balance, as of the end of a calendar year specified in the verification.**

**(d) If applicable, the total amount of unused sick leave accumulated by the member as of a date specified in the verification.**

**(2) A member of the system may dispute the accuracy of the data provided in the verification by filing a written notice of dispute with the board not more than 60 days after the date on which the verification is provided to the member. Upon receiving a notice of dispute under this subsection, the board shall determine the accuracy of the disputed data and make a written decision based on its determination. The board shall provide to the member a copy of the decision and a written explanation of any applicable statutes and rules. A member may seek judicial review of the decision as provided in ORS 183.484 and rules of the board.**

**(3) Except as provided in this section, when a member who receives a verification under this section retires for service, the creditable service, retirement credit, final average salary, member account balances and accumulated unused sick leave used in calculating the member's retirement allowance or pension may not be less than the amounts provided in the verification, subject to adjustments for:**

**(a) Creditable service or retirement credit accrued by the member after the date specified in the verification.**

**(b) Salary attributable to periods of employment after the date specified in the verification.**

**(c) Earnings and losses credited to the member's accounts from the end of the calendar year specified in the verification to the member's effective retirement date, in accordance with rules adopted by the board.**

**(d) Sick leave used and accrued after the date specified in the verification.**

**(4) The board may use creditable service, retirement credit, final average salary, member account balances or accumulated unused sick leave in calculating a member's service retirement allowance that is less than the amounts provided in a verification received under this section if the member knew that the amounts were not accurate at the time the verification was provided and the member did not dispute the accuracy of the amounts as provided in subsection (2) of this section.**

**(5) A participating public employer may not modify information provided to the board relating to a member's creditable service, retirement credit, final average salary, employee contributions or accumulated unused sick leave after the board provides the member with a verification under this section that is based on that information except in response to the board's request for the purpose of a determination under subsection (2) or (4) of this section.**

**(6)(a) Subject to paragraph (b) of this subsection, erroneous payments or overpayments paid to or on account of a member based on a verification provided under this section may not be recovered under ORS 238.715, but may be charged to the reserve account established under ORS 238.670 (1), or charged as an administrative expense under ORS 238.610.**

**(b) The board shall recover erroneous payments or overpayments paid to or on account of a member based on a verification provided under this section if the board determines that the recovery is required to maintain the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code.**

**(7) A member may dispute the accuracy of data in a verification only as provided under this section. A member may not dispute the accuracy of data in a verification in the manner provided by ORS 238.450.**

**(8) A member shall be provided with one verification under this section at no cost. The board may establish procedures for recovering administrative costs from members for services in providing additional verifications.**

**SECTION 4. (1) Except as provided in this section, section 3 of this 2009 Act becomes operative on July 1, 2011.**

**(2) The requirement that the Public Employees Retirement Board provide verification of the amount of a member's accumulated unused sick leave under section 3 (1)(d) of this 2009 Act first applies to requests for verifications of retirement data received by the board on or after July 1, 2012.**

**SECTION 4a. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (1), chapter 75, Oregon Laws 2009 (Enrolled Senate Bill 5539), for the biennium beginning July 1, 2009, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Public Employees Retirement System, is increased by $500,000.**

## PARTICIPATION OF OPSRP MEMBERS IN PERS HEALTH INSURANCE PLANS

**SECTION 5.** ORS 238A.050 is amended to read:

238A.050. (1) The Oregon Public Service Retirement Plan is part of the Public Employees Retirement System and is administered by the Public Employees Retirement Board.

(2) **Sections 3 and 7 of this 2009 Act and** ORS 238.225, 238.229, 238.231, **238.410,** 238.445, 238.450, 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630, 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696, 238.698, 238.700, 238.705, 238.710 and 238.715 apply to the Oregon Public Service Retirement Plan.

(3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4)

of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the provisions of ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the individual account program and pension program differently than the other assets of the Public Employees Retirement System.

(4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the limitations imposed by ORS 293.726 (6).

(5) The board may contract with a private provider for the administration of the individual account program. The board is not subject to the provisions of ORS chapter 279A or 279B in awarding a contract under the provisions of this subsection. The board shall establish procedures for inviting proposals and awarding contracts under this subsection.

## RETIREMENT CREDIT FOR RETROACTIVE PAYMENTS

**SECTION 6. Section 7 of this 2009 Act is added to and made a part of ORS chapter 238.**

**SECTION 7. (1) For the purpose of computing salary under this chapter and ORS chapter 238A, salary includes retroactive payments of wages made to an employee to correct a clerical error. Retroactive payments described in this subsection shall be allocated to and deemed paid in the periods in which the work was done or in which the work would have been done.**

**(2) For the purpose of computing salary under this chapter and ORS chapter 238A, salary includes retroactive payments of wages made to an employee pursuant to a judgment, administrative order, arbitration award, conciliation agreement or settlement agreement that resolves a dispute or claim based on the employee's rights under employment or wage law or under a collective bargaining agreement. Retroactive payments described in this subsection shall be allocated to and deemed paid in the periods of the employee's active or inactive membership in which the work was done or in which the work would have been done.**

**(3) If retroactive payments are included in the salary of an employee under this section, the employee shall receive retirement credit for the periods to which the payment is allocated.**

**SECTION 8.** 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 for which benefits under this chapter are funded by employer contributions and earnings on the fund. For purposes of computing years of "creditable service," full months and major fractions of a month shall be considered to be one-twelfth of a year and shall be added to all full years. "Creditable service" includes all retirement credit received by a member.

(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, 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 qualifying position and who has completed the six-month period of service required by ORS 238.015.

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

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

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

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

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

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

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

(C) Retroactive payments [*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*] **described in section 7 of this 2009 Act**; and

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

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

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

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

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

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

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

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

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

(H) Payments for instructional services rendered to 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.

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

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

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

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

**SECTION 9.** ORS 238A.005 is amended to read:

238A.005. For the purposes of this chapter:

(1) "Active member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

(2) "Actuarial equivalent" means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.

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

(4) "Eligible employee" means a person who performs services for a participating public employer, including elected officials other than judges. "Eligible employee" does not include:

(a) Persons engaged as independent contractors;

(b) Aliens working under a training or educational visa;

(c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190, provided sheltered employment or make-work by a public employer;

(d) Persons categorized by a participating public employer as student employees;

(e) Any person who is an inmate of a state institution;

(f) Employees of foreign trade offices of the Economic and Community Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

(g) An employee actively participating in an alternative retirement program established under ORS 353.250 or an optional retirement plan established under ORS 341.551;

(h) Employees of the Oregon University System who are actively participating in an optional retirement plan offered under ORS 243.800;

(i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003, for membership in the system under the provisions of ORS chapter 238 or other law;

(j) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

(k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who continues to receive retirement benefits while employed; and

(L) Judges.

(5) "Firefighter" means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

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

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

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

(7)(a) "Hour of service" means:

(A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and

(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.

(b) "Hour of service" does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation laws.

(8) "Inactive member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan whose membership has not been terminated, who is not a retired member and who is not employed in a qualifying position.

(9) "Individual account program" means the defined contribution individual account program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(10) "Member" means an eligible employee who has established membership in the pension program or the individual account program of the Oregon Public Service Retirement Plan and whose membership has not been terminated under ORS 238A.110 or 238A.310.

(11) "Participating public employer" means a public employer as defined in ORS 238.005 that provides retirement benefits for employees of the public employer under the system.

(12) "Pension program" means the defined benefit pension program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(13) "Police officer" means a police officer as described in ORS 238.005.

(14) "Qualifying position" means one or more jobs with one or more participating public employers in which an eligible employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which benefits are not provided under the Oregon Public Service Retirement Plan pursuant to ORS 238A.070 (2).

(15) "Retired member" means a pension program member who is receiving a pension as provided in ORS 238A.180 to 238A.195.

(16)(a) "Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection, but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in taxable income.

(b) "Salary" includes the following amounts:

(A) Payments of employee and employer money into a deferred compensation plan that are made at the election of the employee.

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

(C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit plan by the employer at the election of the employee and that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on August 29, 2003.

(D) Any amount that is contributed to a cash or deferred arrangement by the employer at the election of the employee and that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect on August 29, 2003.

(E) Retroactive payments [*made to an employee to correct a clerical error, pursuant to an award by a court or by order of or pursuant to 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 the work would have been done*] **described in section 7 of this 2009 Act**.

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

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

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

(c) "Salary" does not include the following amounts:

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

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

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

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

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

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

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

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

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

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

**SECTION 10. The unit captions used in this 2009 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 2009 Act.**

**SECTION 11. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.**

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