

Chapter 238 — Public Employees Retirement System

2001 EDITION

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GENERAL PROVISIONS

**238.005 Definitions.** For purposes of this chapter:

- (1) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.
- (2) "Board" means the Public Employees Retirement Board.
- (3) "Calendar year" means 12 calendar months commencing on January 1 and ending on December 31 following.
- (4) "Continuous service" means service not interrupted for more than five years, except that such continuous service shall be computed without regard to interruptions in the case of:
  - (a) An employee who had returned to the service of the employer as of January 1, 1945, and who remained in that employment until having established membership in the Public Employees Retirement System.
  - (b) An employee who was in the armed services on January 1, 1945, and returned to the service of the employer within one year of the date of being otherwise than dishonorably discharged and remained in that employment until having established membership in the Public Employees Retirement System.
- (5) "Creditable service" means any period of time during which an active member is being paid a salary by a participating public employer and contributions are being made to the system either by or on behalf of the member. For purposes of computing years of "creditable service," full months and major fractions of a month shall be considered to be one-twelfth of a year and shall be added to all full years. "Creditable service" includes all retirement credit received by a member.
- (6) "Earliest service retirement age" means the age attained by a member when the member could first make application for retirement under the provisions of ORS 238.280.
- (7) "Employee" includes, in addition to employees, public officers, but does not include:
  - (a) Persons engaged as independent contractors.
  - (b) Seasonal, emergency or casual workers whose periods of employment with any public employer or public employers do not total 600 hours in any calendar year.
  - (c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such persons.
  - (d) Persons employed and paid from federal funds received under the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other federal program intended primarily to alleviate unemployment. However, any such

person shall be considered an “employee” if not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects to have the person so considered by an irrevocable written notice to the board.

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

(8) “Final average salary” means whichever of the following is greater:

(a) The average salary per calendar year paid by one or more participating public employers to an employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee, in which three years the employee was paid the highest salary. The three calendar years in which the employee was paid the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is three or fewer, the final average salary for the employee is the average salary per calendar year paid by one or more participating public employers to the employee in all of those years, without regard to whether the employee was employed for the full calendar year.

(b) One-third of the total salary paid by a participating public employer to an employee who is an active member of the system in the last 36 calendar months of active membership before the effective date of retirement of the employee.

(9) “Firefighter” does not include a volunteer firefighter as defined in subsection (23) of this section, but does include:

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

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

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

(11) “Fund” means the Public Employees Retirement Fund.

(12)(a) “Member” means a person who has established membership in the system and whose membership has not been terminated as described in ORS 238.095. “Member” includes active, inactive and retired members.

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

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

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

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

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

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

(14) “Normal retirement age” means:

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

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

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

(16) “Police officer” includes:

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

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

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

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

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

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

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

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

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

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

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

(L) Corrections officers as defined in ORS 181.610.

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

(n) The Director of the Department of Corrections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) "Volunteer firefighter" means a firefighter whose position normally requires less than 600 hours of service per year. [Formerly 237.003; 1997 c.249 §64; 1997 c.853 §36; 1999 c.317 §24; 1999 c.407 §3; 1999 c.971 §1; 2001 c.295 §9; 2001 c.874 §1; 2001 c.945 §29a; 2001 c.968 §1]

**Note:** Section 2, chapter 968, Oregon Laws 2001, provides:

**Sec. 2.** The amendments to ORS 238.005 by section 1 of this 2001 Act apply to all service by an adult parole and probation officer that is performed on and after the date that the adult parole and probation officer is classified as a police officer for the purposes of ORS chapter 238 by the county governing body, whether that classification occurs before, on or after the effective date of this 2001 Act [January 1, 2002]. [2001 c.968 §2]

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

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

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

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

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

## MEMBERSHIP

(Membership Generally)

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

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

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

the employer is an agency created by two or more political subdivisions to provide themselves governmental services and ceases thereafter to transmit to the board contributions for any of its eligible employees, the benefits based upon employer contributions to which such employees would otherwise be entitled shall be reduced accordingly.

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

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

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

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

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

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

(9)(a) All new appointees in the Federal Cooperative Extension Service or in any other service in which participation in the Federal Civil Service retirement program is mandatory, who receive a federal appointment on or after July 1, 1955, may participate in the Public Employees Retirement System only by giving written notice of their election to so participate to the Public Employees Retirement Board within six months after the effective date of their appointment.

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

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

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

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

(11) An employee who is an employee of the Oregon Health and Science University may not be an active member of the

Public Employees Retirement System if that employee is participating in an alternative retirement program established by the university pursuant to ORS 353.250. [Formerly 237.011; 1997 c.249 §65; 1999 c.130 §4; 1999 c.509 §23; 2001 c.192 §1; 2001 c.883 §41; 2001 c.945 §30]

**Note:** Section 2, chapter 192, Oregon Laws 2001, provides:

**Sec. 2.** The amendments to ORS 238.015 by section 1 of this 2001 Act apply to all employer and employee contributions made on behalf of members of the Public Employees Retirement System, whether those members first established membership in the system before, on or after the effective date of this 2001 Act [January 1, 2002]. [2001 c.192 §2]

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

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

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

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

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

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

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

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

(6) An employer entering into a contract under subsection (3) of this section may at any time thereafter enter into a contract with the board to provide membership to all or part of the employees who do not become members of the system at the time that the employer becomes a participating employer. Except as may be provided for prior service credit, or under a contract of integration under ORS 238.680, employees shall receive no retirement credit for the period during which the employee was exempted from contributing to the fund under the agreement, but the employee shall be considered to have completed the six months' service required for membership in the system if the employee has served with the employer for at least six months. When the employee starts to participate in the system the employer shall start to contribute to the fund on account of the employee in the same manner as the employer contributes on account of other employees who are members of the system. [Formerly 237.031; 2001 c.945 §31]

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

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

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

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

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

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

(a) The amount of retirement pay or pension payable to the judge or surviving spouse of a judge and the terms and

conditions of eligibility to receive retirement pay or a pension shall be as established by ORS 1.314 to 1.380 (1989 Edition); and

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

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

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

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

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

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

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

(6) The provisions of ORS 238.390, 238.395, 238.400 and 238.500 to 238.585 do not apply to a judge or surviving spouse of a judge who received retirement pay or a pension from the Judges' Retirement Fund prior to August 1, 1991, or to a judge who retires as a member of the Public Employees Retirement System under subsection (2) of this section. [Formerly 237.039; 2001 c.945 §32]

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

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

**238.062 Membership of deputy district attorneys.** Any deputy district attorney receiving any compensation from the state or from a county participating in the Public Employees Retirement System shall establish membership in the system after service for six months without having been absent 30 working days. Contributions by any such deputy district attorney shall be due from salary paid by the state, by a county participating in the system or by both. The application of this chapter to any such deputy district attorney made prior to the effective date of this section by the Public Employees Retirement Board hereby is confirmed and ratified. [Formerly 237.025]

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

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

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

subsection and shall pay amounts so deducted to the board.

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

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

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

**238.074 Membership of community college employees.** An academic employee of a community college who is employed .375 full-time equivalent (FTE) on a 12-month basis or .50 FTE on a nine-month basis shall be deemed to be employed for 600 hours or more in a year for purposes of this chapter. The combination of duties that comprises a 1.0 FTE in any given discipline or academic activity shall be determined by the governing body of the institution in which the academic employee is employed. Nothing in this section is intended to affect the rights of academic employees at institutions of higher learning or academic employees employed in public secondary or elementary schools. [Formerly 237.017 (3)]

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

(Membership of Retired Employees)

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

(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) 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 who has been retired for less than six consecutive calendar months, may be reemployed by any 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, after which repayment the account of the member shall be reestablished just as it was at the time of earlier retirement.

(3) If a member of the system who retired before August 21, 1981, is reemployed, as provided in 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). [Formerly 237.125]

**Note:** The amendments to 238.078 by section 10, chapter 945, Oregon Laws 2001, become operative January 1, 2003. See section 12, chapter 945, Oregon Laws 2001. The text that is operative on and after January 1, 2003, is set forth for the user's convenience.

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

(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 who has been retired for less than six consecutive calendar months, may be reemployed by any 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 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).

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

**238.082 Active membership of reemployed retired members.** (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 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) 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. [Formerly 237.143; 1997 c.178 §1; 2001 c.874 §2]

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

**238.088 Appointment or election of retired member to public office.** No 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 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 not be entitled to any pension or annuity provided by this chapter. Upon ceasing to hold such office, benefits shall be computed or recomputed on the basis of age then attained. [Formerly 237.133]

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

**238.092 Option of legislators to receive certain benefits; employment of persons as legislative employees or state police officer beyond 65 years of age.** (1) Notwithstanding any other provision of this chapter:

(a) A retired member of the system who has retired as other than a member of the Legislative Assembly and who thereafter

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

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

(c) Upon receipt of the notice provided for in paragraphs (a) and (b) of this subsection, the board shall determine that portion of the accumulated contributions of the member and interest thereon attributable to service as other than a member of the Legislative Assembly, which shall be used in determining the amount of the annuity the member shall receive for that service. The portion of the accumulated contributions of the member and interest thereon attributable to service as a member of the Legislative Assembly shall remain in the member account of the member and, together with subsequent contributions and interest thereon, be used in determining the amount of the additional annuity the member shall receive for that service upon ceasing to hold office as a member of the Legislative Assembly.

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

(a) Unless an active member of the system continuing in employment past the age of 65 years, shall not be permitted to make contributions to the retirement fund, nor shall the employer make contributions on behalf of the person.

(b) If a retired member of the system, is entitled, during the period of such employment, to any pension or annuity provided by this chapter. [Formerly 237.145; 2001 c.945 §35]

(Termination of Membership)

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

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

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

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

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

(4) Interest shall not accrue on the amount in the member account of the former member from the date that membership is terminated under subsection (2) of this section. The Public Employees Retirement Board shall pay the amount in a member account to a former member upon the termination of the membership of the former member under subsection (2) of this section if the former member is separated from all service with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the fund as a qualified governmental retirement plan and trust. [Formerly 237.109; 1999 c.317 §7; 2001 c.945 §36]

(Temporary provisions relating to membership of employees of Oregon Public Broadcasting)

**Note:** Sections 2 and 3, chapter 575, Oregon Laws 1995, provide:

**Sec. 2.** (1) Notwithstanding section 3, chapter 575, Oregon Laws 1995, or any provision of ORS chapter 238, a member of the Public Employees Retirement System described in subsection (2) of this section whose position was transferred to the private, not-for-profit corporation known as Oregon Public Broadcasting under the provisions of section 5, chapter 208, Oregon Laws 1993, may receive imputed retirement credit in the manner provided by this section for all continuous service performed for Oregon Public Broadcasting on and after July 1, 1995, and before July 1, 2005. In no event may a member acquire imputed retirement credit under the provisions of this section if that acquisition would provide the member with more than a combined total of 30 years of creditable service in the system and prior service credit.

(2)(a) The provisions of this section apply only to members of the system who have a combined total of 20 years or more of creditable service in the system and prior service credit on June 30, 1995.

(b) The provisions of this section apply only to continuous service by a member on or after July 1, 1995. If a member terminates service with Oregon Public Broadcasting, the member is not entitled to any imputed retirement credit under the

provisions of this section after that termination even if the member is subsequently reemployed by Oregon Public Broadcasting.

(3) For purposes of computing benefits attributable to the imputed retirement credit provided under the provisions of this section, the Public Employees Retirement Board shall use an imputed salary for the member based on the salary paid to the member by Oregon Public Broadcasting during the period for which retirement credit is received.

(4) Oregon Public Broadcasting shall pay to the Oregon Department of Administrative Services on or before March 1 of each calendar year the actuarially determined present value of the benefits determined by the board to be payable under the provisions of this section that are attributable to service performed for Oregon Public Broadcasting in the previous calendar year. No imputed retirement credit shall be provided by the board under the provisions of this section for service performed in a calendar year if the payment required by this subsection is not made. Upon receipt of the funds from Oregon Public Broadcasting under this subsection, the Oregon Department of Administrative Services shall transfer the funds to the Public Employees Retirement Board pursuant to the appropriation made under subsection (5) of this section.

(5) All funds payable to the Oregon Department of Administrative Services under subsection (4) of this section are continuously appropriated to the Public Employees Retirement Board for the purpose of paying the benefits to members that are attributable to the imputed retirement credit authorized under the provisions of this section.

(6) Oregon Public Broadcasting may elect not to provide the imputed retirement credit provided for in this section at any time after July 14, 1995. An election is only effective for those years for which payment has not already been made under subsection (4) of this section. The election must be in writing, and is irrevocable. Upon receipt of the election, the board shall provide no further imputed retirement credit beyond that already funded under the provisions of subsection (4) of this section. [1995 c.575 §2; 2001 c.945 §77]

**Sec. 3.** (1) Notwithstanding section 5, chapter 208, Oregon Laws 1993, and ORS 236.620, all persons employed by the Oregon Commission on Public Broadcasting before July 1, 1993, who were transferred to and became employees of the private, not-for-profit corporation known as Oregon Public Broadcasting and who continued to be active members of the Public Employees Retirement System shall be considered to have ceased to be active members of the Public Employees Retirement System for all service after June 30, 1995, and shall be entitled to no additional creditable service for periods of employment with the private, not-for-profit corporation known as Oregon Public Broadcasting after that date. A person employed by Oregon Public Broadcasting on or after July 1, 1993, may not become a member of the Public Employees Retirement System.

(2) Persons employed by the Oregon Commission on Public Broadcasting before July 1, 1993, who were transferred to and became employees of the private, not-for-profit corporation known as Oregon Public Broadcasting shall accrue benefits under the system through June 30, 1995. On July 1, 1995, the persons shall be considered by the board to be terminated employees of a participating public employer and entitled to receive such benefits as may be attributable to service before July 1, 1995, under the provisions of ORS 237.001 to 237.315 [renumbered ORS chapter 238].

(3) For the purposes of this section, "active member" and "creditable service" have the meanings given in ORS 237.003 [renumbered 238.005]. [1995 c.575 §3]

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

## RETIREMENT CREDIT

(Restoration of Forfeited Credit)

**238.105 Restoration of credit forfeited by reason of termination of membership.** Whenever, within five years after the employee is separated from all service entitling the employee to membership in the system, an employee who has withdrawn the amount credited to the member account of the member reenters the service of an employer participating in the system, the employee's rights in the system that were forfeited by the withdrawal shall be restored upon repaying to the board within one year after reentering the service of the employer, the full amount so withdrawn together with the interest that would have been accumulated on the sum had the amount not been withdrawn. [Formerly 237.111 (3); 2001 c.945 §37]

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

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

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

(B) Pays to the board in a lump sum for credit to the member account of the member the amount withdrawn and interest on the amount withdrawn compounded annually for each year or portion of a year after the date of the withdrawal and before the effective date of retirement of the member. The interest shall be computed at the annual rate of 7.5 percent.

(b) If a member who obtains restoration of creditable service as provided in this subsection does not obtain restoration of all

creditable service forfeited by the withdrawal pursuant to service after reentry, the payment under paragraph (a) of this subsection shall be reduced proportionately to reflect the percentage of creditable service restored.

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

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

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

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

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

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

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

(b) This subsection provides a method of obtaining creditable service for forfeited creditable service described in this subsection that is in lieu of any application of subsection (1) of this section for that purpose. [Formerly 237.108; 1999 c.130 §5; 2001 c.945 §38]

**Note:** The amendments to 238.115 by section 11, chapter 945, Oregon Laws 2001, become operative January 1, 2003. See section 12, chapter 945, Oregon Laws 2001. The text that is operative on and after January 1, 2003, is set forth for the user's convenience.

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

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

(B) Pays to the board in a lump sum for credit to the member account of the member the amount withdrawn and interest on the amount withdrawn compounded annually for each year or portion of a year after the date of the withdrawal and before the effective date of retirement of the member. The interest shall be computed at the annual rate of 7.5 percent.

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

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

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

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

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

(3)(a) A member of the Public Employees Retirement System who was a member of an association established pursuant to ORS chapter 239 (1997 Edition), but separated from all service entitling the employee to membership in the system of the association and withdrew the amount credited to the member account of the employee in the retirement fund of the association, and who, after that separation, entered the service of an employer in the field of education participating in the Public

Employees Retirement System and served as an active member of that system for 10 years after that entry, and who has not otherwise obtained restoration of all creditable service forfeited by the withdrawal, shall obtain creditable service as a member of the Public Employees Retirement System equal to all creditable service forfeited by the withdrawal if the member within 90 days before the effective date of retirement of the member:

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

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

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

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

(Credit for Probationary Periods)

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

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

(2) The total amount of employer contributions to the fund the employer of the employee would have been required to make in respect to the employee if the employee had been a member of the system during the six months' period, which amount shall be credited to the reserve for pension accounts in the fund. [Formerly 237.117; 2001 c.945 §39]

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

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

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

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

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

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

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

(Credit for Periods of Service With Other Employers)

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

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

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

member was in the service of that public employer; and

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

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

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

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

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

(4) If a person first becomes a member of the system on or after January 1, 2000, as described in subsection (5) of this section, the person may not acquire more than five years of credit under this section in combination with any credit acquired under ORS 526.052 for periods of service with another employer that entitle the employee to retirement credit under a retirement plan offered by the other employer. If a person subject to limitation imposed by this subsection also is eligible for credit under ORS 526.052, the total years of credit that may be acquired under this subsection and ORS 526.052 may not exceed five years.

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

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

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

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

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

**238.156 Contributions, benefits and retirement credit for periods of service in uniformed services; rules. (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 the period of military service in the Armed Forces based on the employee's salary rate at the time the employee entered or reentered the Armed Forces, as though the employee had remained in the employment of the employer. Any lump sum contribution made under this paragraph shall be added to the employee's regular account and in all respects shall be considered as though made by payroll deduction.

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

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

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

(2) No person shall receive retirement credit under this section for any period of service with the Armed Forces of the United States for which that person receives credit under the provisions of ORS 238.156 or for which the person is receiving or entitled to receive a pension or retirement pay under a public retirement system established by the United States for the performance of service in the Armed Forces. [1997 c.578 §2]

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

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

(2) Served in any branch of the Armed Forces of the United States while on military leave of absence from a position in federal government employment as set forth in subsection (1) of this section. [Formerly 237.097]

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

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

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

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

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

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

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

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

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

(Miscellaneous)

**238.165 Credit for certain periods of employment by Legislative Assembly.** (1) As used in this section, "legislative employee" means any person employed by the Legislative Assembly, either of its houses or any of its committees prior or

subsequent to July 22, 1973, during any period or periods of such employment qualifying the person for membership and participation in the Public Employees Retirement System under the provisions of this chapter then in effect. "Legislative employee" does not include any member of the legislature.

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

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

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

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

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

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

(5) Any person who was a legislative employee prior to July 22, 1973, and who is not so employed on July 22, 1973, but who becomes a legislative employee once again after July 22, 1973, may elect to pay employee contributions and obtain retirement credit for service prior to July 22, 1973, as a legislative employee. The election shall be made by giving written notice to the board no later than one year after the first day of the subsequent employment, in the same manner and subject to the same conditions as set forth in subsection (4) of this section.

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

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

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

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

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

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

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

(3) A member may acquire retirement credit under the provisions of this section for the purposes of calculating a service

retirement allowance only if the member returns to employment with a participating public employer after the period of disability.

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

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

(6) Retirement credit under this section may be acquired only for periods occurring on or after January 1, 1985, during which a member receives a disability retirement allowance or disability payments under ORS chapter 656. [1997 c.648 §2]

## CONTRIBUTIONS

(Employee Contributions)

**238.200 Employee contributions generally.** (1)(a) An active member of the system shall contribute to the fund and there shall be withheld from salary of the member six percent of that salary.

(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 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. [Formerly 237.071 (1) to (3); 2001 c.945 §43]

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

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

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

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

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

(5) For the purposes of this section:

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

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

(6) A participating public employer must give written notice to the Public Employees Retirement Board at the time that a written employment policy or agreement described in subsection (1) of this section is adopted or changed. The notice must indicate whether the employer will “pick-up” or “assume or pay” the employee contributions as described in subsection (5) of this section. Any change in the manner in which employee contributions are to be paid applies only to employee contributions made on and after the date the notice is received by the board. [Formerly 237.075; 1997 c.175 §8; 2001 c.945 §44]

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

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

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

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

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

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

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

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

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

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

(Employee Rollover Contributions)

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

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

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

(4) Rollover contributions shall not be considered in determining whether a member has contributed in each of five

calendar years for purposes of ORS 238.265 and 238.425 or for the purpose of any other provision in this chapter relating to employee contributions.

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

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

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

(8) The board shall by rule establish a maintenance fee for rollover accounts established under this section. The fee may be collected out of earnings on rollover accounts or, if there are no earnings, from the principal amounts paid into the rollover accounts. The fee shall be in an amount determined by the board to be adequate to pay the full cost to the system of maintaining rollover accounts under this section. [1999 c.988 §2; 2001 c.945 §45]

**Note:** 238.220 becomes operative July 1, 2002. See section 3, chapter 988, Oregon Laws 1999.

(Employer Contributions)

**238.225 Employer contributions; pooling of employers.** (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 regarded as a single employer; and

(b) All community college districts and the state shall be 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 purposes of the actuarial computation required by subsection (1) of this section. [Formerly 237.081; 2001 c.945 §13]

**Note:** Section 14, chapter 945, Oregon Laws 2001, provides:

**Sec. 14.** The amendments to ORS 238.225 by section 13 of this 2001 Act do not affect any right to receive prior service credit, or any obligation to provide prior service credit, incurred under ORS 238.225 before the effective date of this 2001 Act [August 9, 2001]. [2001 c.945 §14]

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

MEMBER ACCOUNTS

(Generally)

**238.250 Regular accounts.** The board shall provide for a regular account for each active and inactive member of the system. The regular account shall show the amount of the member's contributions to the fund and the interest which they have earned. The board shall furnish a written statement thereof upon request by any member or beneficiary of the system. [Formerly 237.275; 2001 c.945 §46]

**238.255 Credits to regular accounts when earnings less than assumed interest rate.** The regular account for an active or inactive member of the system 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 board, the amount of the difference shall be credited to the regular account and charged to a reserve account in the fund established for the purpose. A reserve account so established may not be maintained on a deficit basis for a period of more than five years. Earnings in excess of the assumed interest rate for years following the year for which a charge is made to the reserve account shall first be applied to reduce or eliminate the amount of a deficit. The Public Employees Retirement Board shall attempt to ensure that the reserve account is funded with amounts adequate to leave 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. [Formerly 237.277; 2001 c.945 §4]

**238.260 Variable Annuity Account.** (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.

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

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

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

(e) The annuity of a member who makes an effective transfer under this subsection shall be based on the amount in the regular account of the member in the fund as otherwise provided in this chapter, and the member shall not receive a variable annuity as provided in this section. [Formerly 237.197; 2001 c.945 §47]

(Withdrawal or Transfer of Member Account)

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

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

(b) The member is separated from all service with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the fund as a qualified governmental retirement plan and trust;

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

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

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

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

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

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

(4) Withdrawal of a member account under this section cancels all membership rights in the system, including the right to claim credit for any employment before withdrawal. [Formerly 237.111 (2); 1999 c.317 §5; 2001 c.945 §48]

**238.270 Transfer of member account to other public employee retirement system.** Whenever a person who is past the earliest service retirement age separates from the service of a public employer participating in the Public Employees Retirement System and who thereafter, but before applying to the Public Employees Retirement Board for retirement benefits, is employed in a position that entitles the person to membership in another public employees retirement system, either within or without this state, the board, upon the written request of the person and if in conformance with the provisions of law governing the other public employees retirement system, may transfer the member account of the person in the fund to the other public employees retirement system. Such transfer shall cancel the right of the person to claim any future benefits under the Public Employees Retirement System for service rendered to a public employer in this state prior to the date of the transfer. [Formerly 237.115; 2001 c.945 §49]

## ELIGIBILITY FOR RETIREMENT

**238.280 Eligibility for retirement.** (1) A police officer or firefighter who is a member of the system and attains the age of 50 or any other employee who is a member of the system and attains the age of 55 shall be retired upon written application by the member to the board on a reduced service retirement allowance which shall be the actuarial equivalent of the service retirement allowance provided for in ORS 238.300 at the normal retirement age.

(2) Notwithstanding subsection (1) of this section and ORS 238.215 (2)(b)(B):

(a) A police officer or firefighter who is a member of the system, attains the age of 50 and has a combined total of 25 years or more of creditable service in the system and prior service credit shall be retired upon written application by the member to the board on a service retirement allowance including, without actuarial reduction, the same current service pension and prior service pension provided for in ORS 238.300 at the normal retirement age.

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

## BENEFITS

(Service Retirement Allowance)

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

(1) A refund annuity which shall be the actuarial equivalent of accumulated contributions 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 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) The actuarial equivalent of the annuity provided by the accumulated contributions of the member.

(B) For a member who made contributions before August 21, 1981, the equivalent of a pension computed pursuant to this subsection as it existed immediately before that date.

(c) As used in this subsection, "number of years of membership" means the number of full years plus any remaining fraction of a year for which salary was paid and contributions to the Public Employees Retirement System made. Except as otherwise provided in this paragraph, in determining a remaining fraction a full month shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as a full month. Membership of a school district employee, an employee of the State Board of Higher Education engaged in teaching or other school activity at an institution of higher education or an employee of the Department of Human Services, the Oregon Youth Authority, the Department of Corrections or the State Board of Education engaged in teaching or other school activity at an institution supervised by the authority, board or department, for all portions of a school year in a calendar year in which the district school, institution of higher education or school activity at an institution so supervised in which the member is employed is normally in session shall be considered as a full one-half year of membership. The number of years of membership of a member who received a refund of contributions as provided in ORS 237.976 (2) is limited to the number of years after the day before the date on which the refund was received. The number of years of membership of a member who is separated, for any reason other than death or disability, from all service entitling the member to membership in the system, who withdraws the amount credited to the member account of the member in the fund during absence from such service and who thereafter reenters the service of an employer participating in the system but does not repay the amount so withdrawn as provided in this chapter, is limited to the number of years after the day before the date of so reentering.

(3) An additional life pension (nonrefund) for prior service credit, including military service, credited to the member at the time of first becoming a member of the system, as elsewhere provided in this chapter, which pension shall be provided by the contributions of the employer. [Formerly 237.147; 1997 c.249 §67; 2001 c.900 §49; 2001 c.945 §50]

**238.305 Optional service retirement allowance calculations.** (1) Not later than 60 days after the date the first benefit

payment is issued 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 (5) 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 (5) 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 date the first benefit payment is issued 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) If the member elects to receive the service retirement benefit described in subsection (2) of this section, the member shall elect at the same time to receive the refund described in subsection (2)(a) 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 installment payments shall be paid once each year for the number of consecutive years equal to the number of installment payments elected.

(b) 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 Public Employees Retirement Fund.

(c) 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.

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

(e) 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.

(f) 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) The designation of a beneficiary, the election of an option or any other election or designation under subsection (1), (2) or (3) 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.

(5) 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.

(6) 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.

(7) 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.

(8) The service retirement allowance provided in subsection (6) or (7) 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.

(9) The board may deny an election to convert a service retirement allowance under this section, a change of beneficiary under this section or a change in benefit options under this section if that denial is required to maintain the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [Formerly 237.155; 1997 c.180 §1; 1999 c.317 §10; 2001 c.945 §68]

**Note:** The amendments to 238.305 by section 8, chapter 945, Oregon Laws 2001, become operative January 1, 2003. See section 12, chapter 945, Oregon Laws 2001. The text that is operative on and after January 1, 2003, is set forth for the user's convenience.

**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).

(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.

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

**Sec. 3.** (1) If on the effective date of this 1997 Act [October 4, 1997] a retired member is eligible for the service retirement allowance provided by ORS 238.305 (6) or (7), as amended by section 1 of this 1997 Act, but was not eligible under ORS 238.305 (1995 Edition):

(a) The member may give written notice of the member's eligibility to the Public Employees Retirement Board at any time after the effective date of this 1997 Act; and

(b) The service retirement allowance of the retired member under ORS 238.305 (6) or (7), as amended by section 1 of this 1997 Act, is first applicable to the first full month after the death of the member's beneficiary, or the first full month after the member attained 80 years of age, whichever is later.

(2) As soon as possible after the effective date of this 1997 Act, the board shall calculate and mail a check for the amount of any retroactive payment required under subsection (1) of this section. The retroactive payment shall represent the difference between the total of all monthly amounts paid to the member before the first recalculated monthly payment is made under subsection (1) of this section, and the total of all monthly amounts that would have been paid to the member if ORS 238.305, as amended by section 1 of this 1997 Act, had been in effect on and after October 3, 1989. In no event shall the increased service allowance under ORS 238.305 (6), as amended by section 1 of this 1997 Act, or the increased life pension or pensions under ORS 238.305 (7), be applicable to any monthly payment that was made before the first full month following October 3, 1989, and no retroactive payment shall be made under this section for any monthly payment that was made before the first full month following October 3, 1989. [1997 c.180 §3]

**Note:** The amendments to section 3, chapter 180, Oregon Laws 1997, by section 9, chapter 945, Oregon Laws 2001, become operative January 1, 2003. See section 12, chapter 945, Oregon Laws 2001. The text that is operative on and after January 1, 2003, is set forth for the user's convenience.

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

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

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

(2) As soon as possible after October 4, 1997, the board shall calculate and mail a check for the amount of any retroactive payment required under subsection (1) of this section. The retroactive payment shall represent the difference between the total

of all monthly amounts paid to the member before the first recalculated monthly payment is made under subsection (1) of this section, and the total of all monthly amounts that would have been paid to the member if ORS 238.305, as amended by section 1, chapter 180, Oregon Laws 1997, had been in effect on and after October 3, 1989. In no event shall the increased service allowance under ORS 238.305 (7), or the increased life pension or pensions under ORS 238.305 (8), be applicable to any monthly payment that was made before the first full month following October 3, 1989, and no retroactive payment shall be made under this section for any monthly payment that was made before the first full month following October 3, 1989.

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

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

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

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

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

(Disability Retirement Allowance)

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

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

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

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

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

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

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

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

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

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

(6) In computing years of employment for the purpose of subsection (3) of this section, the following schedule shall be used: For employment before the employee established membership in the Public Employees Retirement System, a member shall be considered to have been employed for one year for each year of prior service credit allowed, and for any minor fraction of a year of continuous service as certified by the employer for which no prior service credit was granted. After having established membership in the Public Employees Retirement System a member shall be considered to have been employed one

year for each 12-month period or major fraction thereof during which time the member received compensation for employment which entitled the member to membership in the system, as evidenced by payroll records. For the purpose of determining a member's eligibility for disability benefits, no leave of absence after a member ceases to work for any participating employer shall be considered other than accumulated sick leave not in excess of 90 days. The effective date of the disability shall not in any event be determined by the board as prior to the last day for which the disabled member performed services for a participating employer. No benefits may be paid for any month in which the member received salary or sick leave benefits from the participating employer.

(7) For the purposes of subsections (1) and (3) of this section, a member of the system shall be considered to be mentally or physically incapacitated for an extended duration if the mental or physical incapacity can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 90 days. [Formerly 237.171; 2001 c.945 §51]

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

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

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

Option 2A. A reduced disability retirement allowance payable during the period of incapacity which, unless modified under subsection (3) of this section, continues after death, if death shall occur after the effective date of the disability and during the period of incapacity, for the life of the beneficiary whom the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

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

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

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

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

(3) If a retired member has elected to receive a disability retirement allowance under Option 2A or Option 3A as provided in subsection (1) of this section, and if the beneficiary under that option dies after the expiration of the time within which the member could change the election of an option or if the beneficiary is the spouse of the member and the marriage relationship is terminated as provided by law after the expiration of the time within which the member could change the election of an

option, the member may elect to receive, in lieu of the optional form of allowance previously elected, the allowance that the member would have received on the effective date of retirement under Option 1 as provided in subsection (1) of this section and adjusted by the actual amount of any cost-of-living or other post-retirement adjustments made to the original allowance since the effective date of retirement. Notice of election under this subsection 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

allowance authorized under this section is in lieu of any service-connected disability retirement benefit available under this chapter.

(2) The election to receive the benefits authorized under subsection (1) of this section shall be made within 90 days after the board makes its decision that the police officer or firefighter is disabled. The election once made shall not be changed.

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

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

(Use of Sick Leave to Increase Retirement Allowance)

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The written certification of a member or former member of the Legislative Assembly shall constitute a formal record of accumulation and use in determining the amount of accumulated unused sick leave of an employee of the Legislative Assembly, either of its houses or any of its committees or officers for periods of employment before July 1, 1981. Sick leave accumulated on and after July 1, 1981, by employees of the Legislative Assembly, either of its houses or any of its committees

or officers may be considered only to the extent it is supported by records of accumulation and use maintained by the Legislative Administration Committee, or any statutory, standing, special or interim committee of the Legislative Assembly or either house thereof, or any constitutional or statutory office of the Legislative Assembly or either house thereof, pursuant to a plan adopted formally by the committee or officer.

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

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

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

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

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

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

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

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

(Cost-of-Living Adjustments)

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

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

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

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

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

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

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

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

238.380 and 238.387 (2) to judge members, and under section 10, chapter 569, Oregon Laws 1995:

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

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

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

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

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

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

**238.380 Calculation of increased benefit payable under ORS 238.375.** (1)(a) Upon retirement of an employee who is a member of the Public Employees Retirement System and computation of that member's service retirement allowance under ORS 238.300, 238.305 or 238.425, or computation of any disability retirement allowance under ORS 238.320, 238.325, 238.330, 238.345 or 238.425, the Public Employees Retirement Board shall add to the amount of the allowance, including amounts attributable to prior service credit and the amount of any refund of accumulated employee contributions, the greater of the percentage increase calculated under ORS 238.385 or a percentage increase calculated under subsection (4) of this section. No benefit shall be paid to a member or beneficiary under ORS 238.385 if the benefit payable to the member or beneficiary under this section is larger than the benefit payable under ORS 238.385.

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

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

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

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

(b) A member of the system who withdraws the amount credited to the member account of the member in the fund under the provisions of ORS 238.265, or whose member account is returned to the employee after the membership of the employee is terminated under the provisions of ORS 238.095, shall receive an additional amount calculated by multiplying the amount of the member account of the member by the greater of the percentage provided for in ORS 238.385 or the percentage calculated under subsection (4) of this section. If a member thereafter elects to obtain restoration of creditable service by repaying the amount of the withdrawn member account pursuant to the provisions of ORS 238.105, the member must also repay all amounts paid under this section, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.105. If a member repays only part of the withdrawn member account pursuant to the provisions of ORS 238.115, the member must repay that part of the amount paid under this section that is proportionate to the portion of the withdrawn member account that is repaid under ORS 238.115, together with interest from the date of withdrawal at the same rate as applied to the withdrawn member account under ORS 238.115. All amounts paid to the member that are subsequently

repaid under ORS 238.105 or 238.115 shall be deposited by the board to the employer reserve for pension accounts in the fund.

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

1

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1 - the maximum Oregon  
personal income tax rate

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

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

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

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

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

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

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

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

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

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

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

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

(c) The person performed any period of service for a participating public employer before July 14, 1995, that is credited to the six-month period of employment required of an employee under ORS 238.015 before an employee may become a member of the system. [1995 c.569 §3; 1997 c.175 §5; 2001 c.945 §54]

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

amount equal to the percentage increase provided in subsection (4) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) If a member is entitled to receive an increased benefit under the provisions of this section, and any portion of the member's retirement allowance or other benefit payable under the system is payable to an alternate payee under the provisions of ORS 238.465, the increased benefits payable under this section shall be divided between the member and the alternate payee in proportion to the share of the total benefit received by each person. If an alternate payee elects to begin receiving benefits under ORS 238.465 (1) before the member's effective date of retirement, the alternate payee may not begin receiving the increased benefit provided for in this section until benefits are first paid from the system on behalf of the member. [Formerly 237.208; 1997 c.175 §6; 2001 c.945 §55]

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

(a) If the member was serving as other than a police officer or firefighter at the time of retirement, the percentage increase shall be:

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

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

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

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

(b) If the member was serving as a police officer or firefighter at the time of retirement, the percentage increase shall be:

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

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

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

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

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

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

(Death Benefits)

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

(A) Husband or wife.

(B) Children.

(C) Father and mother.

(D) Grandchildren.

(E) Brothers and sisters.

(F) Nieces and nephews.

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

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

(4)(a) In the event that a member of the system dies before retiring, has not designated a beneficiary under subsection (1) of

this section, has no surviving next of kin referred to in subsection (2) of this section and whose estate will not be probated, the amount of money credited at the time of death to the member account of the member in the fund shall be paid directly without probate for the following purposes in the order listed:

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

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

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

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

(7) Payments by the Public Employees Retirement Board of credits or accrued benefits pursuant to the beneficiary designation on file with the board or any affidavit referred to in subsection (2)(b) of this section shall completely discharge the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment. [Formerly 237.165; 2001 c.945 §56]

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

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

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

(6) 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) Payments 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 completely discharge the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment. [Formerly 237.169; 2001 c.945 §57]

**238.400 Payment upon death of retired member who dies before making election of retirement benefits.** If a person who is a member of the system, who has attained normal retirement age and who has retired from service, dies without making an election under ORS 238.305 and prior to the expiration of the time within which such an election could be made by the person, and the records of the Public Employees Retirement Board indicate that the person has designated the surviving spouse as the beneficiary under ORS 238.390 (1), such surviving spouse may, not more than 60 days after the date of the death of such

deceased member, elect to receive the amount referred to in ORS 238.390 (1), or elect Option 2 or Option 3 under ORS 238.305 and designate self as the beneficiary thereunder with the same force and effect as if the election and designation had been properly made by the deceased member. [Formerly 237.167]

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

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

(3) The board shall pay to a surviving spouse or child entitled to a benefit under this section a lump sum amount equal to the actuarial value of the allowance provided under this section if the allowance is less than \$30 per month. The lump sum amount shall be in lieu of the allowance provided for under this section. [Formerly 237.163]

(Insurance Premium Payments)

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

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

(b) "Eligible person" means:

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

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

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

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

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

(2) The Public Employees Retirement Board shall conduct a continuing study and investigation of all matters connected with the providing of health care insurance protection to eligible persons. The board shall design benefits, devise specifications, invite proposals, analyze carrier responses to advertisements for proposals and do acts necessary to award contracts to provide health care insurance, including insurance that provides coverage supplemental to federal Medicare coverage, with emphasis on features based on health care cost containment principles, for eligible persons. The board is not subject to the provisions of ORS 279.005 to 279.111 in awarding contracts under the provisions of this section. The board shall establish procedures for inviting proposals and awarding contracts under this section.

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

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

(5) Subject to applicable provisions of ORS 183.310 to 183.550, the board may make rules not inconsistent with this section to determine the terms and conditions of eligible person participation and coverage and otherwise to implement and carry out the purposes and provisions of this section and ORS 238.420.

(6) The board may retain consultants, brokers or other advisory personnel, organizations specializing in health care cost containment or other administrative services when it determines the necessity and, subject to the State Personnel Relations Law, shall employ such personnel as are required to assist in performing the functions of the board under this section.

(7) The Standard Retiree Health Insurance Account is established within the Public Employees Retirement Fund, separate and distinct from the General Fund. All payments made by eligible persons for health insurance coverage provided under this section shall be held in the account. Interest earned by the account shall be credited to the account. All moneys in the account are continuously appropriated to the Public Employees Retirement Board and may be used by the board only to pay the cost of health insurance coverage under this section and to pay the administrative costs incurred by the board under this section.

(8) The sum of all amounts paid by eligible persons into the Standard Retiree Health Insurance Account, by participating public employers into the Retiree Health Insurance Premium Account under ORS 238.415, and by participating public employers into the Retirement Health Insurance Account under ORS 238.420, may not exceed 25 percent of the aggregate contributions made by participating public employers to the Public Employees Retirement Fund on or after July 11, 1987, not including contributions made by participating public employers to fund prior service credits.

(9) Until all liabilities for health benefits under the system are satisfied, contributions and earnings in the Standard Retiree Health Insurance Account, the Retiree Health Insurance Premium Account under ORS 238.415 and the Retirement Health Insurance Account under ORS 238.420 may not be diverted or otherwise put to any use other than providing health benefits and payment of reasonable costs incurred in administering this section and ORS 238.415 and 238.420. Upon satisfaction of all liabilities for providing health benefits under this section, any amount remaining in the Standard Retiree Health Insurance Account shall be returned to the participating public employers who have made contributions to the account. The distribution shall be made in such equitable manner as the board determines appropriate. [Formerly 237.320; 1999 c.317 §16; 1999 c.407 §7]

**Note:** 238.410 was added to and made a part of ORS chapter 237 (1993 Edition) by legislative action but was not added to ORS chapter 238 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**238.415 Payment toward cost of pre-Medicare insurance; rules.** (1)(a) As used in this section, “eligible retired state employee” means:

(A) A retired member of the Public Employees Retirement System who was a state employee at the time of retirement, is retired for service or disability, is receiving a retirement allowance or benefit under the system, had eight years or more of qualifying service in the system at the time of retirement or is receiving a disability retirement allowance including a pension computed as if the member had eight years or more of creditable service in the system at the time of retirement, and has attained earliest service retirement age but is not eligible for federal Medicare coverage; or

(B) A person who is a surviving spouse or dependent of a deceased eligible retired state employee as provided in subparagraph (A) of this paragraph at the time of death, who:

(i) Is receiving a retirement allowance or benefit under the system; or

(ii) Was covered at the time of the eligible retired state employee’s death by the retired employee’s health insurance contracted for under ORS 238.410, and the employee retired on or after September 29, 1991.

(b) For purposes of this section, “qualifying service” means creditable service in the system and any periods of employment with an employer participating in the system required of the employee before becoming a member of the system.

(2) Of the monthly cost of coverage for an eligible retired state employee under a health care insurance contract entered into under ORS 238.410, an amount as determined under subsection (3) of this section shall be paid from the Retiree Health Insurance Premium Account established by subsection (4) of this section, and any monthly cost in excess of the amount so determined shall be paid by the eligible retired state employee in the manner provided in ORS 238.410 (4). Any amount paid under this subsection shall be exempt from all state, county and municipal taxes imposed on the eligible retired member.

(3) On or before January 1 of each year, the Public Employees Retirement Board shall calculate the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the board under ORS 238.410 and the health insurance premiums paid by state employees who are not retired under contracts entered into by the Public Employees’ Benefit Board. For the purposes of subsection (2) of this section, an eligible retired state employee shall be entitled to receive toward the monthly cost of coverage under a health insurance contract entered into under ORS 238.410:

(a) For an eligible retired state employee with eight years or more of qualifying service in the system, but less than 10 years of qualifying service in the system, 50 percent of the amount calculated by the board under this subsection.

(b) For an eligible retired state employee with 10 years or more of qualifying service in the system, but less than 15 years of qualifying service in the system, 60 percent of the amount calculated by the board under this subsection.

(c) For an eligible retired state employee with 15 years or more of qualifying service in the system, but less than 20 years of qualifying service in the system, 70 percent of the amount calculated by the board under this subsection.

(d) For an eligible retired state employee with 20 years or more of qualifying service in the system, but less than 25 years of qualifying service in the system, 80 percent of the amount calculated by the board under this subsection.

(e) For an eligible retired state employee with 25 years or more of qualifying service in the system, but less than 30 years of qualifying service in the system, 90 percent of the amount calculated by the board under this subsection.

(f) For an eligible retired state employee with 30 years or more of qualifying service in the system, 100 percent of the amount calculated by the board under this subsection.

(4) The Retiree Health Insurance Premium Account is established within the Public Employees Retirement Fund, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. All moneys in the account are continuously appropriated to the Public Employees Retirement Board and may be used only to pay costs of health care insurance contract coverage under subsection (2) of this section, paying the administrative costs incurred by the board under this section and investment of moneys in the account under any law of this state specifically authorizing that investment.

(5) The Retiree Health Insurance Premium Account shall be funded by employer contributions. The state shall transmit to the board those amounts the board determines to be actuarially necessary to fund the liabilities of the account. The level of employer contributions shall be established by the board using the same actuarial assumptions it uses to determine employer contribution rates to the Public Employees Retirement Fund. The amounts shall be transmitted at the same time and in the same manner as contributions for pension benefits are transmitted under ORS 238.225.

(6) The Public Employees Retirement Board shall, by rule, establish a procedure for calculating the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the board under ORS 238.410 and the health insurance premiums paid by state employees who are not retired under contracts entered into by the Public Employees' Benefit Board.

(7) As provided in section 401(h)(5) of the Internal Revenue Code of 1986, upon satisfaction of all liabilities for providing benefits described in subsection (2) of this section, any amount remaining in the Retiree Health Insurance Premium Account shall be returned to the state.

(8) No member of the system shall have an interest in the Retiree Health Insurance Premium Account or in the benefits provided under this section.

(9) For the purposes of this section:

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

(b) "System" means the Public Employees Retirement System. [Formerly 237.247; 1997 c.222 §45; 1999 c.317 §17; 2001 c.945 §80]

**Note:** 238.415 was added to and made a part of ORS chapter 237 (1993 Edition) by legislative action but was not added to ORS chapter 238 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**238.420 Payment toward cost of Medicare supplemental insurance.** (1) As used in this section, "eligible retired member" means:

(a) A retired member of the Public Employees Retirement System who is retired for service or disability, is receiving a retirement allowance or benefit under the system, had eight years or more of qualifying service in the system at the time of retirement or is receiving a disability retirement allowance including a pension computed as if the member had eight years or more of creditable service in the system at the time of retirement, and is eligible for federal Medicare coverage; or

(b) A person who is a surviving spouse or dependent of a deceased eligible retired member as provided in paragraph (a) of this subsection at the time of death, who is eligible for federal Medicare coverage and who:

(A) Is receiving a retirement allowance or benefit under the system; or

(B) Was covered at the time of the retired member's death by the retired member's health insurance contracted for under ORS 238.410, and the member retired before May 1, 1991.

(2) For purposes of subsection (1)(a) of this section, "qualifying service" means creditable service in the system and any periods of employment with an employer participating in the system required of the employee before becoming a member of the system.

(3) Of the monthly cost of coverage for an eligible retired member under a health care insurance contract that provides coverage supplemental to federal Medicare coverage entered into under ORS 238.410, an amount equal to \$60 or the total monthly cost of that coverage, whichever is less, shall be paid from the Retirement Health Insurance Account established by subsection (4) of this section, and any monthly cost in excess of \$60 shall be paid by the eligible retired member in the manner provided in ORS 238.410 (4). Any amount paid under this subsection shall be exempt from all state, county and municipal taxes imposed on the eligible retired member.

(4) The Retirement Health Insurance Account is established within the Public Employees Retirement Fund, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. All moneys in the account are continuously appropriated to the Public Employees Retirement Board and may be used only to pay costs of health care insurance contract coverage under subsection (3) of this section, paying the administrative costs incurred by the board under this section and investment of moneys in the account under any law of this state specifically authorizing that investment.

(5) The Retirement Health Insurance Account shall be funded by employer contributions. Each public employer that is a member of the system shall transmit to the board such amounts as the board determines to be actuarially necessary to fund the liabilities of the account. The level of employer contributions shall be established by the board using the same actuarial assumptions it uses to determine employer contribution rates to the Public Employees Retirement Fund. The amounts shall be transmitted at the same time and in the same manner as contributions for pension benefits are transmitted under ORS 238.225.

(6) As provided in section 401(h)(5) of the Internal Revenue Code of 1986, upon satisfaction of all liabilities for providing benefits described in subsection (1) of this section, any amount remaining in the Retirement Health Insurance Account shall be returned to the employers participating in the retirement system on an equitable basis as determined by the board.

(7) No member of the system shall have an interest in the Retirement Health Insurance Account. [Formerly 237.248; 1999

(Benefits Payable to Inactive Member)

**238.425 Benefits payable to inactive member.** In the event that an employee who is a member of the system, who has made contributions to the fund during each of five calendar years as established by this chapter, and who has not attained earliest service retirement age, is separated, for any reason other than death or disability, from all service entitling the employee to membership in the system, the member account 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:

- (1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions and interest thereon credited to the member;
- (2) A pension provided by the contributions of employers as provided in ORS 238.300 (2), but actuarially reduced and computed on the member's then attained age; and
- (3) An additional life pension (nonrefund) for prior service credit, including military service, credited to the member at the time the member first becomes a member of the system, as elsewhere provided in this chapter, which pension shall be provided by the contributions of the employer. [Formerly 237.111 (1); 2001 c.945 §58]

(Benefits Payable to Persons Establishing Membership on or After January 1, 1996)

**238.430 Limitation on benefits payable to persons establishing membership on or after January 1, 1996.** (1) Notwithstanding any other provisions of this chapter, a person who establishes membership in the Public Employees Retirement System on or after January 1, 1996, is entitled to receive only the benefits provided under ORS 238.435 for periods of service with participating public employers after January 1, 1996, and has no right or claim to any other benefit provided under this chapter. A person who establishes membership in the Public Employees Retirement System before January 1, 1996, is entitled to receive those benefits otherwise provided by this chapter, and is not subject to the provisions of ORS 238.435.

- (2) A person establishes membership in the system before January 1, 1996, for the purposes of this section if:
  - (a) The person is a member of the system, or a judge member of the system, on January 1, 1996;
  - (b) The person was a member of the system before January 1, 1996, ceased to be a member of the system under the provisions of ORS 238.095, 238.265 or 238.545 before January 1, 1996, but restored part or all of the forfeited creditable service from before January 1, 1996, under the provisions of ORS 238.105, 238.115 or 238.265 after January 1, 1996;
  - (c) The person performed any period of service for a participating public employer before January 1, 1996, that is credited to the six-month period of employment required of an employee under ORS 238.015 before an employee may become a member of the system; or
  - (d) The person becomes a member of the system under the terms of an integration contract pursuant to the terms of ORS 238.680, and under the terms of the contract the person receives retirement credit in the system for periods of employment performed for the public employer before January 1, 1996.

- (3) The provisions of ORS 238.435 do not apply to judge members of the system. [1995 c.654 §2; 1997 c.175 §12]

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

- (2) Notwithstanding the definition of "final average salary" provided by ORS 238.005, for the purpose of calculating the retirement allowance of a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, the term "final average salary" means whichever of the following is greater:
  - (a) The average salary per calendar year earned by a public employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee, in which three years the employee was paid the highest salary. The three calendar years in which the employee earned the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is three or less, the final average salary for the employee is the average salary per calendar year earned by the public employee in all of those years, without regard to whether the employee was employed for full calendar years.
  - (b) One-third of the total salary earned by a public employee who is an active member of the system in the last 36 calendar months of membership before the effective date of retirement of the employee.
- (3) The normal retirement age is 60 years of age for a member who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, and who retires as other than a police officer or firefighter.
- (4) ORS 238.255 does not apply to any person who establishes membership in the Public Employees Retirement System on

or after January 1, 1996, as described in ORS 238.430.

(5) Notwithstanding any other provision of this chapter, for the purpose of calculating a monthly disability retirement allowance payable to a member who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, the sum of the monthly amount of the disability retirement allowance and of any monthly payment on account of temporary total disability or permanent total disability under the provisions of ORS chapter 656 may not exceed the member's monthly salary, determined as of the date the member becomes disabled. The board shall reduce any disability retirement allowance payable under this chapter in the amount determined to be necessary by the board to meet the limitation imposed by this subsection.

(6) Except as provided in this section, all provisions of this chapter are applicable to persons who establish membership in the system on or after January 1, 1996, as described in ORS 238.430. [1995 c.654 §3; 1999 c.407 §4]

(Optional Purchase of Benefit Units by Police and Firefighters)

**238.440 Optional purchase of benefit units by police and firefighters.** (1) A police officer or firefighter who is a member of the system may elect to make additional contributions to the fund to purchase increased benefits between the date of retirement and age 65. The rate of additional contribution shall be determined by the actuary, dependent upon the age of the police officer or firefighter at the date of election, so as to provide monthly payments on the basis of \$10 per unit of benefits purchased. No police officer or firefighter may elect to purchase more than eight units. For each \$10 unit purchased by the police officer or firefighter, the employer shall purchase an equal \$10 unit. A police officer or firefighter who is retained until age 65 shall receive a lump sum refund of the additional contributions made toward units purchased, plus interest thereon, but shall receive no benefits from the additional contributions by the employer for such units. If a police officer or firefighter retires after age 60 but prior to age 65, the units purchased by additional contributions shall provide increased monthly benefits based on life expectancy, but the matching units purchased by the employer shall not, regardless of age, exceed \$10 per month per unit purchased by the police officer or firefighter. If a police officer or firefighter is absent from the employment of a participating employer for any reason and because of such absence is unable to make monthly additional contributions, the benefits provided under this section shall be actuarially reduced upon the retirement of the police officer or firefighter.

(2) Notwithstanding subsection (1) of this section, a police officer or firefighter who retires prior to age 60 may apply for and receive an actuarially reduced unit income commencing at any date between the date of early retirement and age 60, with monthly benefits payable for at least 60 months or any other monthly formula in excess of 60 months but always terminating by age 65. Such a police officer or firefighter may elect to pay in a lump sum within the 60 days immediately preceding early retirement the contribution that the police officer or firefighter would have made to the unit income account had the police officer or firefighter worked to age 60.

(3) Any police officer or firefighter who elects to make additional contributions to purchase increased benefits may elect at any time before termination to cancel such election. Having once canceled such election, no police officer or firefighter shall be again permitted to make additional contributions.

(4) The additional contributions made by the police officer or firefighter under this section shall be refunded to the police officer or firefighter only when:

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

(b) The member is separated from all service with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the fund as a qualified governmental retirement plan and trust.

(5) A police officer or firefighter who has elected to make additional contributions under this section and who transfers to employment in which not entitled to make such additional contributions may retain the account established under subsection (1) of this section for five years immediately following such transfer by not requesting a withdrawal. If, at the end of the five-year period, the police officer or firefighter has not reached age 50, or has not returned to employment in which entitled to make additional contributions under this section, the election shall be canceled and the amount of the account established under subsection (1) of this section shall be refunded to the police officer or firefighter.

(6) Any election to make additional contributions under this section and any cancellation of such election shall be submitted to the employer and to the board in writing. [Formerly 237.071 (4); 1999 c.317 §5a]

(Prior Service Credit)

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

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

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

(4) A public employer who agrees to provide prior service credit under this section may elect to treat any year, or part of a year, for which prior service credit is granted as a year in which the employee has made contributions to the Public Employees Retirement Fund for the purposes of ORS 238.265 (3) and 238.425. An election under this subsection must be made at the time the public employer enters into the agreement providing for prior service credit. [2001 c.945 §75; 2001 c.945 §75a]

(Miscellaneous)

**238.445 Benefits exempt from execution, bankruptcy and certain taxes; exceptions.** (1) Except as provided in this section, the right of a person to a pension, an annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit or death benefit, or any other right accrued or accruing to any person under the provisions of this chapter, and the money in the various funds created by ORS 238.660 and 238.670, shall be exempt from garnishment and all state, county and municipal taxes heretofore or hereafter imposed, except as provided under ORS chapter 118, shall not be subject to execution, garnishment, attachment or any other process or to the operation of any bankruptcy or insolvency law heretofore or hereafter existing or enacted, and shall be unassignable.

(2) Subsection (1) of this section does not apply to state personal income taxation of amounts paid under this chapter.

(3) Unless otherwise ordered by a court under ORS 25.387, the exemption from execution or other process granted under this section applies to 75 percent of amounts paid under this chapter if the execution or other process is issued for a support obligation or an order or notice entered or issued under ORS chapter 25, 107, 108, 109, 110, 416, 419B or 419C. [Formerly 237.201; 1999 c.80 §86; 1999 c.745 §3]

**Note:** Section 8, chapter 745, Oregon Laws 1999, provides:

**Sec. 8.** (1) Except as provided in subsection (2) of this section, the amendments to ORS 23.160, 23.170, 29.225 (1999 Edition), 238.445, 412.115, 412.610 and 657.855 by sections 1 to 7, chapter 745, Oregon Laws 1999, apply to all judgments, whether issued before, on or after October 23, 1999.

(2) The amendments to ORS 23.160, 23.170, 29.225 (1999 Edition), 238.445, 412.115, 412.610 and 657.855 by sections 1 to 7, chapter 745, Oregon Laws 1999, do not apply to any execution issued before October 23, 1999. [1999 c.745 §8; 2001 c.249 §80]

**238.450 Computation of retirement allowance or benefit; notice of contest.** (1) Upon receiving an application for a retirement allowance or benefit from a member of the system and obtaining information necessary for computation of the retirement allowance or benefit to which the member is entitled upon retirement, the system shall provide to the member a written computation of the retirement allowance or benefit to which the member is entitled upon retirement and summary of the information used in making that computation.

(2) A member of the system may contest the accuracy of the information used by the system in making the computation of the retirement allowance or benefit to which the member is entitled upon retirement only by filing a written notice of contest with the system not later than whichever of the following days occurs last:

(a) The 240th day after the date on which the computation and information summary is provided to the member pursuant to subsection (1) of this section.

(b) The 240th day after the date on which the retirement allowance or benefit to which the member is entitled first becomes payable.

(3) The filing of a notice of contest under subsection (2) of this section extends the time allowed for election of an optional form of retirement allowance or benefit until the 30th day after the conclusion of the contest proceeding and any judicial review thereof if the proceeding or review results in a change in the computation of the retirement allowance or benefit.

(4) Upon receiving a notice of contest under subsection (2) of this section, the system shall determine the accuracy of the contested information and make a written decision either affirming the accuracy of the information and computation based thereon or changing the computation using corrected information. The system shall provide to the member a copy of the decision and a written explanation of any applicable statutes and rules. The member is entitled to judicial review of the decision as provided in ORS 183.484 and rules of the board consistent with applicable statutes.

(5) This section does not affect any authority of the system, on its own initiative, to correct an incorrect computation of any retirement allowance or benefit. [Formerly 237.210]

**238.455 Estimated benefit payments.** (1)(a) Whenever a member of the system is retired for service and is entitled to receive a retirement allowance or benefit which is payable monthly, and the board is unable to calculate the amount of the monthly payment in time to allow mailing of the monthly payment to the member within 62 days of the date the first monthly payment is due, the board shall calculate an estimated amount for the monthly payment based on the information then available

to the board and shall mail that payment to the member within 62 days of the date the first monthly payment is due.

(b) Whenever a member of the system is retired for disability and is entitled to receive a retirement allowance or benefit which is payable monthly, and the board is unable to calculate the amount of the monthly payment in time to allow mailing of the monthly payment to the member within 10 days of either the date the board approves the member's application or the date that the first monthly payment is due, whichever is later, the board shall calculate an estimated amount for the monthly payment based on the information then available to the board and shall mail that payment to the member within 10 days of the date the board approves the member's disability benefit, the date the board receives the member's election of one of the optional forms of disability retirement allowance or the date the first monthly payment is due, whichever is later.

(2) The board shall continue to mail estimated payments under subsection (1) of this section until such time as the correct amount of the monthly payment is determined.

(3) The board shall notify the member receiving an estimated payment under subsection (1) of this section that the payment is an estimated payment only. The board shall further notify the member of the provisions of subsection (4) of this section.

(4) If the board determines that any estimated payment made to the member under subsection (1) of this section resulted in payment to the member of an amount other than the correct amount due the member as a retirement allowance or benefit, the board shall immediately so notify the member. Thereafter, the board may increase or decrease the monthly payment to the member until such time as the total difference between the amount or amounts the member received and the amount or amounts the member should have received is accounted for. Thereafter the member shall receive the monthly payment as finally calculated by the board.

(5) If the estimated payment made to the member under subsection (1) of this section results in an underpayment to the member of \$10 or more a month, the board shall pay interest on the balance of such underpayment at the rate credited to the Public Employees Retirement Fund for the prior year until such time as the underpayment is paid to the member pursuant to subsection (4) of this section.

(6) No member shall have any right to any allowance or other benefit other than that provided for in this chapter based on the board's estimate under this section or based on any other estimate made by the board for any other purpose under this chapter. [Formerly 237.159]

**238.458 Unclaimed benefits.** 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. [1999 c.317 §20]

**238.460 Waiver of retirement allowance.** (1) If receipt in full by a person of a retirement allowance under this chapter would prevent such person from receiving in full any other governmental pension to which the person is entitled, such person may waive for a calendar year sufficient monthly payments, or portions thereof, of retirement allowance under this chapter to permit the person to receive in full the other governmental pension. The waiver shall be made in writing and filed with the Public Employees Retirement Board not less than 15 days before the first day of the month to which the waiver applies.

(2) If for any month the waiver does not apply to the full retirement allowance due, the waiver applies first to all or the necessary portion or prior service pension, then to all or to the necessary portion of current service pension, and then to the necessary portion of annuity.

(3) The waiver may be revoked at any time, but no retirement allowance waived for the period of time in which the waiver is in effect shall be paid. The revocation shall be made in writing and filed with the board. If a person dies during the period of time in which the waiver is in effect, the waiver is considered revoked on the date of such death. [Formerly 237.157]

**238.462 Spousal consent required for certain optional forms of retirement allowance.** (1) A member of the Public Employees Retirement System who is married on the effective date of member's retirement shall receive a service retirement allowance in the form provided for in Option 3 under ORS 238.305 (1) or a disability retirement allowance in the form provided for in Option 3 under ORS 238.325 (1) unless the member provides proof of spousal consent to receiving an allowance in the form provided by ORS 238.300 or 238.320, or in one of the optional forms provided for in ORS 238.305 and 238.325 other than Option 3.

(2) Except as provided in subsection (3) of this section, a member of the system who is married on the effective date of the member's retirement may not change the form in which a retirement allowance is paid after an election has been made as to the form of the retirement allowance unless the member provides proof of spousal consent.

(3) A member of the system who is married on the effective date of the member's retirement is not required to provide spousal consent to a change in the form in which a retirement allowance is paid if the spouse of the member dies after the effective date of the member's retirement or disability and the change in the form of the allowance is made within the time periods provided by ORS 238.305 and 238.325. A member seeking to change the form of a retirement allowance without spousal consent under the provisions of this subsection must provide a notarized statement to the Public Employees Retirement Board that certifies to the board that the spouse of the member is deceased.

(4) Any member of the system who is not married on the effective date of the member's retirement must provide a notarized statement to the Public Employees Retirement Board that certifies to the board that the member is not married. No retirement allowance may be paid to a member of the system who is not married until the statement required by this subsection is provided to the board.

(5) A member of the system who is married on the effective date of the member's retirement must provide proof of spousal consent for the purposes of this section by submitting a statement to the board that:

- (a) Contains the notarized signature of the member's spouse;
- (b) Indicates the form in which the retirement allowance is to be paid; and
- (c) Contains a statement that the member's spouse consents to the payment of the retirement allowance in the specified form.

(6) If a member of the system who is married on the effective date of the member's retirement fails to provide proof of spousal consent as required by this section, the board shall calculate and pay to the member a retirement allowance in the form provided for in Option 3 under ORS 238.305 (1) if the retirement is for service, or a retirement allowance in the form provided for in Option 3 under ORS 238.325 (1) if the retirement is for disability. The allowance will be calculated based on the ages of the member and the spouse, and the spouse will be designated as the beneficiary for any survivor benefits that may thereafter become payable.

(7) Proof of spousal consent under this section is not required for, and cannot alter, the designation of any form of a retirement allowance that is required under the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation, that has been received by the board in compliance with the requirements prescribed by ORS 238.465. [1997 c.476 §2; 1999 c.407 §5]

**238.465 Benefits payable to others under certain court decrees; rules.** (1) Notwithstanding ORS 238.445 or any other provision of law, payments under this chapter of any pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit that would otherwise be made to a person entitled thereto under this chapter shall be paid, in whole or in part, by the Public Employees Retirement Board to an alternate payee if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the total value of benefits payable to a member and to an alternate payee under this section may not be greater than the value of the benefits the member would otherwise be eligible to receive. Any payment under this subsection to an alternate payee bars recovery by any other person.

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

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

- (A) The earliest date the member would be eligible to receive retirement benefits if the member separates from service; or
- (B) The date the member actually separates from service due to death, disability, retirement or termination of employment.

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

(c) That the alternate payee's life is the measuring life for the purpose of measuring payments to the alternate payee under the form of benefit selected by the alternate payee and for the purpose of determining necessary employer reserves.

(d) Except as provided in ORS 238.305 (9) and 238.325 (7), that any person designated by the member as a beneficiary under ORS 238.300, 238.305 or 238.325 be changed, even though the member has retired and has begun receiving a retirement allowance. If a change of beneficiary is ordered under this paragraph, the board shall adjust the anticipated benefits that would be payable to the member and the beneficiary to ensure that the cost to the system of providing benefits to the member and the new beneficiary does not exceed the cost that the system would have incurred to provide benefits to the member and the original beneficiary. The decree, order or settlement may not provide for any change to the option selected by the retired member under ORS 238.300, 238.305, 238.320 or 238.325 as to the form of the retirement benefit.

(3) The board shall adopt rules that provide for:

(a) The creation of a separate account in the name of the alternate payee reflecting the decree's, order's or agreement's distribution of the member's benefits under this chapter;

(b) The establishing of criteria to determine whether domestic relations decrees, orders and agreements comply with this section; and

(c) The definitions and procedures for the administration of this section.

(4) If a decree, order or agreement awards an interest to an alternate payee, and if the alternate payee predeceases the member before the alternate payee has commenced receiving benefits, the alternate payee shall be considered a member of the system who died before retiring for the purposes of the death benefits provided in ORS 238.390 and 238.395, but for purposes of the death benefits provided in ORS 238.395, the alternate payee shall be considered a member of the system who died before retiring only if the member would have been eligible for death benefits under ORS 238.395 had the member died at the

same time as the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons entitled to receive the benefits under ORS 238.390 and 238.395 shall constitute payment in full of the alternate payee's interest under the decree, order or agreement.

(5) Any increase in the retirement allowance provided to the member shall increase the amounts paid to the spouse or former spouse of the member in the same proportion, except that an alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other retirement allowance increase until benefits are first paid from the system on behalf of the member.

(6) An alternate payee under this section is not eligible to receive the benefits provided under ORS 238.410, 238.415, 238.420 and 238.440 by reason of the provisions of this section.

(7) An alternate payee who elects to begin receiving payments under subsection (1) of this section before the member's effective date of retirement is not eligible to receive any additional payment by reason of credit in the system acquired by the member after the alternate payee begins to receive payments.

(8) Subsection (1) of this section applies only to payments made by the board after the date of receipt by the board of written notice of the decree, order or agreement and such additional information and documentation as the board may prescribe.

(9) Whenever the board is required to make payment to an alternate payee under the provisions of this section, the board shall charge and collect out of the benefits payable to the member and the alternate payee actual and reasonable administrative expenses and related costs incurred by the board in obtaining data and making calculations that are necessary by reason of the provisions of this section. The board may not charge more than \$300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. The board shall allocate expenses and costs charged under the provisions of this subsection between the member and the alternate payee based on the fraction of the benefit received by the member or alternate payee.

(10) As used in this section, "court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia. [Formerly 237.205; 2001 c.945 §82]

**Note:** The amendments to 238.465 by section 89, chapter 945, Oregon Laws 2001, become operative January 1, 2003. See section 90, chapter 945, Oregon Laws 2001. The text that is operative on and after January 1, 2003, is set forth for the user's convenience.

**238.465.** (1) Notwithstanding ORS 238.445 or any other provision of law, payments under this chapter of any pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit that would otherwise be made to a person entitled thereto under this chapter shall be paid, in whole or in part, by the Public Employees Retirement Board to an alternate payee if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the total value of benefits payable to a member and to an alternate payee under this section may not be greater than the value of the benefits the member would otherwise be eligible to receive. Any payment under this subsection to an alternate payee bars recovery by any other person.

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

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

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

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

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

(c) That the alternate payee's life is the measuring life for the purpose of measuring payments to the alternate payee under the form of benefit selected by the alternate payee and for the purpose of determining necessary employer reserves.

(d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person designated by the member as a beneficiary under ORS 238.300, 238.305 or 238.325 be changed, even though the member has retired and has begun receiving a retirement allowance. If a change of beneficiary is ordered under this paragraph, the board shall adjust the anticipated benefits that would be payable to the member and the beneficiary to ensure that the cost to the system of providing benefits to the member and the new beneficiary does not exceed the cost that the system would have incurred to provide benefits to the member and the original beneficiary. The decree, order or settlement may not provide for any change to the option selected by the retired member under ORS 238.300, 238.305, 238.320 or 238.325 as to the form of the retirement benefit.

(3) The board shall adopt rules that provide for:

(a) The creation of a separate account in the name of the alternate payee reflecting the decree's, order's or agreement's distribution of the member's benefits under this chapter;

(b) The establishing of criteria to determine whether domestic relations decrees, orders and agreements comply with this section; and

(c) The definitions and procedures for the administration of this section.

(4) If a decree, order or agreement awards an interest to an alternate payee, and if the alternate payee predeceases the member before the alternate payee has commenced receiving benefits, the alternate payee shall be considered a member of the system who died before retiring for the purposes of the death benefits provided in ORS 238.390 and 238.395, but for purposes of the death benefits provided in ORS 238.395, the alternate payee shall be considered a member of the system who died before retiring only if the member would have been eligible for death benefits under ORS 238.395 had the member died at the same time as the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons entitled to receive the benefits under ORS 238.390 and 238.395 shall constitute payment in full of the alternate payee's interest under the decree, order or agreement.

(5) Any increase in the retirement allowance provided to the member shall increase the amounts paid to the spouse or former spouse of the member in the same proportion, except that an alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other retirement allowance increase until benefits are first paid from the system on behalf of the member.

(6) An alternate payee under this section is not eligible to receive the benefits provided under ORS 238.410, 238.415, 238.420 and 238.440 by reason of the provisions of this section.

(7) An alternate payee who elects to begin receiving payments under subsection (1) of this section before the member's effective date of retirement is not eligible to receive any additional payment by reason of credit in the system acquired by the member after the alternate payee begins to receive payments.

(8) Subsection (1) of this section applies only to payments made by the board after the date of receipt by the board of written notice of the decree, order or agreement and such additional information and documentation as the board may prescribe.

(9) Whenever the board is required to make payment to an alternate payee under the provisions of this section, the board shall charge and collect out of the benefits payable to the member and the alternate payee actual and reasonable administrative expenses and related costs incurred by the board in obtaining data and making calculations that are necessary by reason of the provisions of this section. The board may not charge more than \$300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. The board shall allocate expenses and costs charged under the provisions of this subsection between the member and the alternate payee based on the fraction of the benefit received by the member or alternate payee.

(10) As used in this section, "court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia.

**Note:** Section 83, chapter 945, Oregon Laws 2001, provides:

**Sec. 83.** The amendments to ORS 238.465 by section 82 of this 2001 Act apply only to decrees, orders or settlements entered on or after the effective date of this 2001 Act [August 9, 2001]. Any decree, order or settlement entered on or after the effective date of this 2001 Act may provide for a change of beneficiary under ORS 238.465, as amended by section 82 of this 2001 Act, without regard to whether the member of the Public Employees Retirement System retired before, on or after the effective date of this 2001 Act. [2001 c.945 §83]

**238.470 Interest on payments from fund.** Interest is not payable on any payment from the Public Employees Retirement Fund unless specifically provided for in this chapter. [Formerly 237.202]

**238.475 Effect of transfer of employee to another participating employer.** No transfer after July 1, 1946, by a member of the system from the service of one employer participating in the system to the service of another such employer shall impair any rights or deprive the member of any credits accruing to the member as a result of membership in the system after July 1, 1946, and prior to the transfer. [Formerly 237.101]

**238.480 Effect of change to calendar year on contributions and credit of members.** All contributions made and all service credit earned under the Public Employees' Retirement Act of 1953 prior to January 1, 1956, on the basis of a fiscal year shall not be affected by the change from fiscal year basis to calendar year basis on January 1, 1956, under the 1955 amendments of the Public Employees' Retirement Act of 1953, and such contributions and credit are recognized as if no such change had been made. [Formerly 237.107]

## PUBLIC EMPLOYEE BENEFIT EQUALIZATION FUND

**238.485 Fund established.** (1) There is established a Public Employee Benefit Equalization Fund, separate and distinct from the General Fund and from the Public Employees Retirement Fund. The Public Employee Benefit Equalization Fund is declared to be a trust fund. Interest earned on the fund, if any, shall inure to the benefit of the fund. The Public Employees Retirement Board shall administer the fund and shall act as trustee for the fund.

(2) The assets of the Public Employee Benefit Equalization Fund that are attributable to the contributions of a participating public employer pursuant to ORS 238.488 remain available to the general creditors of the employer in the event of the employer's insolvency until those assets are distributed to members of the Public Employees Retirement System, distributed to the beneficiaries of those members or used to pay the administrative expenses of the fund. Before distribution, members of the Public Employees Retirement System and beneficiaries of those members have no right to or interest in any asset of the fund.

(3) All moneys paid into the fund shall be deposited with the State Treasurer, who is custodian of the fund. The board may draw warrants and issue checks on the fund in the same manner that it draws warrants and issues checks on the Public Employees Retirement Fund.

(4) Any warrant, check or order issued by the board for payment from the fund that is canceled, declared void, abandoned or otherwise made unpayable pursuant to law because it is outstanding and unpaid for a period of more than two years, may be reissued by the board without bond if the payee is located after such warrant, check or order is canceled, declared void, abandoned or otherwise made unpayable pursuant to law. [1997 c.201 §2]

**238.488 Payment of benefits; employer contributions.** (1) A member of the Public Employees Retirement System, or the beneficiary of that member, who by reason of the benefit limitations imposed by Internal Revenue Code section 415 receives a retirement allowance under the system that is less than the allowance the member or beneficiary would otherwise have received under ORS chapter 238, excluding any payments the member or beneficiary may receive under this section and ORS 238.485 and 238.490, shall receive from the Public Employee Benefit Equalization Fund a monthly amount equal to the difference. Any overpayment or improperly made payment from the Public Employee Benefit Equalization Fund may be recovered from the member or beneficiary, or from payments to the member or beneficiary from the Public Employee Benefit Equalization Fund, in the same manner as provided in ORS 238.715 for recovery of overpayments and improperly made payments from the Public Employees Retirement Fund. Notwithstanding ORS 238.445, an overpayment or improperly made payment from the Public Employee Benefit Equalization Fund may be recovered on behalf of the Public Employee Benefit Equalization Fund from payments to the member or beneficiary from the Public Employees Retirement Fund in the same manner as provided in ORS 238.715 for recovery of overpayments and improperly made payments from the Public Employees Retirement Fund if:

(a) No payments are being made to the member or beneficiary from the Public Employee Benefit Equalization Fund at the time recovery of an overpayment or improperly made payment is sought; or

(b) The Public Employees Retirement Board in its discretion determines that the payments being made from the Public Employee Benefit Equalization Fund are inadequate to ensure full recovery of the overpayment or improperly made payment.

(2) A public employer that participates or has participated in the Public Employees Retirement System and that employs or has employed a member of the system who receives a benefit under subsection (1) of this section, or whose beneficiary receives a benefit under subsection (1) of this section, must contribute to the Public Employees Retirement Board a sum equal to all amounts paid to the member or beneficiary that is attributable to the member's employment by the public employer, plus any amount assessed by the board to pay administrative costs under ORS 238.490 (3). If the member has retirement credit attributable to employment with more than one public employer, the board shall allocate the costs of the benefit under this section among the public employers involved, based on the member's length of service with each employer.

(3) A public employer that makes a contribution to the Public Employee Benefit Equalization Fund under subsection (2) of this section shall receive a credit equal to the amount of the contribution against any obligation of the public employer to make contributions to the Public Employees Retirement Fund under ORS 238.225. The credit shall be equal to the amount paid by the employer to the board under subsection (2) of this section less any sums paid to the board by the public employer for administrative costs under ORS 238.490 (3). The board shall apply the credit to reduce the public employer's payment obligation under ORS 238.225 for the month in which the payment is made under this section. The credit does not reduce any obligation below zero and any credit not used may be carried over as a credit against future obligations under ORS 238.225.

(4) All amounts collected from public employers under this section shall be deposited in the Public Employee Benefit Equalization Fund established by ORS 238.485.

(5) The Public Employees Retirement Board shall pay the benefits specified in subsection (1) of this section only to the extent that the benefits have been funded by contributions made by the member's employer under subsection (2) of this section before the date on which the benefits are to be paid. The Public Employees Retirement Board may enforce the provisions of subsection (2) of this section in the manner provided in ORS 238.705 and 238.710 for the enforcement of employer contributions to the Public Employees Retirement Fund.

(6) The board shall notify all participating employers of the records and information needed for the implementation and administration of this section. Each participating employer shall maintain records for all employees who are members of the system, and all former employees who have been members of the system, and shall supply the board with all information required by the board to allow the board to identify members and beneficiaries who are entitled to payment under subsection (1) of this section. [1997 c.201 §3]

**238.490 Administrative expenses.** (1) The administrative expenses incurred by the Public Employees Retirement Board in administering the Public Employee Benefit Equalization Fund shall be paid from interest earned by the fund. If the interest is insufficient, the excess expense shall be paid from the contributions by participating employers under ORS 238.488.

(2) In order to facilitate financing the establishment and administration of the Public Employee Benefit Equalization Fund, the board may designate fiscal periods and may provide that extraordinary expenses incurred during a period, such as expenses for equipment and actuarial studies, may, for purposes of equitably distributing part of the burden of expenses, be apportioned to subsequent fiscal periods in any manner that seems equitable to the board.

(3) For each fiscal period designated by the board, the administrative expenses of the fund for that period shall be deducted from the interest earned by the Public Employee Benefit Equalization Fund. If such interest be insufficient for such purpose, each employer contributing to the Public Employee Benefit Equalization Fund shall pay a fraction of those administrative

expenses determined by dividing the employer's total contribution to the fund for the period by the sum of all the employers' contributions to the fund for the period. [1997 c.201 §4]

**238.492 Rules for administration of fund.** The Public Employees Retirement Board may adopt rules for the administration of ORS 238.485, 238.488 and 238.490. In adopting rules under this section, the board shall consider and take into account all federal law requirements relating to deferred compensation plans, including the requirements imposed for the deferral of income tax on deferred compensation benefits until those benefits are paid or made available to the recipient. [1997 c.201 §5]

**Note:** 238.492 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 238 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## JUDGE MEMBERS

**238.500 Definitions for ORS 238.500 to 238.585.** As used in ORS 238.500 to 238.585, unless the context requires otherwise:

- (1) "Court" means the Supreme Court, the Court of Appeals, the Oregon Tax Court and a circuit court.
- (2) "Judge" means a judge of any court.
- (3) "Judge member" means a judge who is a member of the Public Employees Retirement System subject to ORS 238.500 to 238.585.
- (4) "Service as a judge" means creditable service, as defined by ORS 238.005, by a judge as:
  - (a) A regularly elected or appointed judge of a court; or
  - (b) A regularly elected or appointed judge of a court temporarily in another court. [Formerly 237.211]

**238.505 Judges as PERS members.** (1) Except as provided in subsection (2) of this section, a person who is not a judge on December 31, 1983, and who is elected or appointed to the office of judge on or after January 1, 1984, shall become a judge member on the date the person takes the office.

(2) A person who, by reason of the age at which becoming a judge, could not make contributions to the Public Employees Retirement Fund during each of five calendar years as a judge member at or before attaining the age of 75 years shall not become a judge member. [Formerly 237.215]

**238.510** [Renumbered 237.350 in 1995]

**238.515 Contributions.** (1)(a) Each judge member shall contribute monthly to the Public Employees Retirement Fund seven percent of the monthly salary of the judge member. The contributions of a judge member shall be credited to the member account of the judge member.

(b) The state shall "pick-up," assume or pay the full amount of contributions to the fund required of judge members. The full amount of required judge member contributions "picked-up," assumed or paid by the state on behalf of judge members shall be considered "salary" only for the purpose of computing a judge member's "final average salary" within the meaning of ORS 238.535 (2) and not for any other purpose. The full amount of required judge member contributions "picked-up," assumed or paid by the state on behalf of judge members shall be added to the member account of the judge members and shall be considered judge member contributions for all other purposes of ORS 238.500 to 238.585.

(2) The state shall make employer contributions to the fund in respect to judge members as provided in ORS 238.225. For the purposes of actuarial computation and contributions of the state based thereon under ORS 238.225, judge members shall be considered a separate group of employees. [Formerly 237.217; 2001 c.945 §59]

**238.520** [Renumbered 237.355 in 1995]

**238.525 Compulsory retirement age.** A judge member shall be retired from judicial office at the end of the calendar year in which the judge member attains the age of 75 years. [Formerly 237.219]

**238.530** [Renumbered 237.360 in 1995]

**238.535 Service retirement allowance.** (1) Prior to attaining 60 years of age, all judge members shall elect in writing to retire under either paragraph (a) or (b) of this subsection. The election shall be irrevocable after the judge member attains 60 years of age. Any judge member who fails to make the election provided for in this subsection prior to attaining 60 years of age shall be retired under the provisions of paragraph (a) of this subsection.

(a) Upon retiring from service as a judge at the age of 65 years or thereafter a judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge member and the state in an annual amount equal to 2.8125 percent of final average annual salary multiplied by the number of years of service as a judge not

exceeding 16 years of service as a judge and 1.67 percent of final average salary multiplied by the number of years of service as a judge exceeding 16 years of service as a judge, but the annual amount shall not exceed 65 percent of final average salary.

(b) Upon retiring from service as a judge at the age of 60 years or thereafter, a judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge member and the state in an annual amount equal to 3.75 percent of final average salary multiplied by the number of years of service as a judge not exceeding 16 years of service as a judge and two percent of final average salary multiplied by the number of years of service as a judge exceeding 16 years of service as a judge, but the annual amount shall not exceed 75 percent of final average salary.

(c) Any judge member electing to retire under paragraph (b) of this subsection shall serve as a pro tem judge, without compensation, for 35 days per year for a period of five years. A judge who serves more than 35 days per year may carry over the additional days to fulfill the pro tem service obligation in future years. The five-year period shall commence on the judge member's date of retirement or the date on which the judge member commences pro tem service under ORS 238.545 (4), whichever is earlier. Judge members may be reimbursed for expenses incurred in providing pro tem services under this paragraph. Upon certification from the Chief Justice that any judge member who retired under paragraph (b) of this subsection has failed to perform the pro tem services required under this paragraph, and has not been relieved of the obligations to perform those services in the manner provided by this paragraph, the Public Employees Retirement Board shall recalculate the service retirement allowance of the noncomplying judge member as though the judge member elected to retire under paragraph (a) of this subsection, and the noncomplying judge member shall receive only that recalculated amount thereafter. A judge may be relieved of the pro tem service obligation imposed by this paragraph if the judge fails for good cause to complete the obligation. A retired judge member who is relieved of the obligation to serve as a pro tem judge shall continue to receive the retirement allowance provided in paragraph (b) of this subsection.

(d) For the purpose of paragraph (c) of this subsection:

(A) "Good cause" includes, but is not limited to:

(i) Physical or mental incapacitation of a judge that prevents the judge from discharging the duties of judicial office;

(ii) Failure of the appointing authority to assign a judge to the requisite amount of pro tem service, whether because of insufficient need for pro tem judges, a determination by the appointing authority that the skills of a judge do not match the needs of the courts, clerical mistake, or otherwise; or

(iii) Death of a judge.

(B) "Good cause" does not include:

(i) A judge's refusal, without good cause, to accept pro tem assignments sufficient to meet the required amount; or

(ii) A judge's affirmative voluntary act that makes the judge unqualified to serve as a judge of this state including, but not limited to, failure to maintain active membership in the Oregon State Bar, acceptance of a position in another branch of state government, or acceptance of a position in the Government of the United States or of another state or nation.

(e) The Chief Justice may make rules for the implementation of this subsection.

(2) As used in subsection (1) of this section, "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year paid to a judge member in three of the calendar years of service as a judge before the judge member retires, in which three years the judge member was paid the highest salary.

(b) One-third of the total salary paid to a judge member in the last 36 calendar months of service as a judge before the judge member retires.

(3) As used in subsection (1) of this section, "number of years of service" means the number of full years plus any remaining fraction of a year. In determining a remaining fraction, a full month shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as a full month.

(4) For a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989 Edition), the service retirement allowance under subsection (1) of this section on retirement at the age of 70 years and either 12 years of service or two full six-year terms as a judge shall be at least the equivalent of the retirement pay the judge would have received had the judge retired under ORS 1.314 to 1.390 (1989 Edition).

(5) A judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years and who attains the age of 60 years shall be retired upon written application by the judge member to the board on a reduced service retirement allowance which shall be the actuarial equivalent of the service retirement allowance provided for in subsection (1)(a) of this section.

(6) For the purposes of this section, a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989 Edition) shall be considered to have made contributions to the Public Employees Retirement Fund during one calendar year for each calendar year during which the judge made contributions to the Judges' Retirement Fund.

(7)(a) Notwithstanding subsection (1)(a) of this section, the maximum percentage used in calculating the annual amount of the life pension (nonrefund) for a judge who is a judge member on September 27, 1987, or who elected to become a judge member in the manner provided by ORS 237.215 (3)(b) or (4)(b) (1989 Edition), shall be the percentage specified by paragraph (b) of this subsection if either:

(A) On September 27, 1987, the judge had more than 28 years of service that were creditable either under the system; or

(B) On September 27, 1987, the judge had more than 28 years of service that were creditable under the Judges' Retirement Fund established pursuant to ORS 1.314 to 1.390 (1989 Edition) and the judge became a member of the system under the provisions of ORS 237.215 (3)(b) (1989 Edition).

(b) The maximum percentage used in calculating the annual amount of the life pension (nonrefund) of a judge member who meets the requirements of paragraph (a) of this subsection shall not exceed 45 percent plus 1.67 percent multiplied by the number of years of service as a judge that exceed 16 years and that were served on or before September 27, 1987.

(c) In computing the annual amount of the life pension of a judge who meets the requirements of paragraph (a) of this subsection, the board shall use the percentage specified by paragraph (b) of this subsection and the final average salary of the judge computed on the date of retirement, not the final average salary of the judge computed as of September 27, 1987. In making the computation under this subsection, the board shall use the definition of "final average salary" provided by ORS 238.535 as amended by section 2, chapter 625, Oregon Laws 1987. [Formerly 237.220; 1997 c.801 §19; 1999 c.317 §21]

**Note:** Sections 6, 7, 8 and 9, chapter 823, Oregon Laws 2001, provide:

**Sec. 6.** (1) A judge member who elects to retire under ORS 238.535 (1)(b):

(a) Shall continue to be eligible as a nonretired employee for health benefit plans contracted for under ORS 243.135 during the time that the judge member is serving as a pro tem judge under ORS 238.535 (1)(c); and

(b) Subject to availability of funding, shall continue to receive the monthly state contribution as payment of all or part of the cost of a health benefit plan during the time that the judge member is serving as a pro tem judge under ORS 238.535 (1)(c).

(2) A judge member receiving the monthly state contribution as payment of all or part of the cost of a health benefit plan under this section is not eligible for payments against the cost of Medicare supplemental insurance under ORS 238.420 until such time as the judge member is no longer serving as a pro tem judge under ORS 238.535 (1)(c). [2001 c.823 §6]

**Sec. 7.** Subject to sections 8 and 9 of this 2001 Act, section 6 of this 2001 Act applies to all judge members who retire under the provisions of ORS 238.535 (1)(b), whether before, on or after the operative date of section 6 of this 2001 Act [July 1, 2002], for as long as the judge member is performing the period of pro tem service required by ORS 238.535 (1)(c). [2001 c.823 §7]

**Sec. 8.** Section 6 of this 2001 Act becomes operative July 1, 2002. [2001 c.823 §8]

**Sec. 9.** Section 6 of this 2001 Act is repealed January 2, 2004. [2001 c.823 §9]

**238.540** [Renumbered 237.365 in 1995]

**238.545 Withdrawal of member account; retirement allowance of inactive judge member.** (1) Except as otherwise provided in this section, a judge member may withdraw from the Public Employees Retirement Fund the amount credited to the member account of the judge member if:

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

(b) The judge member is separated from all service with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust;

(c) The judge member has not attained 60 years of age; and

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

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

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

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

(3) If a judge member who is eligible to withdraw as provided in subsection (1) of this section does not elect to withdraw, the member account of the judge member shall remain to the credit of the judge member, and the judge member is entitled to such death benefits and disability retirement allowance as ORS 238.500 to 238.585 provide. Before attaining 60 years of age, a judge member who is eligible to withdraw as provided in subsection (1) of this section but who does not withdraw must elect in writing to retire under either ORS 238.535 (1)(a) or (b). The election is irrevocable after the judge member attains 60 years of age. Any inactive judge member who fails to make the election provided for in this subsection prior to attaining 60 years of age shall be retired under the provisions of ORS 238.535 (1)(a). The service retirement allowance of an inactive judge member who retires under ORS 238.535 (1)(a) shall be a reduced service retirement allowance that is the actuarial equivalent of the service retirement allowance provided for in ORS 238.535 (1)(a). An inactive judge member who elects to retire under ORS 238.535 (1)(b) must meet all other requirements imposed by ORS 238.535 for retirement under ORS 238.535 (1)(b).

(4) If approved by the Chief Justice of the Supreme Court, an inactive judge member who elects to retire under ORS 238.535 (1)(b) pursuant to the provisions of subsection (3) of this section may commence to serve the pro tem service obligation imposed by ORS 238.535 before the judge member's date of retirement. If the Chief Justice determines, at any time after the judge member commences performing the pro tem service obligation, that the judge member has failed to perform the pro tem services in the manner required by ORS 238.535 (1)(c), and the judge member has not been relieved of the obligation to perform those services in the manner provided by ORS 238.535 (1)(c), the Chief Justice shall notify the Public Employees Retirement Board. If the judge member has not yet retired, the board shall calculate the service retirement allowance of the noncomplying judge member at the time of retirement in the manner provided by ORS 238.535 (1)(a). If the judge member has retired, the board shall recalculate the service retirement allowance of the noncomplying judge member in the manner provided

by ORS 238.535 (1)(a), and the noncomplying judge member shall receive only that recalculated amount thereafter. An inactive judge member may be relieved of the pro tem service obligation imposed by ORS 238.535 (1)(c) in the same manner as provided in ORS 238.535 for retired judge members.

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

(6) ORS 238.105 and 238.115 (1) apply to a former judge member who has withdrawn the member account balance under this section. [Formerly 237.223; 1997 c.801 §20; 1999 c.317 §6; 2001 c.566 §1; 2001 c.945 §60]

### **238.550** [Renumbered 237.370 in 1995]

**238.555 Disability retirement allowance.** (1)(a) A judge member who has not attained the age of 65 years and who is found to be mentally or physically incapacitated for an extended duration, as determined by medical examination by one or more physicians selected by the board, and thereby unable to perform any work for which qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, shall be retired for disability and shall receive as a disability retirement allowance, payable monthly, a pension equal to the service retirement allowance to which the judge member would be entitled under ORS 238.535 (1)(a), had the judge member served as a judge continuously until attaining the age of 65 years, but not less than an annual amount equal to 45 percent of the final average salary, as defined in ORS 238.535 (2), of the judge member.

(b) As used in paragraph (a) of this subsection, “injury” means bodily injury causing the disability directly and independently of all other causes and effected solely through accidental means.

(2) A judge member who has six or more years of service as a judge, who has not attained the age of 65 years and who is found to be mentally or physically incapacitated for an extended duration, as determined by medical examination by one or more physicians selected by the board, and thereby unable to perform any work for which qualified, from cause other than injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, shall be retired for disability and shall receive as a disability retirement allowance, payable monthly, a pension equal to the service retirement allowance to which the judge member would be entitled under ORS 238.535 (1)(a) had the judge member served as a judge continuously until attaining the age of 65 years, but not less than an annual amount equal to 45 percent of the final average salary, as defined in ORS 238.535 (2), of the judge member.

(3) The effective date of the disability of a judge member shall not be determined by the board as prior to the last day for which the judge member performed service as a judge.

(4) No disability retirement allowance may be paid for any month in which the judge member received salary or sick leave benefits from the state.

(5) ORS 238.320 (4) and (5), 238.330 (3), 238.335 and 238.340 apply to retirement of a judge member for disability.

(6) A judge member who is retired under the provisions of ORS 1.310 is entitled to any applicable retirement allowance for which eligible under ORS 238.500 to 238.585. [Formerly 237.225]

### **238.560** [Renumbered 237.375 in 1995]

**238.565 Beneficiary of judge; spouse’s pension.** (1) For the purposes of this section, the beneficiary of the judge member shall be any person, or the personal representative of the estate of the judge member, or a trustee named by the judge member to execute an express trust, whom the judge member designates as a beneficiary by written 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, 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).

(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. [Formerly 237.227; 1997 c.801 §21; 1999 c.317 §22; 2001 c.945 §61]

### **238.570** [Renumbered 237.380 in 1995]

**238.575 Cost-of-living adjustments; ad hoc increase.** (1) Every monthly retirement allowance or pension payable to a judge member or surviving spouse of a judge member under ORS 238.500 to 238.585 shall be adjusted annually to reflect the percentage increase or decrease in the cost of living as provided in ORS 238.360.

(2) ORS 238.387 applies to judge members, and for that purpose the monthly retirement allowance referred to in ORS 238.387 shall be the monthly retirement allowance payable to a judge member or the monthly pension payable to the surviving spouse of a judge member under ORS 238.565 (3)(a). [Formerly 237.230; 2001 c.945 §71]

**238.580 Application of PERS laws to judges.** (1) ORS 238.005 (3) and (20), 238.025, 238.078, 238.082, 238.092, 238.115 (1), 238.250, 238.255, 238.260, 238.350, 238.380, 238.410, 238.415, 238.420, 238.445, 238.458, 238.460, 238.465, 238.475, 238.600, 238.605, 238.610, 238.618, 238.630, 238.635, 238.645, 238.650, 238.655, 238.660, 238.665, 238.670 and 238.705 and the increases provided by ORS 238.385 for members of the system who are serving as other than police officers or firefighters apply in respect to service as a judge member.

(2) This chapter applies in respect to persons described in ORS 238.505 (1) and in respect to service as a judge member only as specifically provided in ORS 238.500 to 238.585. [Formerly 237.233; 1999 c.317 §23; 2001 c.945 §62]

**238.585 Use of creditable service by person who serves as both member and judge member; restoration of forfeited rights upon becoming judge member.** (1) A judge member who has creditable service as other than a judge member is entitled to the use of all creditable service as a judge member for the purpose of establishing eligibility under ORS 238.115, 238.125, 238.135 or any other provision of this chapter that requires a specified number of years of creditable service.

(2) A judge member who has creditable service as other than a judge member is entitled to use of all creditable service as other than a judge member for the purpose of establishing eligibility under the provisions of ORS 238.385, 238.415, 238.420 or any other provision of this chapter that is applicable to a judge member and that requires a specified number of years of creditable service.

(3) A member of the system other than a judge member who separates from all service entitling the person to membership in the system and who withdraws the amount credited to the member account of the member in the fund may restore all rights forfeited by the withdrawal in the manner specified by ORS 238.105 if the person becomes a judge member within five years

after the date that the person is separated from all service entitling the person to membership in the system. [1995 c.658 §136; 2001 c.945 §63]

## ADMINISTRATION

(Public Employees Retirement System)

**238.600 System established.** (1) A system of retirement and of benefits at retirement or death for employees of public employers hereby is established and shall be known as the Public Employees Retirement System. Any similar system being operated by a public employer on April 8, 1953, may be integrated into this system as hereinafter provided.

(2) If the Public Employees Retirement System is terminated, or if contributions may no longer be made to the system, each member of the system has a nonforfeitable right to the benefits that the member has accrued as of the date of the termination, or as of the date that contributions may no longer be made to the system, to the extent that those benefits are funded. [Formerly 237.005; 1997 c.121 §2; 1999 c.317 §9]

**238.601 Legislative findings and intent; administration of system.** The Legislative Assembly finds that the maintenance of a solid, affordable public employees retirement plan is essential to providing effective, efficient services to the citizens of Oregon by allowing the state and political subdivisions of the state to hire and retain employees who are committed to providing those services. It is the intent of the Legislative Assembly that the Public Employees Retirement Board, in performing its duties as trustee of the Public Employees Retirement Fund, recognize that the continued stability and viability of the Public Employees Retirement System depends on the ability of public employers and taxpayers to pay the costs of the system. Consistent with this intent, the board shall administer the system to create and maintain long-term stability and viability in the system, and shall act to achieve full funding for the benefits provided by the system, giving equal consideration to the interests of the public employer and the employee to the extent that treatment does not violate the fiduciary duties of the board. Nothing in this section shall be construed to impose a fiduciary duty on the board to consider the interests of public employers, and the board shall consider the interests of public employers only with respect to matters unrelated to the board's fiduciary duties as trustee of the fund. [2001 c.945 §2]

**238.605 Actuarial report on system.** At least once every two years the board shall cause a competent actuary familiar with public systems of retirement and death benefits to prepare a report evaluating the current and prospective assets and liabilities of the system and indicating its current and prospective financial condition. In preparing the report the actuary shall investigate the mortality, disability, service and other experience of the members of, and employers participating in the system, shall state fully the condition of the system, and shall make such recommendations as the actuary deems advisable to facilitate administering it properly. The board shall publish and distribute a summary of the report to all the public employers participating in the system. The board may authorize the transfer of any portion of the funds collected under the provisions of ORS 238.225 to carry out the recommendations of the actuary. [Formerly 237.285]

**238.610 Administrative expenses of system.** (1) The administrative expenses of the system shall be paid from interest earned by the retirement fund; provided, that if such interest be insufficient the expense in excess thereof shall be paid from the contributions which this chapter requires participating employers to pay into the Public Employees Retirement Fund.

(2) In order to facilitate financing the establishment and administration of the system the board may designate fiscal periods and may provide that extraordinary expenses incurred during one such period, such as expenses for equipment and actuarial studies, may, for purposes of equitably distributing part of the burden of the expenses, be apportioned to subsequent fiscal periods in such manner as to the board seems equitable.

(3) For each fiscal period designated by the board there shall be deducted from the interest earned by the retirement fund, the administrative expenses of the system for that period; provided, that if such interest be insufficient for such purpose, the excess expense shall be paid by deducting from the account of each employer participating in the system that fraction of the administrative expense of the system for that period which the employer's total contribution to the fund for the period is of the sum of all the employers' contributions to the fund for the period.

(4) Amounts payable as refunds and retirement allowances shall not for any purpose be deemed expenses of the board and shall not be included in its biennial departmental budget. [Formerly 237.291]

**238.615 Revolving fund for payment of administrative expenses.** (1) On request from the Public Employees Retirement System, the Oregon Department of Administrative Services shall draw warrants on amounts authorized for payment of the administrative expenses of the system for use by the system as a revolving fund. The revolving fund shall not exceed the aggregate sum of \$5,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the system may draw checks.

(2) The revolving fund may be used by the system to pay travel expenses for employees of the system and for any consultants or advisors for whom payment of travel expenses is authorized by law, or advances therefor, or for salary advances or payment to terminating employees, or for receipt and disbursement of funds made available to the system through vocational rehabilitation training programs.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the system and by the department. When such claims have been approved, a warrant covering them shall be drawn in favor of the system and charged against the appropriate fund or account and shall be used to reimburse the revolving fund. [Formerly 237.293]

**238.618 Exclusion of employer or employee from system to maintain tax qualification.** Notwithstanding any other provision of law, the Public Employees Retirement Board may deny or terminate participation by an employer in the Public Employees Retirement System, and may deny or terminate membership in the system for any employee, if the board determines that allowing participation by the employer or membership for the employee would cause the system or the Public Employees Retirement Fund to lose qualification as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [1999 c.317 §3]

**238.620** [1995 c.296 §2; repealed by 1999 c.317 §14]

**238.625** [1995 c.296 §3; 1997 c.179 §20; repealed by 1999 c.317 §14]

(Public Employees Retirement Board)

**238.630 Board generally; rules.** (1) The governing authority of the system shall be a board known as the Public Employees Retirement Board and consisting of 12 members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Except as otherwise provided in ORS 238.640, the term of each member shall be three years.

(2) The board shall have:

- (a) The powers and privileges of a corporation, including the right to sue and be sued in its own name as such board; and
- (b) The power and duty, subject to the limitations of this chapter, of managing the system.

(3) The board:

- (a) Shall, at its first meeting each year, designate one of its members to serve as chair of the board for the remainder of the year and until a successor is designated and takes that office;
- (b) Shall arrange for actuarial service for the system;
- (c) Shall employ a director;
- (d) Shall create such other positions as it deems necessary to sound and economical administration of the system, which positions the director shall fill by appointment;
- (e) Shall, with the approval of the Director of the Oregon Department of Administrative Services, and as otherwise provided by law, fix the salaries of all persons employed for purposes of administering the system;

(f) Shall publish and distribute to all employer and employee members of the system an annual report including a summary of investments of moneys in the fund, investment earnings, significant legislative or administrative changes in the system and other pertinent information on the operation of the system for the preceding year;

(g) Shall determine the actuarial equivalency of optional forms of retirement allowances and establish from time to time for that purpose the necessary actuarial factors, which shall constitute a part of the system; and

(h) Shall adopt rules and take all actions necessary to maintain qualification of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. Rules under this paragraph may impose limits on contributions to the system, limits on benefits payable from the system and other limitations or procedures required or imposed under federal law or regulation for the purpose of qualification of the Public Employees Retirement System and Public Employees Retirement Fund under the Internal Revenue Code as a governmental retirement plan and trust.

(4) The board established by this section shall succeed to all the duties and prerogatives of the Public Employees Retirement Board created by chapter 401, Oregon Laws 1945, in relation to the Public Employees Retirement Fund, and in addition shall perform all duties required of it by ORS 237.950 to 237.980, in regard to moneys payable to or from such fund.

(5) The board shall identify by rule those records that must be maintained by participating public employers for the purposes of subsection (3)(h) of this section. A participating public employer shall maintain records for all employees who are members of the system as required by board rules, and shall provide that information to the board upon request. [Formerly 237.251; 1997 c.121 §3; 2001 c.945 §6]

**238.635 Board consideration of system goals and objectives.** The Public Employees Retirement Board shall include a study of accounting, reporting and related subjects when considering the goals and objectives of the Public Employees Retirement System. [Formerly 237.253]

**238.640 Qualifications of board members.** (1) Members of the Public Employees Retirement Board shall have the following qualifications:

(a) Each member shall be a citizen of the United States and a resident of this state for at least two years immediately preceding appointment to the board.

(b) Six members shall be public members who are not members of the Public Employees Retirement System. At least three

of the public members must have experience in investing or pension management.

(c) One member shall be an employee of the state in a management position at the time of appointment and throughout the term of appointment.

(d) At the time of appointment and throughout the term of the appointment, one member shall hold an elective office, by election or appointment, in the governing body of a participating public employer, other than the state.

(e) Four members shall be public employees, as defined in ORS 243.650, of a participating public employer and be in an appropriate bargaining unit, as defined in ORS 243.650, having an exclusive representative at the time of appointment and throughout the term of appointment; but membership on the board shall not itself affect the status of such a member as a public employee as defined in ORS 243.650. At the time of appointment and throughout the term of appointment, one of those four members shall be engaged in teaching or other school activity, one shall be a police officer or firefighter, one shall be an employee of the state in a category other than teaching or other school activity or police officer or firefighter, and one shall be an employee of a political subdivision of the state in a category other than teaching or other school activity or police officer or firefighter.

(f) In lieu of one member appointed with the qualifications specified in paragraph (c), (d) or (e) of this subsection, one member shall be a retired member of the system at the time of appointment and throughout the term of the appointment.

(g) The successor of a board member in any category shall have the qualifications prescribed for that category.

(2) Any vacancy on the board shall be filled by appointment for the unexpired term of the member replaced.

(3) Except as provided in subsection (4) of this section, a member of the board is entitled to compensation and expenses as provided in ORS 292.495 from the Public Employees Retirement Fund.

(4) Any member of the board who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the board. The wages or salary of the member shall not be reduced during periods that the member is released from duty for the purpose of conducting the official business of the board. The board shall reimburse a public employer for the cost of continuing the wages or salary of the member while the member is released from duty under this subsection. A member who continues to receive wages or salary under the provisions of this subsection shall not receive compensation under ORS 292.495, but shall receive travel and other expenses provided for under ORS 292.495. The provisions of this subsection do not apply to any person who is a member of the board and who holds another office that is subject to the provisions of section 10, Article II of the Oregon Constitution, prohibiting the holding of more than one lucrative office. [Formerly 237.255; 1997 c.324 §1; 2001 c.945 §6a]

**Note:** Section 7, chapter 945, Oregon Laws 2001, provides:

**Sec. 7.** (1) As soon as possible after the effective date of this 2001 Act [August 9, 2001], the Governor shall appoint a 12th member of the Public Employees Retirement Board as required by the amendments to ORS 238.640 by section 6a of this 2001 Act. The public member so appointed by the Governor must have experience in investing or pension management as required by ORS 238.640 (1)(b), as amended by section 6a of this 2001 Act.

(2) The amendments to ORS 238.640 by section 6a of this 2001 Act do not affect the term of any member serving on the Public Employees Retirement Board on the effective date of this 2001 Act. When a vacancy occurs after the effective date of this 2001 Act in the position of the member who is serving on the board under ORS 238.640 (1)(c) (1999 Edition) and who is an employee of a school district, whether the position becomes vacant by reason of completion of the term or for any other reason, the Governor shall appoint a public member with experience in investing or pension management to serve on the board under ORS 238.640 (1)(b), as amended by section 6a of this 2001 Act. When the first vacancy occurs after the effective date of this 2001 Act in a position of a member serving on the board under ORS 238.640 (1)(d) (1999 Edition), whether the position becomes vacant by reason of completion of the term or for any other reason, the Governor shall appoint a public member with experience in investing or pension management to serve on the board under ORS 238.640 (1)(b), as amended by section 6a of this 2001 Act. [2001 c.945 §7]

**238.645 Director and staff.** The system shall be administered, subject to the limitations of this chapter and the budget prescribed by the board, by the director provided for by ORS 238.630 and by a staff which the board authorizes and which the director appoints. The director shall hold that position during the discretion of the board and the members of the staff shall hold their respective positions during the discretion of the director. No member of the staff may be removed from it, however, in a manner contrary to the laws of the state regarding civil service. The director shall furnish such bond as is required by the board. [Formerly 237.259]

**238.650 Rules of board; written plan document.** (1) Subject to the limitations of this chapter, the Public Employees Retirement Board shall, from time to time, establish rules for transacting its business and administering the system in accordance with the requirements of ORS 183.310 to 183.550.

(2) All rules adopted by the board become part of the written plan document of the Public Employees Retirement System for the purpose of the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [Formerly 237.263; 1999 c.317 §1]

**238.655 Procedure for board hearings.** In order to determine any facts necessary to the administration of the retirement

system, the board may conduct hearings, subpoena and examine witnesses and require any person having custody thereof to bring before the board any book, record, document, certificate, writing, article or thing necessary to a determination of facts. The chairperson or member of the board acting in such capacity shall have authority to administer oaths. The procedure in such hearings shall be informal. Fees shall not be paid to witnesses who are public officers or employees, whether or not their employer is participating in the system. No public employer shall make deduction from the compensation of public officers or employees because of absence from their respective positions in order to be examined as witnesses before the board. The fees of other witnesses and mileage of any witness shall be as allowed by law to witnesses in ORS 44.415 (2). Fees and mileage and all other necessary disbursements in connection with a hearing shall be paid by the public employer whose failure or refusal to supply any facts requested of it by the board made necessary such hearing. [Formerly 237.315]

(Public Employees Retirement Fund)

**238.660 Fund generally.** (1) The Public Employees Retirement Fund is declared to be a trust fund, separate and distinct from the General Fund, for the uses and purposes set forth in this chapter and ORS 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. [Formerly 237.271; 1997 c.121 §1; 1999 c.317 §8; 1999 c.407 §6; 2001 c.945 §3]

**238.661 Moneys in fund appropriated to board.** Moneys in the Public Employees Retirement Fund are continuously appropriated to the Public Employees Retirement Board to carry out the purposes of this chapter. [2001 c.716 §10]

**238.665 Contributions and interest not included in board's budget.** Contributions required by this chapter to be placed in the retirement fund, and interest required to be allocated to the member accounts of members of the retirement system and to participating employers, shall not be included in the biennial departmental budget of the board. [Formerly 237.279; 2001 c.945

**238.667 Investment of employer moneys in Variable Annuity Account investments.** (1) The Public Employees Retirement Board, on a regular basis, shall determine for each participating public employer the total amount of all member accounts in the Variable Annuity Account held by active or inactive members who are or were employed by the employer. The board shall provide the total amount for each employer so determined to the Oregon Investment Council. The Oregon Investment Council shall invest moneys equal to the amounts specified by the board in the same fund or funds in which Variable Annuity Account moneys are invested.

(2) The moneys invested by the Oregon Investment Council under this section shall be moneys of the Public Employees Retirement Fund that are assets attributable to employer contributions and earnings on those contributions, but that are not assets of the reserve account established under ORS 238.255 or assets of member accounts maintained under ORS 238.250 or 238.260. The board shall credit or charge earnings and losses produced by investments made under this section to each public employer, based on the amount determined for the employer under subsection (1) of this section, for the purpose of matching earnings credited to the Variable Annuity Account on behalf of the active and inactive members who are or were employed by the employer.

(3) Investments authorized under this section are not subject to the limitations on investment imposed by ORS 293.726 (6).

(4) Nothing in this section shall be construed to convey to any participating public employer any proprietary interest in the Public Employees Retirement Fund or in the contributions made to the fund by those employers. [2001 c.945 §17]

**238.670 Reserve accounts in fund.** (1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(c) To provide for any other contingency that the board may determine to be appropriate.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371 (1), for its review and comment. [Formerly 237.281; 2001 c.945 §5]

**Note:** Section 18, chapter 945, Oregon Laws 2001, provides:

**Sec. 18.** Nothing in this 2001 Act affects any civil action that was commenced before the effective date of this 2001 Act [August 9, 2001] in which the Public Employees Retirement Board is a defendant, or in any way operates to modify the meaning of the provisions of ORS chapter 238 or to express legislative intent as to the meaning of the provisions of ORS chapter 238, for the purposes of actions taken by the Public Employees Retirement Board before the effective date of this 2001 Act that are the subject of the civil action. [2001 c.945 §18]

**238.672 Crediting of earnings to employer upon death or retirement of member.** Upon the death or retirement of a member of the Public Employees Retirement System, the Public Employees Retirement Board shall credit earnings to the

participating public employer or employers that employed the member. The board shall credit earnings to the amounts charged to each employer by reason of the death or retirement. The earnings rate used by the board shall be the same rate that the board uses for crediting member accounts at the time the charge is made. [2001 c.945 §21]

**238.675 Transfer of unclaimed death benefit or account balance to other account or reserve.** (1)(a) Any benefit payment that is payable as the result of the death of a member may be transferred by the Public Employees Retirement Board to another account or reserve in the fund if:

- (A) The total benefit payable to the beneficiaries designated by the deceased member is less than \$250 in amount;
- (B) Ten years have passed since the death of the member; and
- (C) No claim has been made for the benefit payment.

(b) Amounts transferred under this section shall be credited to accounts or reserves in the fund designated by the board in its discretion.

(c) The board shall establish procedures for the filing of a delayed claim by a beneficiary of a deceased member who would otherwise be entitled to receive a benefit payment. Delayed claims may be filed after the 10-year period provided for in paragraph (a) of this subsection.

(2)(a) The Public Employees Retirement Board may transfer the amount credited to the member account of a former member to another account or reserve in the fund if:

- (A) The total amount credited to the member account of the former member is less than \$250;
- (B) The membership of the person in the system has been terminated under the provisions of ORS 238.095 (2); and
- (C) Ten years have passed since the former member ceased to be a member of the system and no claim has been made for payment of the amount credited to the member account of the former member.

(b) Amounts transferred under this section shall be credited to reserves or accounts in the fund designated by the board in its discretion.

(c) The board shall establish procedures for the filing of a delayed claim by a former member of the system who would otherwise be entitled to receive amounts credited to the member account of the former member. Delayed claims may be filed after the 10-year period provided for in paragraph (a) of this subsection. [Formerly 237.295; 2001 c.945 §65]

(Integration of Other Retirement Systems)

**238.680 Integration of other retirement systems.** (1) Employees whose membership in a previously established retirement system excludes them from membership in the system established by this chapter may apply to the Public Employees Retirement Board in writing for the former system to be integrated into the latter and for them to be allowed to become members of the latter. Whenever two-thirds of them and their employer, through its governing body, so apply, the board:

(a) May cause a financial and actuarial investigation of the proposed integration to be made, the cost of which shall be borne by the previously established system; and

(b) May upon such terms as are set forth in a contract between the board and the employer, integrate the previously established system into the system established by this chapter.

(2) Nothing in this chapter nor any action taken pursuant thereto shall reduce or impair the benefits which employees who are receiving benefits from a retirement system integrated with the system provided by this chapter would have received had the integration not been effected.

(3) A retirement plan which has been adopted by an association organized pursuant to the provisions of ORS chapter 239 (1997 Edition), prior to April 8, 1953, and which exists on April 8, 1953, may be integrated into the retirement system established by this chapter in the manner prescribed in this subsection and not otherwise:

(a) A proposed form of contract setting forth all the terms, conditions and provisions of the integration shall be prepared by, and adopted by a majority vote of, the board of trustees of the association and approved by the board of directors of the school district in which the association is organized.

(b) The proposed contract so adopted and approved shall be submitted to a vote of the active members of the association. In submitting a proposed contract, an association shall follow the procedure provided in its bylaws for the promulgation and adoption of bylaws.

(c) Adoption by the membership of an association of a proposed contract of integration shall be by an affirmative vote of not less than two-thirds of the active members of the association at the time of the election.

(d) The proposed contract so formulated, approved and adopted shall be submitted to the retirement board created by ORS 238.630 for acceptance or rejection. In the event that the proposed contract is accepted by the board, then the integration shall proceed in accordance with the provisions of the contract.

(e) No contract of integration shall in any way alter, impair or adversely affect any rights, benefits or privileges which have vested under the provisions of law in a member of an association by virtue of retirement, either on account of disability or on account of having attained the retirement age, prior to the effective date of the contract of integration.

(f) A contract of integration formulated, approved and adopted as provided in this subsection shall contain provisions whereby there will be provided to each active member of the association who becomes a member of the retirement system created by this chapter pursuant to a contract of integration, retirement benefits, in addition to the retirement benefits accruing

for subsequent service under the Public Employees' Retirement Act of 1953, determined in compliance with sound actuarial practice and with the findings of an accredited actuary on the basis of the reserves of the members at the time of the integration.

(g) A contract of integration shall likewise provide that any active member of an association which integrates with the retirement system may elect at the time of the integration as to whether the member shall obtain a refund of the amount standing to the credit of the member on the books of the association at the time of the integration. In the event that a member so elects, then the amount standing to the credit of the member shall be refunded and the additional benefits provided under paragraph (f) of this subsection shall not be available to the member to whom the refund is made.

(4) If a public employer applies for inclusion of a class of employees under ORS 238.035, application for integration under subsection (1) of this section shall be made by the employer and by two-thirds of the class of employees who are to become members of the system, or if the class designated under ORS 238.035 is covered by a collective bargaining agreement, application for the class shall be approved under the terms of the collective bargaining agreement.

(5) If a public employer entering into an integration contract under the provisions of this section continues to maintain the public employer's previously established system for the purpose of providing benefits to some or all of the employer's employees who become members of the system under the integration contract, the board may allow an employee or alternate payee to waive the right to receive all other benefits that would otherwise be paid under this chapter if:

(a) The employee or alternate payee elects to receive a refund of accumulated member contributions along with interest credited to those contributions at the time of refund; and

(b) The employer certifies to the board that the waiver of benefits other than the refund of member contributions is required as a condition of the employee's or alternate payee's receipt of benefits under the previously established system.

(6) A waiver under subsection (5) of this section must be made before an employee's effective date of retirement or the effective date of an alternate payee's election to commence receiving payments. The waiver is irrevocable as to the benefits waived and applies to all future payment of those benefits that would otherwise be made to the employee, the alternate payee or the beneficiaries of the employee or alternate payee. The provisions of subsection (5) of this section apply only to:

(a) Employees of the public employer who become members of the system under the provisions of the integration contract and who are participants in the previously established system of the public employer at the time the integration contract goes into effect; and

(b) Alternate payees of employees described in paragraph (a) of this subsection. [Formerly 237.051; 1997 c.551 §1; 1999 c.130 §6]

**238.685 Method of payment of unfunded obligation under integration contract.** (1) The school district, which is or expects to become a party to a contract of integration described in ORS 238.680 (3), may provide for payment of all or any part of its unfunded obligation for previous service costs with respect to the association by any one or a combination of the following methods:

(a) By agreeing to pay such portion of the obligation to the Public Employees Retirement System over a period of not to exceed 40 years, together with an appropriate rate of interest as determined by the Public Employees Retirement Board and the board of directors of the school district.

(b) By issuing one or more series of general obligation bonds for the estimated amount of such portion of the obligation and paying it from the proceeds or interest thereon. Except as provided in subsection (2) of this section, the initial authorization for the original issue of such bonds shall require approval of the electors of the district and shall otherwise conform to all requirements of law governing the issuance, sale, redemption, refunding and refinancing of bonds by the school district, the retention, segregation and use of bond proceeds and the levy of taxes for their payment.

(c) By issuing other notes, contracts or evidences of indebtedness for the estimated amount of such portion of the obligation and paying it therewith or from the proceeds or interest thereon. The interest rate on such notes, contracts or evidences of indebtedness shall be such as the board of directors of the school district finds is reasonably competitive with interest rates on bonds which could be issued pursuant to paragraph (b) of this subsection.

(d) By contracting with an insurance company authorized to write annuity contracts in this state to assume and pay the pensions of retired, active or former members of the association.

(2) Such agreement, bonds, notes, contracts or evidences of indebtedness, or any part of them, may be issued or entered into without an election, but in such case:

(a) To the extent the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness are paid from operating taxes within the district's permanent tax rate limit, the school district shall each year divide its operating taxes into two portions, both within the district's permanent tax rate limit, and one of such portions shall be the amount used to pay the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness for such year and the proceeds of such portion shall not be used for other purposes; and

(b) To the extent the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness are paid from revenues other than operating tax proceeds, the school district need not divide its levy as provided in paragraph (a) of this subsection and the principal and interest may be paid out of such other revenues.

(3) Part or all of the agreement, bonds, notes, contracts or evidences of indebtedness authorized by this section may be issued prior to or after the execution of the contract of integration. The validity or enforceability thereof shall not be affected by the terms of the contract of integration or by whether operating taxes are properly apportioned as provided in subsection (2)(a)

of this section. [Formerly 237.053; 1997 c.541 §359; 2001 c.945 §81]

**238.690 Integration of retirement plan of mass transit district.** (1) A retirement plan which has been adopted by a mass transit district organized under ORS 267.010 to 267.390 situated in a standard metropolitan statistical area with a population exceeding 400,000, may be integrated with, or the district may become a participant in, the Public Employees Retirement System in the manner prescribed in subsection (2) of this section.

(2)(a) A proposed form of contract setting forth all the terms, conditions and provisions of the integration or participation shall be a mandatory subject of bargaining subject to the provisions of ORS 243.650 to 243.782.

(b) The proposed contract shall be submitted to a vote of the employees of the mass transit district, or the members of the affected bargaining unit of the applicable labor organization, and the board of directors of the mass transit district. In submitting a proposed contract to its members, the labor organization shall follow the procedure provided in its bylaws for the promulgation and adoption of bylaws.

(c) Adoption by the employees or members of the affected bargaining unit of the applicable labor organization of the proposed contract of integration or participation shall be by an affirmative vote of not less than two-thirds of the affected employees or active members of the affected bargaining unit of the applicable labor organization at the time of the election.

(d) The proposed contract so formulated, approved and adopted shall be submitted to the Public Employees Retirement Board. The board may exercise its authority to negotiate and enter into a contract with the mass transit district that would accomplish the integration or participation without adversely affecting the current operational and capital requirements of the mass transit district. The board shall not enter into any contract that prevents those adverse effects by adjusting the level of benefits received by any of the employees of the mass transit district.

(e) No contract of prospective participation shall in any way alter, impair or adversely affect any rights, benefits or privileges which have vested under the provisions of law or collective bargaining agreement in an employee of a mass transit district by virtue of retirement, either on account of disability or on account of having attained the retirement age, prior to the effective date of the contract of integration or participation.

(f) When a public employer enters into a contract with the board under this section, the public employer shall agree to eventually extend coverage under this chapter to all eligible employees of the employer through subsequent contracts with the board.

(3) For the purposes of this section, "standard metropolitan statistical area" has that meaning given in ORS 267.010. [Formerly 237.037]

(Bonding of Local Government Pension Liabilities)

**238.692 Definitions for ORS 238.692 to 238.698.** As used in ORS 238.692 to 238.698:

(1) "Governmental unit" has the meaning given that term in ORS 288.150, and includes an agency created by two or more political subdivisions pursuant to ORS 190.003 to 190.130 or 190.265.

(2) "Pension liability" means:

(a) Monetary obligations of a participating public employer for which the employer is or will be required to transmit amounts to the Public Employees Retirement Board under the provisions of ORS 238.225, including any obligations arising out of an integration contract under ORS 238.680, or any other liability of a governmental unit that is attributable to an obligation to pay pensions or other retirement benefits to officers or employees of the governmental unit, whether active or retired; and

(b) Monetary obligations of a public employer arising out of an integration contract under ORS 238.680 for which the employer is required to transmit amounts to the Public Employees Retirement Board.

(3) "State agency" means any officer, board, commission, department, division or institution in the administrative branch of state government. [2001 c.945 §23]

**238.694 Local governments authorized to issue bonds to finance pension liabilities; limited tax bonds; revenue bonds.**

(1) The Legislative Assembly finds that authorizing issuance of limited tax bonds or revenue bonds to finance pension liabilities may reduce the cost of public pensions to taxpayers and that the reduction of those costs to taxpayers is a matter of statewide concern.

(2) Notwithstanding any limitation on indebtedness or borrowing under state or local law, for the purpose of obtaining funds to pay the pension liability of a governmental unit, the governing body of a governmental unit may authorize and cause the issuance of limited tax bonds as defined in ORS 288.150, revenue bonds authorized by charter or pursuant to ORS 288.805 to 288.945, or any combination of those bonds. The governing body of a governmental unit may pledge the full faith and credit and taxing power of the governmental unit to the payment of the principal and interest on bonds issued under ORS 238.692 to 238.698, and any premium on those bonds.

(3) Limited tax bonds authorized under this section must be issued in the manner prescribed by ORS chapters 287 and 288 for the issuance of limited tax bonds. A county may not issue limited tax bonds under this section for an amount that exceeds five percent of the real market value of the taxable property within the boundaries of the county.

(4) Revenue bonds authorized under this section need not comply with the procedure specified in ORS 288.815.

(5) A governmental unit that issues limited tax bonds or revenue bonds under this section may also issue limited tax bonds or revenue bonds for the purpose of refunding the bonds.

(6) A governmental unit may enter into indentures or other agreements with trustees or escrow agents for the issuance, administration or payment of bonds authorized under this section.

(7) The state may not issue bonds under the provisions of this section. [2001 c.945 §24]

**238.695 Intergovernmental agreements for collective issuance, administration or payment of bonds.** (1) Governmental units may enter into intergovernmental agreements for the collective issuance, administration or payment of bonds authorized under ORS 238.694. An agreement for collective issuance, administration or payment of bonds under this subsection may provide for the contribution and pooling of the assets of the governmental units as security for the bonds, and may make provisions for such other matters as the governmental units determine convenient. Notwithstanding ORS 190.080, any intergovernmental entity created by governmental units under this section shall have the power to issue bonds as described in ORS 238.694. The bonds may be issued and sold as parity bonds, issued and sold individually or issued and sold in such combinations or forms as determined to be appropriate by the governmental units.

(2) Proceeds of bonds sold under an intergovernmental agreement entered into under this section, and any other funds or assets of a governmental unit, together with interest or earnings on the proceeds, funds and assets, may be consolidated into one or more funds or accounts and may be pledged to the holders of the bonds.

(3) Governmental units may enter into indentures or other agreements with trustees or escrow agents for the issuance, administration or payment of bonds pursuant to an intergovernmental agreement entered into under this section.

(4) The State Treasurer may cooperate with, assist and provide recommendations to governmental units, and any intergovernmental entity created by governmental units under this section, relating to all matters involved in the issuance, administration and payment of bonds. Any expenses incurred by the State Treasurer in providing assistance to governmental units under this section may be paid as an administrative expense of the governmental unit from the proceeds of the bonds issued with the assistance of the State Treasurer. [2001 c.945 §25]

**238.696 Debt service trust fund.** (1) A governmental unit, or a group of governmental units that enter into an intergovernmental agreement under ORS 238.695, may establish a debt service trust fund for the purpose of paying the principal and interest on bonds issued under ORS 238.692 to 238.698. The trustee of the debt service trust fund shall hold the moneys paid into the trust fund solely for the purpose of paying the principal and interest on bonds issued under ORS 238.692 to 238.698 and for paying the administrative costs of the trust fund.

(2) Moneys held in a debt service trust fund are subject to the limitations on investment imposed by ORS 294.033 and 294.035.

(3) A governmental unit, or a group of governmental units that enter into an intergovernmental agreement under ORS 238.695, that has established a debt service trust fund under this section may not divert or pledge any moneys paid into the trust fund for any purpose other than the purpose specified in subsection (1) of this section until the total amount of principal and interest on bonds issued by the governmental unit or under the intergovernmental agreement, and any premium on those bonds, is paid. [2001 c.945 §26]

**238.698 Funds diversion agreement.** (1) A governmental unit, or a group of governmental units that enter into an intergovernmental agreement under ORS 238.695, that receives funds from any state agency may enter into a funds diversion agreement with the state agency for the purpose of paying the principal and interest on bonds issued under ORS 238.692 to 238.698, and any premium on those bonds. A diversion agreement entered into under this section must provide that:

(a) Moneys payable to the governmental unit or governmental units by the state agency from appropriations from the General Fund or any other source of moneys will be paid directly to a debt service trust fund established under ORS 238.696 in amounts equal to the debt service owed by the governmental unit or governmental units;

(b) The state agency must pay the amounts required under the funds diversion agreement to the debt service trust fund established under ORS 238.696 pursuant to the schedule specified in the agreement before paying any other amounts to the governmental unit or governmental units;

(c) The agreement is irrevocable; and

(d) The agreement will remain in effect until all the bonds issued by the governmental unit or under the intergovernmental agreement are mature or redeemed.

(2) If for any reason a state agency that has entered into a funds diversion agreement is not able to pay moneys to a debt service trust fund as contemplated by the agreement, the state agency shall give notice to the governmental unit or governmental units within 30 days after the state agency is aware that the moneys will not be paid.

(3) Nothing in this section, or in any funds diversion agreement entered into by a state agency under this section, may in any manner obligate the state or any state agency:

(a) To pay any amount to a governmental unit that the governmental unit is not otherwise entitled to receive under law; or

(b) To pay any principal or interest on bonds issued under ORS 238.692 to 238.698. [2001 c.945 §27]

(Enforcement)

**238.700 Enforcement of requirements of ORS chapter 238.** All provisions of ORS 238.655, 238.705, 238.710 and 238.715 hereby are made applicable for enforcement of the requirements of ORS chapter 238. [Formerly 237.300; 1997 c.249]

**238.705 State departments to remit contributions and furnish reports.** (1) All public employers that are members of the system shall promptly and regularly remit to the Public Employees Retirement Board all contributions required of them by law and furnish all reports required by the board.

(2) Any public employer delinquent in remitting contributions shall be charged interest on the total amount of contributions due from it at the rate of one percent per month or fraction thereof during which the public employer is delinquent. Interest so paid shall be deposited in the Public Employees Retirement Fund and shall be used by the board in paying administrative expenses of the system.

(3) If any state officer or agency fails to remit any contribution or other obligation required by law, the Public Employees Retirement Board, within 30 days after the date the request therefor has been made by it by registered mail or by certified mail with return receipt, may certify to the Oregon Department of Administrative Services the fact of such failure and the amount of the delinquent contribution or obligation, together with its request that such amount be set over from funds of the delinquent officer or agency to the credit of the Public Employees Retirement Fund. A copy of such certification and request shall be furnished the delinquent officer or agency. The department shall, within 10 days after receipt of the request of the board, approve the payment of such amount by the delinquent officer or agency from funds allocated to the officer or agency for the current biennium and draw a warrant for payment of the amount of the contribution or obligation due out of funds in the State Treasury allocated to the use of the delinquent officer or agency.

(4) If any public employer other than a state agency fails to remit any contribution or pay any other obligation due under this chapter, the board may certify to the department the fact of such failure. Upon receipt of the certification the department shall withhold payment to the public employer of any revenues or funds in the State Treasury in which the public employer is entitled by law to share and which have been apportioned to the public employer until the board certifies to the department that the failure has been remedied. The board shall send a copy of each certification it makes under this subsection to the public employer affected.

(5) Any public employer delinquent in making reports or supplying information concerning its employees in the manner required by the board shall be charged a penalty of the lesser of \$2,000 or one percent of the total annual contributions, for each month or fraction thereof during which the employer is delinquent. In addition, the board may send an auditor to the office of the employer to examine its records and to obtain the necessary reports, the entire cost of such audit to be paid by the delinquent employer. Penalties and other charges so paid shall be used by the board in paying administrative expenses of the system. [Formerly 237.301]

**238.710 Mandamus against defaulting employer; appeal.** In addition to the remedies otherwise provided by ORS 238.705 the board may, by petition in usual form apply to the circuit court for the county in which is located the public employer concerned, or the principal office or place of business of such public employer, for, and if warranted, to have issued, writs of mandamus to compel such public employer to supply to the board a true and complete list and employment records of such employer's employees and all information concerning such employees that reasonably may be required and sought by said board in such petition. Such writs, among other things, shall direct the defendant therein to make such contributions to the retirement fund on account of such defendant's employees as may appear, from records and information concerning such defendant's employees, to be required by law. Either or both parties thereby aggrieved may appeal to the Court of Appeals from, or from any part of, the judgment of the circuit court given and made in such proceeding, as in ordinary mandamus proceedings. [Formerly 237.311]

**238.715 Recovery of overpayments; rules.** (1) If the Public Employees Retirement Board determines that a member of the system or any other person receiving a monthly payment from the Public Employees Retirement Fund has received any amount in excess of the amounts that the member or other person is entitled to under this chapter, the board may recover the overpayment or other improperly made payment by:

(a) Reducing the monthly payment to the member or other person for as many months as may be determined by the board to be necessary to recover the overpayment or other improperly made payment; or

(b) Reducing the monthly payment to the member or other person by an amount actuarially determined to be adequate to recover the overpayment or other improperly made payment during the period during which the monthly payment will be made to the member or other person.

(2)(a) Any person who receives a payment from the Public Employees Retirement Fund and who is not entitled to receive that payment, including a member of the system who receives an overpayment, holds the improperly made payment in trust subject to the board's recovery of that payment under this section or by a civil action or other proceeding.

(b) The board may recover an improperly made payment in the manner provided by subsection (1) of this section from any person who receives an improperly made payment from the fund and who subsequently becomes entitled to receive a monthly payment from the fund.

(c) The board may recover an improperly made payment by reducing any lump sum payment in the amount necessary to recover the improperly made payment if a person who receives an improperly made payment from the fund subsequently becomes entitled to receive a lump sum payment from the fund.

(3) Unless the member or other person receiving a monthly payment from the fund authorizes a greater reduction, the board

may not reduce the monthly payment made to a member or other person under the provisions of subsection (1) of this section by an amount that is equal to more than 10 percent of the monthly payment.

(4) Before reducing a benefit to recover an overpayment or erroneous payment, or pursuing any other collection action under this section, the board shall give notice of the overpayment or erroneous payment to the person who received the payment. The notice shall describe the manner in which the person who received the payment may appeal the board's determination that an overpayment or erroneous payment was made, the action the board may take if the person does not respond to the notice and the authority of the board to assess interest, penalties or costs of collection.

(5) If the board determines that an overpayment or erroneous payment was caused by a fraudulent or intentional act of the person who received the payment, the board may assess interest in an amount equal to one percent per month on the balance of the improperly made payment until the payment is fully recovered. The board may also assess to the member or other person all costs incurred by the board in recovering the payment, including attorney fees. Interest and costs may be collected in the manner prescribed in subsections (1) and (2) of this section. The board may waive the interest and costs on an overpayment or other improperly made payment for good cause shown.

(6) Notwithstanding ORS 293.240, the board may waive the recovery of any payment or payments made to a person who was not entitled to receive the payment or payments if the total amount of the overpayment or other improperly made payments is less than \$50.

(7) A payment made to a person from the fund may not be recovered by the board unless within six years after the date that the payment was made the board has commenced proceedings to recover the payment. For the purposes of subsection (1) of this section, the board shall be considered to have commenced proceedings to recover the payment upon mailing of notice to the person receiving a monthly payment that the board has determined that an overpayment or other improperly made payment has been made.

(8) The remedies authorized under this section are supplemental to any other remedies that may be available to the board for recovery of amounts incorrectly paid from the fund to members of the system or other persons.

(9) The board shall adopt rules establishing the procedures to be followed by the board in recovering overpayments and erroneous payments under this section. [Formerly 237.312]

(Short Title)

**238.750 Short title.** This chapter shall be known as the Public Employes' Retirement Act of 1953. [Formerly 237.001]