

**Enrolled**  
**House Bill 3020**

Sponsored by Representative KNOPP

CHAPTER .....

AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 237.620, 238.005, 238.078, 238.082, 238.088, 238.156, 238.200, 238.225, 238.255, 238.260, 238.300, 238.305, 238.390, 238.395, 238.425, 238.458, 238.565, 238.660, 293.701, 293.706 and 293.711 and sections 6, 8, 10, 13, 14b and 37, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), sections 4, 5 and 7, chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), and section 2, chapter 276, Oregon Laws 2003 (Enrolled Senate Bill 258); repealing section 9, chapter 823, Oregon Laws 2001; and declaring an emergency.

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

**SECTION 1.** ORS 238.390, as amended by section 25, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

238.390. (1) *[In the event that]* **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 withdrawal from the fund of the amount in the member account of a member pursuant to ORS 238.265 shall not invalidate a prior designation of beneficiary in the event a member returns to covered employment, regardless of whether the sum is repaid to the fund pursuant to ORS 238.105.

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

*[(A) Husband or wife.]*

*[(B) Children.]*

*[(C) Father and mother.]*

*[(D) Grandchildren.]*

*[(E) Brothers and sisters.]*

*[(F) Nieces and nephews.]*

*[(b) Payment shall not be made to persons included in any of the groups listed in paragraph (a) of this subsection should there be living at the date of payment persons in any of the groups preceding it as listed. Payment to the persons in any group, upon receipt from them of an affidavit upon a form supplied by the board, that there are no living individuals in a group preceding it, that the estate of*

*the deceased will not be probated and that the amount of money, to the full extent thereof if necessary, will be used to pay the expenses of last illness and funeral of the deceased, shall completely discharge the board and system on account of the death.]*

**(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 [~~\$30~~] **\$200**.

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

*[(A) Expenses of the funeral of the deceased.]*

*[(B) Medical expenses of the last illness of the deceased.]*

*[(C) Hospital expenses of the last illness of the deceased.]*

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

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

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

**SECTION 2.** ORS 238.458 is amended to read:

238.458. (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.**

**SECTION 3.** ORS 238.305, as amended by section 8, chapter 945, Oregon Laws 2001, is amended to read:

238.305. (1) Not later than 60 days after the first benefit payment is made to a retired member of the 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 [(5)] (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 shall be in a form approved by the board. Payment under Option 1 shall be effective for months beginning on or after the date the board receives the election.

(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.

**SECTION 4.** ORS 238.395 is amended to read:

238.395. (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 *[to the same person or persons and]* in the *[same]* manner *[as]* provided for payment of money credited to the member account of the member in ORS 238.390 (2).

*[(4) In the event that a beneficiary has not been designated and the deceased member has no surviving next of kin referred to in ORS 238.390 (2)(a), the death benefit referred to in subsection (1) of this section shall be used for the same purpose and in the same manner as provided for the use of money credited to the member account of the member in ORS 238.390 (4)(a).]*

*[(5)]* (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 ~~[\$30]~~ **\$200**.

*[(6)]* (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.

[(7)] **(6)** [Payments] **Payment** by the Public Employees Retirement Board of additional death benefits [pursuant to the beneficiary designation on file with the board or any affidavit referred to in ORS 238.390 (2)(b) shall] **in the manner provided by this section** completely [discharge] **discharges** the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment.

**SECTION 5.** ORS 238.565 is amended to read:

238.565. (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 designation 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[; or]. If there is no surviving spouse, **the accrued retirement allowance shall be paid** to the beneficiary of the judge member[; or]. If there is no surviving spouse or beneficiary, [*to the personal representative of the estate of the judge member; or if there is no surviving spouse or beneficiary and the estate of the judge member will not be probated, for the purposes and in the manner provided in ORS 238.390 (4)(a)*] **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.

**SECTION 6. The amendments to ORS 238.390 and 238.565 by sections 1 and 5 of this 2003 Act apply only to members of the Public Employees Retirement System who die on or after the effective date of this 2003 Act.**

**SECTION 7. The amendments to ORS 238.395 by section 4 of this 2003 Act that increase from \$30 to \$200 the minimum amount that may be paid monthly to the beneficiary of a deceased member in lieu of a lump sum payment apply to a beneficiary designated by a member of the Public Employees Retirement System only if the member dies on or after the effective date of this 2003 Act.**

**SECTION 8.** ORS 238.225, as amended by section 1, chapter 9, Oregon Laws 2002, and section 1, chapter 5, Oregon Laws 2002 (third special session), is amended to read:

238.225. (1) 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. 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.

(2) For the purpose of the actuarial computation required under subsection (1) of this section:

(a) The school districts of the state shall be grouped together and regarded as a single employer; and

(b) All community college districts and the state shall be grouped together and regarded as a single employer.

(3) For the purpose of the actuarial computation required under subsection (1) of this section, any participating public employer may elect to be grouped with the state and all community college districts and treated as a single employer for actuarial purposes only. An election under this subsection may be made only by participating public employers other than school districts and community college districts. Any public employer that makes an election under this subsection may not revoke the election.

(4) The computation of the contributions of a participating public employer that makes an election under the provisions of subsection (3) of this section shall be based only on the liabilities of the employer 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 before the effective date of the employer's election.

(5) A participating public employer may make an election under subsection (3) of this section only by the adoption of a resolution or ordinance by the governing body of the public employer.

(6) Except as provided in subsection (2) of this section, the board may not require that any participating public employer be grouped with any other participating public employer for the purpose of the actuarial computation required under subsection (1) of this section. If two participating public employers merge or otherwise consolidate, and one of the public employers has made an election under subsection (3) 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 (3) of this section; and

(b) The board may require that the 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.

(7) Except as provided in this section, the board may not group participating public employers for the purpose of the actuarial computation required by subsection (1) of this section.

(8) If a public employer is grouped with any other public employer for the purpose of the actuarial computation required under subsection (1) of this section, and the individual public employer makes a lump sum payment that is in addition to the normal contribution of the public employer and that is designated for application only against accrued unfunded liabilities attributable to the employees of the individual public employer, the board shall adjust the amount of 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 in this section 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 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 the provisions of this subsection if the payment is equal to the full amount of the individual public employer's accrued unfunded liabilities.

(9) The board shall establish a separate account within the fund for each lump sum payment made under subsection (8) of this section or made by any other participating public employer that is not grouped with other public employers under this section. The board shall credit to each account all interest and other income received from investment of the account funds during the calendar year[, *less any amounts withheld from earnings for administrative expenses under ORS 238.610 or paid into the reserve account established under ORS 238.670 (1)*]. **Except as provided in subsection (10) of this section, the board may not collect any administrative expense or other charge from the account or from earnings on the account.** The account shall be used to offset contributions that the public employer would otherwise be required to make for the liabilities against which the lump sum payment is applied.

**(10) The board may charge a participating public employer expenses for administration of an account established under subsection (9) of this section in an amount not to exceed \$2,500 during the year in which the account is established and the immediately following two calendar years, and in an amount not to exceed \$1,000 in all subsequent years.**

[(10)] (11) 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, whether under the provisions of this section or pursuant to board rule, any

lump sum payment made under subsection (8) of this section must be applied first against those liabilities, with the oldest such liability being paid first. Any amounts remaining after application under this subsection must be deposited in a separate account established under subsection (9) of this section.

**SECTION 8a.** (1) For the purpose of the contributions required under ORS 238.225 commencing July 1, 2003, a participating public employer described in subsection (2) of this section may elect to pay the rate approved for the employer by the Public Employees Retirement Board on February 11, 2003, in lieu of the employer contribution rate approved for the employer by the board on June 30, 2003. An election under this section must be in writing and must be received by the Public Employees Retirement Board not later than 90 days after the effective date of this 2003 Act.

(2) The provisions of this section apply only to a participating public employer that is not grouped with any other public employer for the purposes of the computation required under ORS 238.225.

(3) An election under this section does not affect the liability of a public employer for the benefits to be provided by the contributions of the employer under ORS 238.225. This section does not affect the ability of the board to change contribution rates at any time after July 1, 2003, for an employer that makes an election under this section based on an evaluation of the employer's liabilities that is concluded after July 1, 2003.

(4) A public employer making an election under this section waives any right to challenge the employer contribution rate approved by the board on February 11, 2003, and may not bring any action in a court of this state to challenge that rate.

**SECTION 9.** ORS 238.200, as amended by section 1, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

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

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

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

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

(4) Notwithstanding subsections (1) to (3) of this section, a member of the system, or a participating employer acting on behalf of the member pursuant to ORS 238.205, is not permitted or required to make employee contributions to the fund **for service performed** on or after January 1, 2004. **This subsection does not affect any contribution for the purpose of unit purchases un-**

der ORS 238.440 or amounts paid for acquisition of creditable service under ORS 238.105 to 238.175.

**SECTION 10.** ORS 238.255, as amended by section 1, chapter 3, Oregon Laws 2003 (Enrolled House Bill 2001), and section 5, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

238.255. (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.**

**SECTION 11.** Section 6, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

**Sec. 6.** (1) The amendments to ORS 238.255 by section 5, **chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)**, [of this 2003 Act] apply only to the crediting of earnings under ORS 238.255 for calendar years 2003 and thereafter.

(2) **Except as provided in subsection (3) of this section**, the amendments to ORS 238.255 by section 5, **chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)**, [of this 2003 Act] do not affect the crediting of earnings to member accounts for any member who retires before April 1, 2004, and the board shall credit the accounts of those members in the manner provided by ORS 238.255,

and rules adopted by the Public Employees Retirement Board to implement ORS 238.255, as in effect immediately before [*the effective date of this 2003 Act*] **July 1, 2003.**

**(3) If a member of the system retires on or after the effective date of this 2003 Act and before April 1, 2004, and the member elects to receive installment payments under ORS 238.305 (4), the board shall credit interest as provided under ORS 238.305 (4)(a)(D) to reflect the actual earnings and losses of the fund.**

**SECTION 12.** Section 8, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

**Sec. 8.** (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.**

**SECTION 13.** Section 10, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

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

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

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

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

**(b) The board shall calculate a service retirement allowance for the member as of the member's effective date of retirement using the member account balance established under paragraph (a) of this subsection. The board shall make the calculation under ORS 238.300, section 4, chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), and such other provisions of this chapter as may be applicable to the calculation of the service retirement allowance of the member or as may provide for increases or decreases in the service retirement allowance of the member.**

(c) If the member elected an optional service retirement allowance calculation under ORS 238.305, the board shall convert the service retirement allowance calculated under paragraph (b) of this subsection to the optional calculation elected by the member **and shall make any adjustment required by section 4, chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), or by any other provision of this chapter.**

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

(3) The board shall calculate a fixed service retirement allowance for members described in subsection (5) of this section. The fixed service retirement allowance shall be the amount *[that is not attributable to a variable annuity under ORS 238.260 and]* that is payable to or on account of the member on *[the effective date of this 2003 Act]* **July 1, 2003, or on the member's effective date of retirement, whichever is later.** The fixed service retirement allowance may not be adjusted under ORS 238.360.

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

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

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

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

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

**(6) The provisions of this section apply to the alternate payees and beneficiaries of members described in subsection (5) of this section. The provisions of this section do not apply to judge members.**

**SECTION 14.** Section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

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

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

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

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

(5)(a) The Public Employees Retirement Board shall establish a transition account program for payments made under this section. All assets of the program are held in trust for the exclusive benefit of the members of the system. Except as otherwise provided by law, the board is declared to be the trustee of the assets of the transition account program. **The board may create separate accounts within the Public Employees Retirement Fund for the assets of the transition account program. Investment of the assets of the transition account program is not subject to the limitations imposed by ORS 293.726 (6).**

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

(6) Amounts held in a transition account under this section must be distributed to the member within 90 days after the member's effective date of retirement under ORS chapter 238[, or within 90 days after termination of the person's membership in the system under ORS 238.095]. **A member may withdraw the amount in the member's transition account at any time after the member is separated from all service with participating public employers and 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. Upon the death of any member, the amounts in the member's transition account shall be distributed to the personal representative for the estate of the member, or to a person filing an affidavit under ORS 114.505 to 114.560 if the amount of moneys credited to the account do not exceed the maximum amount of personal property for which an affidavit may be filed under ORS 114.505 to 114.560.**

(7) Distribution from a member's transition account shall be made in a single lump sum payment. **ORS 238.445 and 238.465 apply to amounts held in and payable from a member's transition account.**

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

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

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

**(11) The board may contract with a private provider for the administration of the transition account program. The board is not subject to the provisions of ORS 279.005 to 279.111 in awarding a contract under the provisions of this subsection. The board shall establish procedures for inviting proposals and awarding contracts under this subsection.**

**(12) A member of the system may not make payments to a transition account under the provisions of this section during any period of time that the member is required to make contributions to the system under ORS 238.200.**

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

**(14) The provisions of this section do not apply to judge members.**

**SECTION 15.** ORS 238.425, as amended by section 12, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

238.425. 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 [and computed] based on the member's then attained age.

**SECTION 16.** Section 4, chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), as amended by section 40, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

**Sec. 4.** (1) Subject to subsections (2) and (3) of this section, for the purpose of computing the retirement allowance of members and alternate payees with effective dates of retirement on or after July 1, 2003, and before January 1, 2005, the Public Employees Retirement Board shall use actuarial equivalency factor tables that are based on the mortality assumptions **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 *[the effective date of this 2003 Act]* **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 *[the effective date of this 2003 Act]* **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 (Enrolled House Bill 2004), 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.**

**SECTION 17.** Section 5, chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), is amended to read:

**Sec. 5.** *[(1) Exclusive jurisdiction is conferred on the Supreme Court to determine in the manner provided by this section whether the implementation of actuarial equivalency factor tables under section 2 or 4 of this 2003 Act breaches any contract between members of the Public Employees Retirement System and their employers, or violates any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under section 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the United States Constitution.]*

*[(2) Under the jurisdiction conferred in subsection (1) of this section, any person aggrieved by the implementation of actuarial equivalency factor tables under section 2 or 4 of this 2003 Act may petition the Supreme Court for relief. The petition must state the facts showing how the petitioner is aggrieved and the grounds upon which the petition is based. The Supreme Court shall give priority on its docket to a petition for relief filed under this section and shall expedite a decision on the petition. Any and all petitions filed under this section alleging a similar basis or bases of challenge may be consolidated by the Supreme Court upon its own motion.]*

*[(3) A person petitioning for relief under this section is not required to exhaust administrative remedies or file in any other court.]*

*[(4) A petition for relief under this section must be filed before August 15, 2003.]*

*[(5) A petition for relief under this section must present a justiciable controversy. The petitioner must serve a copy of the petition on the Attorney General.]*

*[(6) Any public employer participating in the Public Employees Retirement System may intervene in any proceeding commenced under this section.]*

*[(7) If the Supreme Court determines that factual determinations are necessary for resolution of a proceeding commenced under this section, the Supreme Court may appoint a special master to hear evidence and prepare proposed findings of fact. If the Supreme Court appoints a special master, the court shall allow the parties to conduct discovery under ORCP 36 to 46.]*

*[(8) A petition under this section is the exclusive means of determining whether the implementation of actuarial equivalency factor tables under section 2 or 4 of this 2003 Act breaches any contract between members of the Public Employees Retirement System and their employers, or violates any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under section 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the United States Constitution.]*

**(1) Jurisdiction is conferred on the Supreme Court to determine in the manner provided by this section whether the implementation of actuarial equivalency factor tables under section 2 or 4, chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), breaches any contract between members of the Public Employees Retirement System and their employers, or violates any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under section 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the United States Constitution.**

**(2) A person who is adversely affected by chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), or who will be adversely affected by chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:**

**(a) The petition must be filed before August 15, 2003.**

**(b) The petition must include the following:**

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

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

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

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

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

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

**(7) The petition for review provided for in this section is in addition to any other remedy or procedure that may be available to determine whether the implementation of actuarial**

**equivalency factor tables under section 2 or 4, chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), breaches any contract between members of the Public Employees Retirement System and their employers or violates any constitutional provision.**

**SECTION 17a.** Section 37, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

**Sec. 37.** (1) Jurisdiction is conferred on the Supreme Court to determine in the manner provided by this section whether the provisions of *[this 2003 Act]* **chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)**, breach any contract between members of the Public Employees Retirement System and their employers or violate any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under section 21, Article I of the Oregon Constitution, or clause 1, section 10, Article I of the United States Constitution.

(2) A person who is adversely affected by *[this 2003 Act]* **chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)**, or who will be adversely affected by *[this 2003 Act]* **chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)**, may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:

(a) The petition must be filed within 60 days after the effective date of *[this 2003 Act]* **chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)**.

(b) The petition must include the following:

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

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

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

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

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

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

**(7) The petition for review provided for in this section is in addition to any other remedy or procedure that may be available to determine whether the provisions of chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), breach any contract between members of the Public Employees Retirement System and their employers or violate any constitutional provision.**

**SECTION 18.** Section 7, chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004), is amended to read:

**Sec. 7.** (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 section 2, **chapter 68, Oregon Laws 2003 (Enrolled House Bill 2004)**, *[of this 2003 Act]* 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).

**SECTION 19.** The amendments to ORS 238.260 by section 3, chapter 67, Oregon Laws 2003 (Enrolled House Bill 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 contributions to the Variable Annuity Account for services as a judge member performed on or after January 1, 2004.**

**SECTION 20.** ORS 238.005, as amended by section 16, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

238.005. For purposes of this chapter:

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

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

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

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

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

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

(5) "Creditable service" means any period of time during which an active member is being paid a salary by a participating public employer and [*contributions are being made to the system either by or on behalf of the member*] **for 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 position that meets the requirements of ORS 238.015 (4), and who has completed the six-month period of service required by ORS 238.015.

(c) "Inactive member" means a member who is absent from the service of all employers participating in the system, whose membership has not been terminated in the manner described by ORS 238.095, and who is not retired for service or disability. "Inactive member" includes a member who would be an active member except that the person's only employment with a participating public employer is in a position that does not meet the requirements of ORS 238.015 (4).

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

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

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

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

(14) "Normal retirement age" means:

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

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

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

(16) "Police officer" includes:

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

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

(c) Employees of the Oregon Liquor Control Commission who are classified as enforcement officers by the administrator of the commission.

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

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

(f) Parole and probation officers employed by the Department of Corrections, parole and probation officers who are transferred to county employment under ORS 423.549 and adult parole and probation officers, as defined in ORS 181.610, who are classified as police officers for the purposes of this chapter by the county governing body. If a county classifies adult parole and probation officers as police officers for the purposes of this chapter, and the employees so classified are represented by a labor organization, any proposal by the county to change that classification or to cease to classify adult parole and probation officers as police officers for the purposes of this chapter is a mandatory subject of bargaining.

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

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

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

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

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

(L) Corrections officers as defined in ORS 181.610.

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

(n) The Director of the Department of Corrections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 21.** ORS 238.156 is amended to read:

238.156. (1) Notwithstanding any other provision of this chapter, but subject to subsection (4) of this section, an employee who leaves a position that meets the requirements of ORS 238.015 (4) 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 position that meets the requirements of ORS 238.015 (4) 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 position that meets the requirements of ORS 238.015 (4);

(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 [*the total amount of contributions the employee would have made throughout*] **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, or to the employee's transition account established under section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), if the employee does not have a 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.

**SECTION 22.** ORS 238.300, as amended by section 4, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

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

(1) A refund annuity which shall be the actuarial equivalent of accumulated contributions, if any, by the member and interest thereon credited at the time of retirement, which annuity shall provide an allowance payable during the life of the member and at death a lump sum equal in amount to the difference between accumulated contributions at the time of retirement and the sum of the annuity payments actually made to the member during life shall be paid to such person, if any, as the member nominates by written designation duly acknowledged and filed with the board or shall otherwise be paid according to the provisions of this chapter for disposal of an amount credited to the member account of a member at the time of death in the event the member 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 a member of the Legislative Assembly, two percent of final average salary multiplied by the number of years of membership in the system as a member of the Legislative Assembly before the effective date of retirement.

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

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

(A) For a member who first establishes membership in the system before [*the effective date of this 2003 Act*] **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 [*the effective date of this 2003 Act*] **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 [*the effective date of this 2003 Act*] **July 1, 2003**; or

(ii) The person performed any period of service for a participating public employer before [*the effective date of this 2003 Act*] **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 [*for which salary was paid and contributions to the Public Employees Retirement System made*] **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.

**SECTION 23.** If Senate Bill 258 becomes law, section 2, chapter 276, Oregon Laws 2003 (Enrolled Senate Bill 258), is amended to read:

**Sec. 2.** (1) An inactive member who withdraws the account of the member under ORS 238.265 shall receive an additional amount equal to 50 percent of the balance of the account, to be paid from employer contributions, if:

(a) The member was an inactive member on January 1, 2000, and remains an inactive member until the member account is withdrawn;

(b) The member made contributions to the Public Employees Retirement Fund during each of five calendar years or more, and the amounts in the member account are attributable to those contributions; and

(c) The withdrawal is made on or after July 1, 2004, and before June 30, 2006.

(2) A member who withdraws a member account under this section may not obtain restoration under ORS 238.105 or 238.115 of the creditable service forfeited by the withdrawal.

**(3) In addition to an inactive member described in subsection (1) of this section, the provisions of this section apply to the alternate payee of a member who withdraws the account of the alternate payee on or after July 1, 2004, and before June 30, 2006.**

**SECTION 24.** ORS 293.706, as amended by section 3, chapter 69, Oregon Laws 2003 (Enrolled House Bill 2005), is amended to read:

293.706. (1) There is created the Oregon Investment Council, consisting of five **voting** members[, *subject to Senate confirmation in the manner provided in ORS 171.562 and 171.565*].

*[(2) One member of the council shall be a person who is appointed to serve on the Public Employees Retirement Board under ORS 238.640 (4).]*

*[(3)] (2) [Three] **Four*** members, who shall be qualified by training and experience in the field of investment or finance and who may not hold any other public office or employment, shall be appointed by the Governor, **subject to Senate confirmation in the manner provided in ORS 171.562 and 171.565**. One member shall be the State Treasurer. In addition, the Director of the Public Employees Retirement System appointed by the board shall be an ex officio member of the council with no voting power.

*[(4)] (3)* The term of office of each appointed non ex officio member of the council is four years, but each appointed member serves at the pleasure of the appointing authority. A vacancy in the appointed membership occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

**SECTION 25.** ORS 293.706, as amended by section 3, chapter 69, Oregon Laws 2003 (Enrolled House Bill 2005), and section 24 of this 2003 Act, is amended to read:

293.706. (1) There is created the Oregon Investment Council, consisting of five voting members.

**(2) One member of the council shall be a person who is appointed to serve on the Public Employees Retirement Board under ORS 238.640 (4).**

*[(2)] (3) [Four] **Three*** members, who shall be qualified by training and experience in the field of investment or finance and who may not hold any other public office or employment, shall be appointed by the Governor, subject to Senate confirmation in the manner provided in ORS 171.562 and 171.565. One member shall be the State Treasurer. In addition, the Director of the Public Employees Retirement System appointed by the board shall be an ex officio member of the council with no voting power.

*[(3)] (4)* The term of office of each appointed non ex officio member of the council is four years, but each appointed member serves at the pleasure of the appointing authority. A vacancy in the appointed membership occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

**SECTION 26.** ORS 293.711, as amended by section 4, chapter 69, Oregon Laws 2003 (Enrolled House Bill 2005), is amended to read:

293.711. (1) A member of the Oregon Investment Council is entitled to compensation and expenses as provided in ORS 292.495 [*except that the member of the council who is also a member of the Public Employees Retirement Board shall be compensated in the manner provided in ORS 238.640 (7)*].

(2) The council shall select one of its members as chairperson, for a term and with powers and duties necessary for the performance of the functions of the office as the council shall determine.

**SECTION 26a. The amendments to ORS 293.706 and 293.711 by sections 24 and 26 of this 2003 Act become operative on September 1, 2003.**

**SECTION 27.** ORS 293.711, as amended by section 4, chapter 69, Oregon Laws 2003 (Enrolled House Bill 2005), and section 26 of this 2003 Act, is amended to read:

293.711. (1) A member of the Oregon Investment Council is entitled to compensation and expenses as provided in ORS 292.495 **except that the member of the council who is also a member of the Public Employees Retirement Board shall be compensated in the manner provided in ORS 238.640 (7).**

(2) The council shall select one of its members as chairperson, for a term and with powers and duties necessary for the performance of the functions of the office as the council shall determine.

**SECTION 28. The amendments to ORS 293.706 and 293.711 by sections 25 and 27 of this 2003 Act become operative on October 1, 2007.**

**SECTION 29.** ORS 238.660 is amended to read:

238.660. (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, **section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)**, 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 and is due to erroneous payment or decreased liability for employer contributions under the system.

(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 (1).

(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.

**SECTION 30.** ORS 293.701, as amended by section 9, chapter 6, Oregon Laws 2002 (third special session), and section 35a, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

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

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

**SECTION 31.** Section 14b, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

**Sec. 14b.** (1) If the Public Employees Retirement Board is required to correct one or more of the erroneous benefit calculation methods identified in *City of Eugene et al. v. State of Oregon*, Case Nos. 99C-12794, 00C-16173, 99C-12838 and 99C-20235, the board shall recover the cost of benefits

erroneously paid to retired members as a result of those erroneous benefit calculations by one or both of the following methods:

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

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

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

**(3) Nothing in this section creates any contract right in any member of the Public Employees Retirement System.**

**SECTION 32. Section 9, chapter 823, Oregon Laws 2001, is repealed.**

**SECTION 33.** ORS 237.620 is amended to read:

237.620. (1) On or before July 1, 1973, all public employers of police officers and firefighters who are not participants in the Public Employees Retirement System shall become participants in the system with respect to the police officers and firefighters employed by them.

(2) All police officers and firefighters in the employ of the public employer on the date the public employer becomes a participant in the system under subsection (1) of this section shall establish membership under the six-month service requirement of ORS 238.015.

(3) The participation of the public employer in the system under this section shall apply to services of its employee police officers and firefighters on and after the effective date of the public employer's participation in the system. The public employer also shall provide a prior service pension for its police officers and firefighters, within the limitations of ORS 238.225 (2) (1999 Edition), for continuous service to the public employer for a period not exceeding 20 years before the effective date of the public employer's participation in the system.

(4) Notwithstanding subsections (1) and (2) of this section, if a public employer provides retirement benefits to its police officers and firefighters *[which] that* are equal to or better than the benefits *[which] that* would be provided to them under the system, as determined at the expense of the public employer by the Public Employees Retirement Board, the public employer *[shall] is not [be]* required to participate in the system with respect to its police officers and firefighters. *[This exemption shall continue to apply for only as long as the coverage remains substantially unchanged under ORS chapter 238 but must be reexamined whenever substantial changes are made therein.]* **Once every two years the Public Employees Retirement Board shall review the benefits provided by a public employer that provides retirement benefits to its police officers and firefighters other than through the Public Employees Retirement System to determine whether the public employer complies with the requirements of this subsection.**

**SECTION 33a.** ORS 238.078, as amended by section 10, chapter 945, Oregon Laws 2001, is amended to read:

238.078. (1)(a) *[Any member of the system who is retired at any time after having reached earliest service retirement age, and]* **A retired member** who has been retired for more than six consecutive calendar months[,] may be reemployed by *[any]* **a participating** public employer *[even though such retired member has been receiving retirement benefits]* **in the manner provided by this subsection.**

(b) Any person reemployed as provided in this subsection shall resume making contributions to the retirement fund, and the employer shall make contributions on behalf of the person as provided in ORS 238.225. Payments of retirement allowance received by such person during separation from the service shall not be repaid into the retirement fund after the person reenters public employment except as provided in paragraph (c) of this subsection; but the amount of such payment shall be

deducted from such employee's reserve in the retirement fund and the remainder shall be credited pro rata to the funds from which it was derived.

(c) Upon reentering public employment as provided in this subsection, the former retirement of such person and any election of option for payment of retirement benefits theretofore made by the person shall be canceled; and thereafter upon retiring such person may elect any option for payment of retirement benefits authorized by this chapter, except that a person who elected to receive lump sum payment of benefits 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) [Any member of the system who is retired at any time after having reached earliest service retirement age, and] **A retired member** who has been retired for less than six consecutive calendar months[,] may be reemployed by [any] **a participating** public employer [even though such retired member has been receiving retirement benefits,] 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 earlier 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).**

**SECTION 34.** ORS 238.082 is amended to read:

238.082. (1) Subject to the limitations in subsection (2) of this section, any public employer may employ any person receiving a service retirement allowance if the administrative head of such employer is satisfied that such employment is in the public interest.

(2) The period or periods of employment by one or more public employers of any person receiving a service retirement allowance [shall] **may** not total 1,040 hours or more in any calendar year; but if the person is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the person may be employed 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.

(3) The limitations on employment imposed by subsection (2) of this section do not apply to a retired member [who has attained normal retirement age and] 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 education service district that has its administrative office located within 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 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.

**(4) The limitations on employment imposed by subsection (2) 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; or

(d) 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.

(5) The limitations on employment imposed by subsection (2) 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.

(6) The limitations on employment imposed by subsection (2) 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.

(7) Subsections (3) to (6) of this section do not apply to any member who retires under the provisions of ORS 238.280 (1).

[4] (8) 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.

**SECTION 35.** The amendments to ORS 238.082 by section 34 of this 2003 Act apply to all retired members employed by public employers, without regard to whether employment commenced before, on or after the effective date of this 2003 Act.

**SECTION 35a.** ORS 238.088 is amended to read:

238.088. (1) [No] **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, [shall] **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 [shall] **is not** [be] 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 (6), 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).**

**SECTION 36.** ORS 238.260 is amended to read:

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

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

(3) A member 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.

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

(5)(a) An employee who is a member of the system on January 1, 1968, and who thereafter files an election under subsection (3) of this section, 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.

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

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

(b) Performance of functions under contracts so entered into shall be paid for out of the gross interest or other income of the investments with respect to which the functions are performed, and the net interest or other income of the investments after that payment shall be considered income of the Variable Annuity Account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 37. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.**

**Passed by House May 9, 2003**

**Repassed by House July 25, 2003**

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Chief Clerk of House

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Speaker of House

**Passed by Senate July 7, 2003**

**Repassed by Senate July 28, 2003**

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President of Senate

**Received by Governor:**

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

**Approved:**

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

.....  
Governor

**Filed in Office of Secretary of State:**

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

.....  
Secretary of State