

## Chapter 243 — Public Employee Rights and Benefits

2001 EDITION

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#### LIFE INSURANCE FOR POLICE AND FIREFIGHTERS

**243.005 Definitions for ORS 243.005 to 243.045.** As used in ORS 243.005 to 243.045:

(1) “Firefighter” means persons employed by a city, county or district whose duties involve fire fighting and includes a volunteer firefighter whose position normally requires less than 600 hours of service per year.

(2) “Police officer” includes police chiefs and police officers of a city who are classified as police officers by the council or other governing body of the city; sheriffs and those deputy sheriffs whose duties, as classified by the county governing body are the regular duties of police officers; employees of districts, whose duties, as classified by the governing body of the district are the regular duties of police officers; employees of the Department of State Police who are classified as police officers by the Superintendent of State Police; employees of the Criminal Justice Division of the Department of Justice who are classified by the Attorney General as criminal investigators or criminal financial investigators; employees of the Oregon State Lottery Commission who are classified by the Director of the Oregon State Lottery as enforcement agents; and employees of Department of Corrections institutions as defined in ORS 421.005 whose duties, as assigned by the superintendent, include the custody of persons committed to the custody of or transferred to the Department of Corrections institution; but “police officer” does not include volunteer or reserve police officers or persons considered by the respective governing bodies to be civil deputies or clerical personnel.

(3) “Public employer” means a city, a county or the state, or one of its agencies or political subdivisions that employs police officers or firefighters. [1971 c.692 §6; 1985 c.302 §11; 1987 c.320 §149; 1991 c.67 §61; 2001 c.33 §1]

**243.010** [Amended by 1955 c.203 §1; 1959 c.162 §1; 1969 c.597 §141; repealed by 1971 c.692 §14]

**243.015 Life insurance for police and firefighters.** The Oregon Department of Administrative Services shall enter into a contract with an insurance company licensed to do business in this state to purchase insurance as described in ORS 243.025 for all police officers and firefighters in the service of public employers. [1971 c.692 §7; 1973 c.409 §1; 1991 c.67 §62]

**243.020** [Amended by 1955 c.203 §2; 1955 c.503 §1; 1957 c.204 §1; 1959 c.162 §2; repealed by 1971 c.692 §14]

**243.025 Issuance of \$10,000 life insurance certificate.** When the Oregon Department of Administrative Services has awarded the contract under ORS 243.015, every police officer and firefighter in the service of a public employer shall be issued, pursuant to the contract provided for in ORS 243.015, a certificate of insurance in the face amount of \$10,000, covering death caused by injury sustained during working hours as a police officer or firefighter or death resulting from such an injury within 365 days. The insurance certificate shall set forth the names of any beneficiaries whom the insured may designate. [1971 c.692 §8; 1973 c.409 §2; 1991 c.67 §63]

**243.030** [Amended by 1955 c.203 §3; repealed by 1955 c.503 §2]

**243.035 Premiums and administrative costs to be budgeted and paid by public employers.** (1) The premiums and administrative costs incurred by the Oregon Department of Administrative Services for the insurance provided for in ORS 243.005 to 243.045 shall be paid by the affected public employers and shall not come from funds of the Public Employees Retirement System.

(2) Every public employer shall include in its budget amounts sufficient to pay the annual premiums accruing on the policies of insurance issued pursuant to ORS 243.005 to 243.045, and amounts sufficient to reimburse the Oregon Department of Administrative Services for its administrative expenses incurred under ORS 243.005 to 243.045. [Subsection (1) enacted as 1971 c.692 §9; subsection (2) enacted as 1971 c.692 §10]

**243.040** [Amended by 1955 c.203 §4; 1959 c.162 §3; repealed by 1971 c.692 §14]

**243.045 Police and firefighters considered common group for certain purposes.** For purposes of the Insurance Code, police officers and firefighters are considered to be associated in a common group formed for purposes other than the obtaining of insurance. [1971 c.692 §11; 1973 c.409 §3; 1991 c.67 §64]

**243.050** [Amended by 1955 c.203 §5; 1959 c.162 §4; 1969 c.502 §6; repealed by 1971 c.692 §14]

**243.055 Exemption from requirements of ORS 243.005 to 243.045 for certain public employers. (1)**

Notwithstanding ORS 243.005 to 243.045, if a public employer provides benefits equal to or better than the insurance required under ORS 243.025, as determined by the Director of the Department of Consumer and Business Services, the public employer is exempt from the requirements of ORS 243.005 to 243.045 for so long as such benefits continue to be equal or better than the insurance required, as determined by the Director of the Department of Consumer and Business Services.

(2) Determinations pursuant to subsection (1) of this section shall be made after reasonable notice and opportunity for hearing as provided in ORS 183.310 to 183.550. [1971 c.692 §12; 1973 c.612 §13]

**243.060** [Amended by 1955 c.203 §6; 1957 c.204 §2; 1959 c.162 §5; 1969 c.502 §7; repealed by 1971 c.692 §14]

**PUBLIC EMPLOYEES' BENEFIT BOARD**

**243.061 Public Employees' Benefit Board; members; term; confirmation; expenses. (1)** There is created in the Oregon Department of Administrative Services the Public Employees' Benefit Board consisting of eight voting members and two members of the Legislative Assembly as nonvoting advisory members. Two of the voting members are ex officio members and six are appointed by the Governor. The voting members shall be:

(a) Four members representing the state as an employer and management employees, who shall be as follows:

(A) The Director of the Oregon Department of Administrative Services or a designee of the director;

(B) The Administrator of the Office for Oregon Health Policy and Research or a designee of the administrator; and

(C) Two management employees appointed by the Governor from areas of state government other than the Oregon Department of Administrative Services or the Office for Oregon Health Policy and Research; and

(b) Four members appointed by the Governor and representing nonmanagement representable employees, who shall be as follows:

(A) Two persons from the largest employee representative unit;

(B) One person from the second largest employee representative unit; and

(C) One person from representable employees not represented by employee representative units described in subparagraphs (A) and (B) of this paragraph.

(2) One member of the Senate shall be appointed by the President of the Senate and one member of the House of Representatives shall be appointed by the Speaker of the House to serve as nonvoting advisory members.

(3) The term of office of each appointed voting member is four years, but an appointed voting member serves at the pleasure of the Governor. Before the expiration of the term of a voting member appointed by the Governor, the Governor shall appoint a successor to take office upon the date of that expiration. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) The appointments by the Governor of voting members of the board are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(5) Members of the board who are not members of the Legislative Assembly shall receive no compensation for their services, but shall be paid for their necessary and actual expenses while on official business in accordance with ORS 292.495. Members of the board who are members of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly. [1997 c.222 §1]

**Note:** 243.061 and 243.066 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**243.066 Officers; quorum; meetings. (1)** The Public Employees' Benefit Board shall select one of its appointed voting members as chairperson and another appointed voting member as vice chairperson, for terms and with duties and powers necessary for the performance of the functions of those offices as the board determines.

(2) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the board. [1997 c.222 §3]

**Note:** See note under 243.061.

**243.070** [Repealed by 1971 c.692 §14]

## BENEFIT PLANS

(Generally)

**243.105 Definitions for ORS 243.105 to 243.285.** As used in ORS 243.105 to 243.285, unless the context requires otherwise:

(1) “Benefit plan” includes, but is not limited to, contracts for insurance or other benefit based on life; supplemental medical, supplemental dental, optical, accidental death or disability insurance; group medical, surgical, hospital or any other remedial care recognized by state law; and related services and supplies. “Benefit plan” includes comparable benefits for employees who rely on spiritual means of healing.

(2) “Board” means the Public Employees’ Benefit Board.

(3) “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, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation, or a board-approved guarantor of benefit plan coverage and compensation.

(4)(a) “Eligible employee” means an officer or employee of a state agency who elects to participate in one of the group benefit plans described in ORS 243.135. The term includes state officers and employees in the exempt, unclassified and classified service, and state officers and employees, whether or not retired, who:

(A) Are receiving a service or disability retirement allowance under the Public Employees Retirement System or are receiving a service or disability retirement allowance or pension under any other retirement or disability benefit plan or system offered by the State of Oregon for its officers and employees;

(B) Are eligible to receive a service retirement allowance under the Public Employees Retirement System and have reached earliest retirement age under ORS chapter 238; or

(C) Are eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by the State of Oregon and have attained earliest retirement age under the plan or system.

(b) “Eligible employee” does not include individuals:

(A) Engaged as independent contractors;

(B) Whose periods of employment in emergency work are on an intermittent or irregular basis;

(C) Who are employed on less than half-time basis unless the individuals are employed in positions classified as job-sharing positions or unless the individuals are defined as eligible under rules of the board;

(D) Appointed under ORS 240.309;

(E) Provided sheltered employment or made-work by the state in an employment or industries program maintained for the benefit of such individuals; or

(F) Provided student health care services in conjunction with their enrollment as students at the state institutions of higher education.

(5) “Family member” means an eligible employee’s spouse and any unmarried child or stepchild within age limits and other conditions imposed by the board with regard to unmarried children or stepchildren.

(6) “Payroll disbursing officer” means the officer or official authorized to disburse moneys in payment of salaries and wages of employees of a state agency.

(7) “Premium” means the monthly or other periodic charge for a benefit plan.

(8) “State agency” means every state officer, board, commission, department or other activity of state government. [1971 c.527 §1; 1979 c.302 §3; 1979 c.468 §30a; 1981 c.773 §1; 1983 c.640 §1; 1985 c.224 §2; 1985 c.635 §4; 1991 c.89 §1; 1997 c.222 §27; 1999 c.971 §3]

**243.107 Employees of institutions of higher education eligible to participate in benefit plan.** A person employed by a state institution of higher education or the Oregon Health and Science University may be considered an eligible employee for participation in one of the group benefit plans described in ORS 243.135 if the State Board of Higher Education, or the Oregon Health and Science University Board of Directors for Oregon Health and Science University employees, determines that funds are available therefor and if:

(1) Notwithstanding ORS 243.105 (4)(b)(F), the person is a student enrolled in an institution of higher education

and is employed as a graduate teaching assistant, graduate research assistant or a fellow at the institution and elects to participate; or

(2) Notwithstanding ORS 243.105 (4)(b)(B) or (C), the person is employed on a less than half-time basis in an unclassified instructional or research support capacity and elects to participate. [1983 c.266 §2; 1991 c.89 §2; 1995 c.162 §65; 1997 c.222 §28; 1999 c.971 §4]

**243.110** [1955 c.313 §1; 1959 c.540 §1; 1963 c.313 §1; repealed by 1967 c.627 §12]

**243.115** [1971 c.527 §2; 1973 c.792 §7; 1989 c.563 §1; 1993 c.500 §9; repealed by 1997 c.222 §54]

**243.120** [1963 c.331 §8; 1967 c.267 §1; repealed by 1967 c.627 §12]

**243.125 Powers and duties of board; rules; compensation and expenses.** (1) The Public Employees' Benefit Board shall prescribe rules for the conduct of its business. The board shall study all matters connected with the providing of adequate benefit plan coverage for eligible state employees on the best basis possible with relation both to the welfare of the employees and to the state. The board shall design benefits, devise specifications, analyze carrier responses to advertisements for bids and decide on the award of contracts. Contracts shall be signed by the chairperson on behalf of the board.

(2) In carrying out its duties under subsection (1) of this section, the goal of the board shall be to provide a high quality plan of health and other benefits for state employees at a cost affordable to both the employer and the employees.

(3) Subject to ORS 183.310 to 183.550, the board may make rules not inconsistent with ORS 243.105 to 243.285 and 292.051 to determine the terms and conditions of eligible employee participation and coverage.

(4) The board shall prepare specifications, invite bids and do acts necessary to award contracts for health benefit plan and dental benefit plan coverage of eligible employees in accordance with the criteria set forth in ORS 243.135 (1).

(5) The board may retain consultants, brokers or other advisory personnel when necessary and, subject to the State Personnel Relations Law, shall employ such personnel as are required to perform the functions of the board. [1971 c.527 §3; 1975 c.560 §1; 1975 c.667 §1a; 1983 c.640 §2; 1987 c.879 §9; 1997 c.222 §29; 2001 c.655 §5]

**243.130** [1981 c.93 §4; repealed by 1997 c.222 §54]

**243.135 Health benefit plans for public employees; terms and conditions.** (1) Notwithstanding any other benefit plan contracted for and offered by the Public Employees' Benefit Board, the board shall contract for a health benefit plan or plans best designed to meet the needs and provide for the welfare of eligible employees and the state. In considering whether to enter into a contract for a plan, the board shall place emphasis on:

- (a) Employee choice among high quality plans;
- (b) A competitive marketplace;
- (c) Plan performance and information;
- (d) Employer flexibility in plan design and contracting;
- (e) Quality customer service;
- (f) Creativity and innovation;
- (g) Plan benefits as part of total employee compensation; and
- (h) The improvement of employee health.

(2) The board may approve more than one carrier for each type of plan contracted for and offered but the number of carriers shall be held to a number consistent with adequate service to eligible employees and their family members.

(3) Where appropriate for a contracted and offered health benefit plan, the board shall provide options under which an eligible employee may arrange coverage for family members.

(4) Payroll deductions for such costs as are not payable by the state may be made upon receipt of a signed authorization from the employee indicating an election to participate in the plan or plans selected and the deduction of a certain sum from the employee's pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and their family members at an additional cost or premium.

(6) Transfer of enrollment from one plan to another shall be open to all eligible employees and their family

members under rules adopted by the board. Because of the special problems that may arise in individual instances under comprehensive group practice plan coverage involving acceptable physician-patient relations between a particular panel of physicians and particular eligible employees and their family members, the board shall provide a procedure under which any eligible employee may apply at any time to substitute a health service benefit plan for participation in a comprehensive group practice benefit plan. [1971 c.527 §4; 1975 c.560 §2; 1977 c.313 §1; 1983 c.640 §3; 1997 c.222 §30]

**243.140 Health benefit and dental plans for persons operating foster homes.** (1) Persons whose homes are certified as a foster home by the Department of Human Services under ORS 418.630 and as defined in ORS 418.625 (3) may participate in a health benefit plan available to state employees pursuant to ORS 243.105 to 243.285 at the expense of the foster parent. For such purposes, foster parents shall be considered eligible employees.

(2) A person who maintains a developmental disability child foster home that is certified by the department under ORS 443.830 and 443.835 may participate in a health benefit plan available to state employees pursuant to ORS 243.105 to 243.285 at the expense of the person. For such purposes, the person maintaining the home shall be considered an eligible employee.

(3) Persons who participate in the health benefit plan pursuant to subsections (1) and (2) of this section may also participate in a dental plan available to state employees pursuant to ORS 243.105 to 243.285 at the expense of the foster parent or the person maintaining the developmental disability child foster home. [1989 c.550 §3; 1991 c.578 §1; 1997 c.222 §31; 1999 c.316 §8; 2001 c.900 §239]

**Note:** 243.140 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**243.145 Board authority with respect to health benefit plans; termination of participation of state agency.** (1) The Public Employees' Benefit Board shall have authority to employ whatever means are reasonably necessary to carry out the purposes of ORS 243.105 to 243.285 and 292.051. Such authority shall include but is not limited to authority to seek clarification, amendment, modification, suspension or termination of any agreement or contract that in the board's judgment requires such action.

(2) Upon providing specific notice in writing to the carrier, the affected employee organization or organizations, the Oregon Department of Administrative Services and affected, eligible employees, and after affording opportunity for a public hearing upon the issues that may be involved, the board may enter an order withdrawing approval of any benefit plan. Thirty days after entry of the order, the board shall terminate all withholding authorizations of eligible employees and terminate all board-approved participation in the plan.

(3) The board by order may terminate the participation of any state agency if within three months the state agency fails to perform any action required by ORS 243.105 to 243.285 and 292.051 or by board rule. [1971 c.527 §5; 1997 c.222 §32]

**243.155** [1971 c.527 §6; 1975 c.667 §2; repealed by 1997 c.222 §54]

**243.157** [1985 c.224 §4; repealed by 1991 c.969 §7]

**243.160 Eligibility of retired state officer or employee to participate in dental benefit plan; rules.** A retired state officer or employee is not required to participate in one of the group benefit plans described in ORS 243.135 in order to obtain dental benefit plan coverage. The Public Employees' Benefit Board shall establish by rule standards of eligibility for retired officers or employees to participate in a dental benefit plan. [1981 c.773 §4; 1991 c.16 §1]

**243.163 Eligibility of former member of Legislative Assembly to participate in group benefit plan.** A member of the Legislative Assembly who is receiving a pension or annuity under ORS 238.092 (1)(a) shall be eligible to participate as a retired state officer in one of the group benefit plans described in ORS 243.135 after the member ceases to be a member of the Legislative Assembly if the member applies to the Public Employees' Benefit Board within 60 days after the member ceases to be a member of the Legislative Assembly. [1989 c.799 §16; 1997 c.222 §33]

**243.165 Public Employees' Benefit Account; continuing appropriation to account.** (1) There hereby is created

in the General Fund an account to be known as the Public Employees' Benefit Account, the balances of which are continuously appropriated to cover administrative expenses incurred in connection with the administration of ORS 243.105 to 243.285 and 292.051.

(2) There hereby is appropriated to the Public Employees' Benefit Account, subject to ORS 243.185, an amount not to exceed two percent of the monthly employer and employee contributions for any benefit available under ORS 243.105 to 243.285 and 292.051. [1971 c.527 §7; 1997 c.222 §34; 2001 c.655 §3]

**243.167 Public Employees' Revolving Fund; continuing appropriation to fund.** (1) There is created the Public Employees' Revolving Fund, separate and distinct from the General Fund. The balances of the Public Employees' Revolving Fund are continuously appropriated to cover expenses incurred in connection with the administration of ORS 243.105 to 243.285 and 292.051. Assets of the Public Employees' Revolving Fund may be retained for limited periods of time as established by the Public Employees' Benefit Board by rule. Among other purposes, the board may retain the funds to control expenditures and to stabilize benefit premium rates. The board may establish subaccounts within the Public Employees' Revolving Fund.

(2) There is appropriated to the Public Employees' Revolving Fund all unused employer contributions for employee benefits and all refunds, dividends, unused premiums and other payments attributable to any employee contribution or employer contribution made from any carrier or contractor that has provided employee benefits administered by the board, and all interest earned on such moneys. [2001 c.655 §2]

**Note:** 243.167 was added to and made a part of 243.105 to 243.285 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

**243.170 Contributions for job-share employees limited.** When more than one individual shares a single position that is classified as a job-sharing position, the state shall contribute to obtain coverage for the individuals a total amount not greater than the amount that would be contributed to obtain coverage for one individual in the same position. The individuals shall receive credit for the state contribution in such proportions as they and the employer agree upon, and each individual who desires coverage shall make further contribution in such amounts as may be appropriate. [1997 c.222 §25]

**243.175** [1971 c.527 §8; 1973 c.225 §1; 1975 c.667 §3; 1977 c.570 §3; 1979 c.302 §1; repealed by 1997 c.222 §54]

**243.180** [1975 c.667 §5; 1977 c.570 §4; 1979 c.302 §2; 1979 c.538 §2; repealed by 1997 c.222 §54]

**243.182** [1981 c.93 §3; repealed by 1997 c.222 §54]

**243.185 Transfer of moneys from General Fund for payment of costs of health benefit plans.** Subject to legislative or Emergency Board approval of budgetary authorization for operation of the Public Employees' Benefit Board and its administration of the health benefit plans and other duties under ORS 243.105 to 243.285 and 292.051, an amount not to exceed two percent of the employer and employee contributions shall be forwarded by each payroll disbursing officer to the board and deposited by it in the State Treasury to the credit of the Public Employees' Benefit Account to meet administrative and other costs authorized by ORS 243.105 to 243.285 and 292.051. The board shall take action to ensure that the balance in the account does not exceed five percent of the monthly total of employer and employee contributions for more than 120 days. [1971 c.527 §9; 1997 c.222 §35; 2001 c.655 §4]

**243.195** [1971 c.527 §10; repealed by 1997 c.222 §54]

**243.200 Participation of self-pay groups in benefit plans.** (1) The Public Employees' Benefit Board may allow self-pay groups to participate in benefit plans available to eligible state employees, if the group meets a minimum participation level equal to 75 percent of the persons in the group.

(2) Nothing in subsection (1) of this section applies to:

(a) Any person or group of persons similarly situated exempted by state or federal law from any minimum participation requirement; or

(b) Any person or group of persons participating prior to January 1, 1992, in a benefit plan that was offered by the

State Employees' Benefit Board.

(3) As used in subsection (1) of this section, "self-pay group" means a group of persons other than state employees for whom the state makes no contributions for benefit plans under ORS 243.105 to 243.285. [1991 c.577 §4; 1997 c.222 §36]

**243.205 Reports.** The payroll disbursing officer shall submit reports to the Public Employees' Benefit Board regarding health care coverage for eligible or participating employees as the board considers desirable. [1971 c.527 §11; 1997 c.222 §37]

**243.215 Certain eligible employees permitted to receive state contributions for health benefit plans of their choice.** Any eligible employee unable to participate in one or more of the plans described in ORS 243.135 (1) solely because the employee is assigned to perform duties outside the state may be eligible to receive the monthly state contribution, less administrative expenses, as payment of all or part of the cost of a health benefit plan of choice, subject to the approval of the Public Employees' Benefit Board and such rules as the board may adopt. [1971 c.527 §13]

**243.220** [1977 c.675 §1; renumbered 243.345]

(Miscellaneous)

**243.221 Options that may be offered under flexible benefit plan.** (1) In addition to the powers and duties otherwise provided by law to provide employee benefits, the Public Employees' Benefit Board may provide, administer and maintain flexible benefit plans under which eligible employees of this state may choose among taxable and nontaxable benefits as provided in the federal Internal Revenue Code.

(2) In providing flexible benefit plans, the board may offer:

(a) Health or dental benefits as provided in ORS 243.125 and 243.135.

(b) Other insurance benefits as provided in ORS 243.275.

(c) Dependent care assistance as provided in ORS 243.550.

(d) Expense reimbursement as provided in ORS 243.560.

(e) Any other benefit that may be excluded from an employee's gross income under the federal Internal Revenue Code.

(f) Any part or all of the state contribution for employee benefits in cash to the employee.

(3) In developing flexible benefit plans under this section, the board shall design the plan on the best basis possible with relation to the welfare of employees and to the state. [1989 c.804 §2; 1997 c.222 §38]

**243.223 Rules for flexible benefit plans; costs.** (1) In providing flexible benefit plans under ORS 243.221, the Public Employees' Benefit Board shall adopt rules as are considered necessary for the establishment and administration of the plans.

(2) The board may assess a charge to participating employees to pay the cost of administering the plans and may pay some or all of such cost from funds authorized to pay general administrative expenses incurred by the board.

(3) The board may contract with private organizations for administration of flexible benefit plans in accordance with rules adopted under subsection (1) of this section. [1989 c.804 §3; 1997 c.222 §39]

**243.225** [1977 c.675 §2; renumbered 243.350]

**243.230** [1979 c.469 §2; 1985 c.224 §5; 1987 c.158 §36; 1989 c.1006 §6; repealed by 1997 c.222 §54]

**243.232** [1983 c.266 §4; 1995 c.612 §16; repealed by 1997 c.222 §54]

**243.235** [1979 c.469 §3; 1989 c.1006 §1; repealed by 1997 c.222 §54]

**243.240** [1979 c.469 §5; repealed by 1997 c.222 §54]

**243.245** [1979 c.469 §6; repealed by 1997 c.222 §54]

**243.250** [1979 c.469 §7; repealed by 1997 c.222 §54]

**243.252 Payment of cost for retired employee.** The state may pay none of the cost of making health benefit plan coverage available to a retired state employee who is an eligible employee and to family members or may agree, by collective bargaining agreement or otherwise, to pay part or all of that cost. [1985 c.224 §7]

**243.253** [1981 c.773 §2; repealed by 1997 c.222 §54]

**243.255** [1979 c.469 §8; repealed by 1997 c.222 §54]

**243.260** [1979 c.469 §9; repealed by 1997 c.222 §54]

**243.265** [1979 c.469 §10; repealed by 1997 c.222 §54]

**243.270** [1979 c.469 §11; repealed by 1997 c.222 §54]

**243.275 Additional benefit plans authorized; assessment for expenses.** (1) In addition to contracting for health and dental benefit plans, the Public Employees' Benefit Board may contract with carriers to provide at the expense of participating eligible employees and with or without state participation for coverage, including but not limited to, insurance or other benefit based on life, supplemental medical, supplemental dental, optical, accidental death or disability insurance plans.

(2) The monthly contribution of each eligible employee for other benefit plan or plans coverage, as described in subsection (1) of this section, shall be the total cost per month of the benefit coverage afforded the employee under the plan or plans, for which the employee exercises an option, including the cost of enrollment of such eligible employees and administrative expenses therefor.

(3) For any benefit plan or plans described in subsection (1) of this section in which the state participates, the monthly contribution of each eligible employee for the benefit plan, for which the employee exercises an option and there is state participation, shall be reduced by an amount equal to the portion thereof contributed by the state, including the cost of enrollment of the eligible employee and the administrative expenses therefor.

(4) The board may withdraw approval of any such additional benefit plan coverage in the same manner as it withdraws approval of health benefit plans as described and authorized by ORS 243.145.

(5) If any state agency contracts for any of the benefits described in subsection (1) of this section on behalf of any state employees, the administrative expenses thereof shall be paid by assessment of the participating employees. Such contracts are subject to approval of the board before they become operative. The board may withdraw approval for any such benefit in the same manner as it withdraws approval under ORS 243.145. [1979 c.469 §12; 1997 c.222 §40]

**243.280** [1979 c.469 §14; repealed by 1997 c.222 §54]

**243.285 Salary deductions; payment of moneys to benefit plan contractor.** (1) Upon receipt of the request in writing of an eligible employee so to do, the payroll disbursing officer authorized to disburse funds in payment of the salary or wages of the eligible employee may deduct from the salary or wages of the employee an amount of money indicated in such request for payment of the applicable amount set forth in contracts made by the employee or made on the employee's behalf for:

(a) Group health and related services and supplies, including such insurance for family members of the eligible employee.

(b) Group life insurance, including life insurance for family members of the eligible employee.

(c) Group dental and related services and supplies, or any other remedial care recognized by state law and related services and supplies, recognized under state law, including such insurance for family members of the eligible employee.

(d) Group indemnity insurance for accidental death and dismemberment and for loss of income due to accident, sickness or other disability, including such insurance for family members of the eligible employee.

(e) Other benefit plans approved and provided by the Public Employees' Benefit Board.

(2) Moneys deducted pursuant to subsection (1) of this section shall be paid over promptly to the carriers or

persons responsible for payment of premiums to carriers, in accordance with the terms of the contracts made by the eligible employees or on their behalf. [1979 c.469 §13; 1997 c.222 §41]

**243.290** [1979 c.469 §15; repealed by 1997 c.222 §54]

(Long Term Care Insurance)

**243.291 Plan eligibility; costs to be paid by participants.** (1) The Public Employees' Benefit Board shall make available one or more fully insured long term care insurance plans. The plans shall be made available to eligible employees, retired employees and family members. Notwithstanding ORS 243.105, for purposes of this subsection, "family members" includes family members as defined by the board and also includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree.

(2) Employees of local governments and employees of political subdivisions may participate in the plans under terms and conditions established by the board, if it does not jeopardize the financial viability of the board's long term care insurance plans. However, unless the local government or political subdivision provides otherwise, the employee's participation is a personal action of the employee and does not obligate the local government or political subdivision to pay for the provision of benefits under this subsection.

(3) Participation of eligible employees or retired employees in any long term care insurance plan made available by the board is voluntary and is subject to reasonable underwriting guidelines and eligibility rules established by the board.

(4) The employee or retired employee is solely responsible for the payment of the long term care premium rates developed by the board. The board is authorized to charge a reasonable administrative fee, in addition to the premium charged by the long term care insurer, to cover the cost of administration and consumer education materials. [1997 c.757 §1; 1999 c.59 §60]

**Note:** 243.291 and 243.296 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**243.295** [1979 c.469 §16; repealed by 1997 c.222 §54]

**243.296 Board to develop method to make plan available; education program.** (1) The Public Employees' Benefit Board shall develop effective and cost-effective ways to make the long term care insurance plans described under ORS 243.291 available.

(2) The board, in consultation with the Public Employees Retirement System, shall develop long term care insurance plan design, eligibility rules, underwriting principles and educational materials in order to:

(a) Allow eligible employees to continue to participate in the plans after retirement; and

(b) Allow former eligible employees to enroll in the plans after retirement.

(3) The board's education program for the eligible employees and retired employees shall provide information on the potential need for long term care, methods of financing long term care and the availability of long term care insurance plans offered by the board. [1997 c.757 §2]

**Note:** See note under 243.291.

**243.300** [1979 c.469 §17; repealed by 1997 c.222 §54]

(Retirees)

**243.302 Grouping retired and nonretired employees for health insurance coverage.** The Public Employees' Benefit Board may group retired state employees and state employees who are not retired for the purpose of entering into contracts for health insurance coverage. [1991 c.969 §1; 1997 c.222 §42]

**Note:** 243.302 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## LOCAL GOVERNMENT HEALTH COVERAGE CONTRACTS

### **243.303 Local government authority to make health care insurance coverage available to retired officers and employees, spouses and children.** (1) As used in this section:

(a) “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.

(b) “Local government” means any city, county, school district or other special district in this state.

(c) “Retired employee” means a former officer or employee of a local government who is retired for service or disability, and who received or is receiving retirement benefits, under the Public Employees Retirement System or any other retirement system or plan applicable to officers and employees of the local government.

(2) The governing body of any local government that contracts for or otherwise makes available health care insurance coverage for officers and employees of the local government shall, insofar as and to the extent possible, make that coverage available for any retired employee of the local government who elects within 60 days after the effective date of retirement to participate in that coverage and, at the option of the retired employee, for the spouse of the retired employee and any unmarried children under 18 years of age. The health care insurance coverage shall be made available for a retired employee until the retired employee becomes eligible for federal Medicare coverage, for the spouse of a retired employee until the spouse becomes eligible for federal Medicare coverage and for a child until the child arrives at majority, and may, but need not, be made available thereafter. The governing body may prescribe reasonable terms and conditions of eligibility and coverage, not inconsistent with this section, for making the health care insurance coverage available. The local government may pay none of the cost of making that coverage available or may agree, by collective bargaining agreement or otherwise, to pay part or all of that cost.

(3)(a) A local government and a health care insurer may not create a group for health care insurance coverage of retired employees and their dependents that is separate from a group for health care insurance coverage of officers and employees of the local government.

(b) A health care insurer may not establish a higher premium for retired employees and their dependents than the premium established for officers and employees of the local government. The retired employees shall be charged a premium according to an appropriate category, including individual alone, individual and spouse, individual and dependents or other similar category. [1981 c.240 §1; 1985 c.224 §1; 2001 c.604 §1]

**Note:** 243.303 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## AFFIRMATIVE ACTION

**243.305 Policy of affirmative action and fair and equal employment opportunities and advancement.** (1) It is declared to be the public policy of Oregon that all branches of state government shall be leaders among employing entities within the state in providing to its citizens and employees, through a program of affirmative action, fair and equal opportunities for employment and advancement in programs and services and in the awarding of contracts.

(2) “Affirmative action” means a method of eliminating the effects of past and present discrimination, intended or unintended, on the basis of race, religion, national origin, age, sex, marital status or physical or mental disabilities. [1975 c.529 §1; 1981 c.436 §1; 1989 c.224 §35]

**243.315 Director of Affirmative Action; duties; appointment; confirmation; legislative and judicial branches to monitor own programs.** (1) There is hereby created in the office of the Governor the position of Director of Affirmative Action. The primary duty of the occupant of this position shall be to direct and monitor affirmative action programs in all state agencies to implement the public policy stated in ORS 243.305. The director shall be appointed by the Governor, subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

(2) The legislative and judicial branches shall each select a person to monitor the effectiveness of the branches’ affirmative action programs. [1975 c.529 §2; 1981 c.436 §2]

## LEAVES OF ABSENCE FOR ATHLETIC COMPETITION

**243.325 “Public employee” defined.** For the purposes of this section and ORS 243.330 and 243.335, “public

employee” means officers or employees, classified, unclassified, exempt and nonexempt, of:

- (1) State agencies.
- (2) Community colleges.
- (3) School districts and education service districts.
- (4) County governments.
- (5) City governments.
- (6) Districts as defined in ORS 255.012 and any other special district. [1979 c.830 §1; 1997 c.249 §73; 2001 c.104 §74]

**243.330 Leaves of absence for athletic competition; requirements; maximum period; reinstatement.** (1) To encourage amateur athletic competition at the world level, state agencies and political subdivisions described in ORS 243.325 (2) to (6) may grant leaves of absence on request to any public employee who participates in world, Pan American or Olympic events as a group leader, coach, official or athlete of a United States amateur team for the purpose of preparing for and engaging in the competition and preliminary competitions.

(2) The leave shall be with regular pay and benefits for periods of official training camps and competitions. Paid leave shall not exceed 90 days per calendar year.

(3) Upon expiration of the leave, the public employee shall have the right to be reinstated to the position held before the leave was granted and at the salary rates prevailing for such positions on the date of resumption of duty without loss of seniority or other employment rights. Failure of the employee to report within 30 days after termination of official competition shall be cause for dismissal.

(4) In order to be eligible for the benefits authorized by ORS 243.325 to 243.335, the public employee shall be a resident of this state for a period of not less than five years and shall have been a public employee of the particular employer for a period of not less than one year prior to being granted the leave. [1979 c.830 §2]

**243.335 Reimbursement to public employer.** Public employees eligible for the benefits authorized by ORS 243.325 to 243.335 are obligated to reimburse the employer in full through monetary payment, with no interest charge, or through hours worked equivalent to the number of hours spent on athletic leave, or a combination of both. Full reimbursement shall be accomplished at a time not later than 10 years following the last day the employee received benefits under ORS 243.325 to 243.335. [1979 c.830 §3; 1997 c.249 §74]

## SMOKING IN STATE OFFICES

**243.345 Smoking in places of state employment; policy statement.** The Legislative Assembly finds that because the smoking of tobacco creates a health hazard, it is necessary to protect the public health by restricting smoking in places of employment operated by the State of Oregon. [Formerly 243.220]

**243.350 Personnel Division rules restricting smoking in places of state employment.** (1) In accordance with the provisions of ORS 183.310 to 183.550, the Personnel Division shall adopt rules restricting smoking in places of employment operated by departments or agencies of the State of Oregon. The rules of the division shall:

(a) Set standards for the designation of areas in a place of employment where smoking is permitted, including standards for ventilation and physical barriers.

(b) Require departments or agencies to designate areas in the place of employment where smoking is permitted pursuant to the standards of the division.

(c) Require departments or agencies supplying employees with lounges to provide smoke-free lounge areas for nonsmoking employees.

(d) Prohibit smoking in a place of employment in any area not designated as an area where smoking is permitted.

(2) The rules adopted by the division pursuant to subsection (1) of this section shall not apply to enclosed offices occupied exclusively by smokers, even though the offices may be visited by nonsmokers.

(3) Nothing in this section is intended to prevent departments or agencies from prohibiting smoking in the entire area of the place of employment. [Formerly 243.225]

## DEFERRED COMPENSATION PLANS

(Definitions)

**243.400** [1977 c.721 §2; 1979 c.468 §31; 1991 c.618 §1; repealed by 1997 c.179 §1 (243.401 enacted in lieu of 243.400)]

**243.401 Definitions for ORS 243.401 to 243.507.** As used in ORS 243.401 to 243.507:

- (1) “Board” means the Public Employees Retirement Board described in ORS 238.630.
- (2) “Council” means the Oregon Investment Council created by ORS 293.706.
- (3) “Deferred compensation contract” means a written agreement entered into by the state and an eligible state employee under the provisions of ORS 243.440.
- (4) “Deferred compensation investment program” means the program established by the Oregon Investment Council under ORS 243.421, for investment of assets of the Deferred Compensation Fund.
- (5) “Deferred compensation plan” means a plan established by the state or a local government for the deferral of compensation payable to employees of the state or local government and for the deferral of income taxation on that compensation.
- (6) “Eligible state employee” means an officer or employee of a state board, commission, department or other instrumentality of state government, including, but not limited to, all officers and employees of the executive, judicial and legislative branches of state government, but excluding:
  - (a) Persons engaged as independent contractors, except as otherwise specifically allowed by statute;
  - (b) Persons who are employed in emergency work and whose periods of employment are on an intermittent or irregular basis; and
  - (c) Persons who are provided sheltered employment or make-work by the state in an employment or industries program maintained for the benefit of such individuals.
- (7) “Fund” means the Deferred Compensation Fund established under ORS 243.411.
- (8) “Local government” means a city, county, municipal or public corporation, any political subdivision of the state or any instrumentality thereof, or an agency created by two or more such political subdivisions to provide themselves governmental services.
- (9) “Local government deferred compensation plan” means a deferred compensation plan that is established and administered by a local government.
- (10) “Local plan participant” means a person participating in a local government deferred compensation plan.
- (11) “Participating local government” means a local government that invests all or part of the assets of the deferred compensation plan established by the local government through the deferred compensation investment program.
- (12) “State deferred compensation plan” means the deferred compensation plan described in ORS 243.435 for eligible state employees.
- (13) “State plan participant” means a person participating in the state deferred compensation plan, either through current or past deferrals of compensation.
- (14) “System” means the Public Employees Retirement System established in ORS 238.600. [1997 c.179 §2 (enacted in lieu of 243.400)]

**243.410** [1977 c.721 §3; 1983 c.789 §1; 1991 c.618 §2; repealed by 1997 c.179 §36]

(Deferred Compensation Fund)

**243.411 Deferred Compensation Fund.** (1) The Deferred Compensation Fund is created, separate and distinct from the General Fund, for the purpose of holding and investing assets of the state deferred compensation plan and the assets of the deferred compensation plans of participating local governments. Interest and any other earnings of the Deferred Compensation Fund shall be credited to the fund. Moneys in the fund may be used only for the purposes of implementing and administering ORS 243.401 to 243.507.

(2) Subject to rules adopted by the Public Employees Retirement Board under ORS 243.470, the assets of the Deferred Compensation Fund may be commingled with the assets of the Public Employees Retirement Fund for investment purposes in a group trust or by other means.

(3) The limitations imposed on the use of the Deferred Compensation Fund by subsection (1) of this section do not affect any law of this state that authorizes the manner in which moneys in the fund may be invested. [1997 c.179 §3]

**243.416 State Treasurer as fund custodian; administration.** The Deferred Compensation Fund shall be held by

the State Treasurer, who shall be custodian of the fund. Another person may be appointed as custodian of the fund if the State Treasurer and the Public Employees Retirement Board agree to the appointment. On request from the Director of the Public Employees Retirement System or the director's designee, the Oregon Department of Administrative Services shall draw warrants and issue payments on the Deferred Compensation Fund for the payment of benefits, the payment of expenses incurred by the system in the administration of ORS 243.401 to ORS 243.507, and the payment of refunds or other amounts that by reason of excessive contributions or other error are owed to state plan participants or local plan participants or the beneficiaries of those participants. [1997 c.179 §4]

**243.420** [1977 c.721 §10; 1983 c.789 §2; repealed by 1991 c.618 §20]

**243.421 Investment program for fund; securities law not applicable.** (1) The Oregon Investment Council shall establish a program for investment of moneys in the Deferred Compensation Fund. The program shall include policies and procedures for the investment of moneys in the fund. The program and all investments of moneys under the program are subject to the provisions of ORS 293.701 to 293.820.

(2) The council shall provide to the Public Employees Retirement Board a description of the investment options set forth in the council's policies and procedures for the investment of moneys in the fund, the applicable benchmark for each option and a description of the characteristics of each benchmark.

(3) The provisions of ORS chapter 59 that require registration of securities do not apply to any share, participation or other interest in the state deferred compensation plan or in the Deferred Compensation Fund. The provisions of ORS chapter 59 requiring licensing of certain persons as broker-dealers or as investment advisors do not apply to any of the following persons or entities for the purposes of implementing and administering the deferred compensation investment program established under this section:

(a) The council.

(b) The Public Employees Retirement Board.

(c) The Public Employees Retirement System.

(d) The State Treasurer.

(e) Any officer or employee of the persons or entities described in paragraphs (a) to (d) of this subsection. [1997 c.179 §5]

**243.426 Accounts; use for administrative expenses.** On request from the Public Employees Retirement Board, the State Treasurer shall establish all accounts in the Deferred Compensation Fund that are necessary to administer the provisions of ORS 243.401 to 243.507. The accounts shall be established and maintained with the charges assessed under ORS 243.472 against the account balances of the state plan participants and the funds invested by participating local governments. The moneys held in the accounts established by the board may be used only for payment of the administrative expenses incurred by the system, the State Treasurer and the Oregon Investment Council in administering the provisions of ORS 243.401 to 243.507. [1997 c.179 §6]

**243.428 Forfeited payments; use of moneys.** (1) If a warrant, check or order is issued for the payment of a deferred compensation benefit under the state deferred compensation plan, or for payment of a refund under the state deferred compensation plan, and the warrant, check or order is canceled, declared void or otherwise made unpayable, the payment shall be forfeited and the amount of the payment shall be returned or credited to the Deferred Compensation Fund. The amount forfeited may be used for the payment of administrative expenses of the state deferred compensation plan. Any amounts forfeited under this section shall be restored to the fund and paid to the payee, without interest, if the payee is located and files a claim for the benefit. The amount so paid shall be restored from other forfeited amounts or paid as an administrative expense of the state deferred compensation plan. The Public Employees Retirement Board may reissue the warrant, check or order for payment without bond if the payee is located after the warrant, check or order is canceled, declared void or otherwise made unpayable. Benefit payments forfeited under this subsection are not subject to ORS 98.302 to 98.436.

(2) The amount of any warrant, check or order for the payment of employee benefit withdrawals or refunds under a local government deferred compensation plan that is canceled, declared void or otherwise made unpayable shall be credited to the account of the applicable local government deferred compensation plan held in the Deferred Compensation Fund. The state shall not be liable under this subsection to a payee, or to a payee's beneficiaries, in the event a warrant, check or order for payment is not reissued to the payee or the payee's beneficiaries. [1997 c.179 §7]

**243.430** [1977 c.721 §4; 1985 c.256 §1; 1985 c.690 §1; 1991 c.618 §3; repealed by 1997 c.179 §36]

(State Deferred Compensation Plan)

**243.435 Plan contents; assets held in trust; use of moneys; recovery of overpayments; assignment of benefits prohibited.** (1) The Public Employees Retirement Board shall administer the state deferred compensation plan described in ORS 243.401 to 243.507 on behalf of the state for the benefit of eligible state employees.

(2) All assets of the state deferred compensation plan are held in trust for the exclusive benefit of the state plan participants and their beneficiaries. Except as otherwise provided by law, the Public Employees Retirement Board is declared to be the trustee of the assets of the state deferred compensation plan.

(3) The State of Oregon has no proprietary interest in the assets of the state deferred compensation plan or in payments of deferred compensation made to the plan by state plan participants. The state disclaims any right to reclaim payments made to the plan and waives any right of reclamation the state may have to the plan assets. This subsection does not limit the ability of the board to alter or refund an erroneously made employer payment.

(4) All moneys paid into the plan shall be deposited into the Deferred Compensation Fund.

(5) The assets of the state deferred compensation plan that are held in the Deferred Compensation Fund may be used only for the payment of benefits under the plan and for payment of expenses or refund liabilities incurred by the system in administration of the state deferred compensation plan.

(6) If the board determines that a state plan participant or any other person has received any amount in excess of the amounts that the participant or other person is entitled to receive under ORS 243.401 to 243.507, the board may recover the overpayment or other improperly paid amount in the same manner as provided for the recovery of overpayments from the Public Employees Retirement Fund under ORS 238.715.

(7) A state plan participant may not assign, anticipate, alienate, sell, transfer, pledge or in any way encumber any of the rights a participant may have under the state deferred compensation plan, and the state shall reject and refuse to honor any such purported action with respect to those rights. [1997 c.179 §8]

**243.440 Salary reduction for deferred compensation plan; amount; payment.** (1) The state and an eligible state employee may enter into a written deferred compensation contract that provides that a specified portion of the compensation payable to the employee for services rendered by the employee will not be paid or otherwise made available at the time the services are rendered but instead will be paid or otherwise made available at some future date. The deferred compensation contract must specify the amount by which the employee's compensation will be reduced each month for the purpose of funding the deferred compensation benefit for the employee. The amount of the reduction may not be less than \$25 per month and may not exceed the maximum amount allowable under rules adopted by the Public Employees Retirement Board under ORS 243.470.

(2) The state officer or official authorized to disburse moneys in payment of salaries and wages of employees is authorized, upon written request of an eligible state employee, to reduce each month the salary of the eligible state employee by an amount of money designated by that employee in the employee's deferred compensation contract. The state officer or official may pay that amount to the Public Employees Retirement System for deposit in the Deferred Compensation Fund. [1977 c.721 §5; 1983 c.789 §3; 1991 c.618 §4; 1997 c.179 §9]

**243.445 Employee choice of plans; choice not binding; change in value of employee assets not to affect net worth of state.** (1) When an eligible state employee agrees to participate in the state deferred compensation plan under ORS 243.401 to 243.507, the employee may indicate a preference with respect to the mode of investment or deposit to be used by the state in investing or depositing the deferred income under the plan. The preference indicated by the employee is not binding on the state.

(2) Any change in the net value of the assets of an eligible state employee invested under the state deferred compensation plan shall result in a commensurate change in the total amount distributable to the employee or the beneficiary of the employee, and shall not result in any increase or decrease in the net worth of the state. [1977 c.721 §11; 1983 c.789 §4; 1991 c.618 §5; 1997 c.179 §10]

**243.450 Disclosure statement; contents.** The Public Employees Retirement System shall give each eligible state employee who enters into a deferred compensation contract under the state deferred compensation plan, prior to the deferral of any part of that employee's salary, a disclosure statement in writing that contains information regarding the options available under the plan for the investment of deferred compensation, including the probable income and

probable safety of the moneys deferred, that persons of reasonable prudence and discretion require when determining the permanent disposition of their funds. [1977 c.721 §12; 1991 c.618 §6; 1997 c.179 §11]

**243.460 Effect of deferred compensation on current taxable income and on retirement programs.** (1) The amount by which an eligible state employee's salary is reduced under ORS 243.440 shall continue to be included as regular compensation for the purpose of computing the retirement, pension and social security benefits earned by the employee, but that amount shall not be considered current taxable income for the purpose of computing federal and state income taxes withheld on behalf of the employee.

(2) The state deferred compensation plan established by ORS 243.401 to 243.507 supplements all other retirement and pension systems established by the State of Oregon, and participation by an eligible state employee in the state deferred compensation plan shall not cause a reduction of any retirement or pension benefits provided to the employee by law. [1977 c.721 §6; 1997 c.179 §12]

**243.470 Administration of deferred compensation program; rules.** (1) Subject to ORS 183.310 to 183.550, the Public Employees Retirement Board may adopt rules necessary to implement the provisions of ORS 243.401 to 243.507 and determine the terms and conditions of eligible state employee participation and coverage. Rules adopted by the board under this subsection shall establish the terms and conditions of deferred compensation contracts for eligible state employees.

(2) The Public Employees Retirement System shall adopt forms and maintain accounts and records necessary and appropriate to the efficient administration of ORS 243.401 to 243.507 or which may be required by agencies of the State of Oregon or the United States.

(3) The board shall adopt rules and take all actions necessary to maintain compliance of the state deferred compensation plan with requirements for governmental deferred compensation plans imposed by the Internal Revenue Code and by regulations adopted pursuant to the Internal Revenue Code.

(4) The Public Employees Retirement System may contract with a private corporation or institution able and qualified to provide consolidated billing services, state plan participant enrollment services, educational services, state plan participant accounts, data processing, record keeping and other related services that are necessary or appropriate to the administration of the state deferred compensation plan under ORS 243.401 to 243.507. [1977 c.721 §8; 1983 c.789 §5; 1991 c.618 §7; 1997 c.179 §13]

**243.472 Costs of plan administration assessed against participants; apportionment of expenses; expenses not board budgeted items.** (1) ORS 243.401 to 243.507 shall be implemented and administered by the Public Employees Retirement Board so that no expense is incurred by the State of Oregon or the Public Employees Retirement Fund and so that the State of Oregon and the Public Employees Retirement System incur no liabilities other than those liabilities that may be imposed under ORS 243.401 to 243.507 or other law. In addition to the amounts that may be deducted by the State Treasurer pursuant to ORS 293.718, the Public Employees Retirement System may assess a charge against the accounts of state plan participants in the Deferred Compensation Fund. The charge may not exceed two percent of the balances of those accounts. Funds collected pursuant to the charge are continuously appropriated for and shall be used only to cover the costs incurred by the system to administer the state deferred compensation plan, to issue refunds and to pay costs incurred in investing the plan assets.

(2) For the purpose of implementing and administering the provisions of ORS 243.401 to 243.507, including implementation and administration of service agreements entered into with local governments under ORS 243.478, the Public Employees Retirement Board may designate fiscal periods. The board may apportion extraordinary expenses incurred during any fiscal period, including but not limited to expenses for equipment and actuarial studies, to subsequent fiscal periods for purposes of equitably distributing the burden of the expenses. The board may carry forward unexpended fees collected in one fiscal period to a later fiscal period for the payment of future expenses.

(3) In the event the assessment provided for in subsection (1) of this section is inadequate to meet the administrative expenses incurred by the system for the state deferred compensation plan, and these expenses are not carried over to another fiscal period, the excess expenses may be paid by an additional one-time assessment against the account balances of state plan participants in the Deferred Compensation Fund. The additional assessment shall be in an amount determined by the Public Employees Retirement Board to be sufficient to pay the excess expenses in the fiscal period in which the assessment is made. The one-time assessment is in addition to the regular assessment provided for in subsection (1) of this section.

(4) Deferred compensation benefit payments, and amounts payable as refunds, shall not for any purpose be deemed

expenses of the board and shall not be included in its biennial departmental budget. [1997 c.179 §14; 2001 c.716 §23]

(Local Government Deferred Compensation Plans)

**243.474 Investment of local government plan assets through investment program; agreement with Public Employees Retirement System; charges against participants.** (1) A local government that establishes a deferred compensation plan may invest all or part of the plan's assets through the deferred compensation investment program established by the Oregon Investment Council under ORS 243.421. Plan assets of a local government deferred compensation plan invested through the deferred compensation investment program are not subject to the limitations on investment imposed by ORS 294.033 and 294.035. Local governments that invest through the deferred compensation investment program are subject to the policies and procedures established by the council for the administration of the program.

(2) A local government that wishes to become a participating local government pursuant to this section must enter into a written agreement with the Public Employees Retirement System. The agreement must set forth the terms of the investment and the record keeping and related services to be performed by the system for the invested funds. The Public Employees Retirement Board may require that the local government enter into a service agreement under ORS 243.478 as a condition of an agreement under this subsection. If the local government and the system cannot reach an agreement under the provisions of this subsection, the local government may not become a participating local government.

(3) All funds invested by the council for a participating local government must be accounted for separately. Investment of funds under this section must be implemented and administered so that the State of Oregon incurs no expense or liability other than those liabilities that may be imposed under ORS 243.401 to 243.507 or other law.

(4) In addition to those amounts that may be deducted by the State Treasurer pursuant to ORS 293.718, the system may assess a charge against the total account balances of all participating local governments that is sufficient to reimburse the system for any additional costs of investing funds for participating local governments. The Public Employees Retirement Board shall not act as a trustee or be considered the trustee of any trust established by a local government deferred compensation plan.

(5) The terms of the agreement provided for in subsection (2) of this section shall govern the nature and extent of the information that must be provided to local government officers and employees about the investment of deferred compensation through the deferred compensation investment program. [1997 c.179 §15]

**243.476 Compliance with federal requirements.** (1) As a condition of allowing a local government to become a participating local government, and at any time thereafter, the Oregon Investment Council, the Public Employees Retirement Board or the Director of the Public Employees Retirement System may require that the local government provide proof that the local government deferred compensation plan complies with the provisions of section 457 of the Internal Revenue Code, as amended, that apply to governmental plans, including but not limited to any required declaration of trust related to plan assets and appointment of a trustee. The council, board or director may require an opinion of counsel or other assurance satisfactory to the council, board or director that participation of a local government deferred compensation plan in the deferred compensation investment program does not cause the State of Oregon, its agencies or employees to violate any federal or state laws or regulations related to investments and securities.

(2) Participating local governments shall take all actions that the Oregon Investment Council, the Public Employees Retirement Board or the Director of the Public Employees Retirement System, in their discretion, deem necessary for compliance by the deferred compensation investment program with all applicable federal and state laws or for qualification of the program for any exemptions from regulation available under those laws, including but not limited to the federal Securities Act of 1933, as amended, the Investment Company Act of 1940, as amended, and ORS chapter 59. [1997 c.179 §16]

**243.478 Plan administration agreements; costs.** (1) A participating local government and the Public Employees Retirement System may enter into a written agreement for the system to provide consolidated billing services, participant enrollment services, participant accounts, data processing, record keeping and other related services that are necessary or appropriate to the administration of the local government deferred compensation plan. The agreement may provide that the services be provided directly by the system or through contracts with other providers.

(2) Agreements under this section must require that the participating local government remain the responsible

administrator for the local government deferred compensation plan. The agreement may provide any additional terms and conditions that the system determines necessary for the purposes of offering the services described in subsection (1) of this section to local government deferred compensation plans, including proof of compliance under ORS 243.476. The system may require that participating local governments that enter into agreements with the system under this section have uniform provisions on plan administration and record keeping.

(3) The system may assess a charge, in an amount to be determined by the system, against the total account balances in the Deferred Compensation Fund of all local governments that have entered into service agreements under this section. The charge imposed under this subsection is in addition to any charges that may be assessed against local governments by the system under ORS 243.474 or deducted by the State Treasurer under ORS 293.718.

(4) In the event the assessment provided for in subsection (3) of this section is inadequate to meet the administrative expenses incurred by the system for local government deferred compensation plans during a fiscal period, and the expenses are not carried over to another fiscal period pursuant to ORS 243.472 (2), the excess expenses may be paid by an additional one-time assessment against the account balances in the Deferred Compensation Fund of participating local governments that have entered into service agreements under this section. [1997 c.179 §17]

**243.480** [1977 c.721 §9; 1983 c.789 §6; repealed by 1991 c.618 §20]

(Immunities)

**243.482 Immunity of governmental agencies from liability for plan administration or investment of funds.**

(1) A civil action for damages may not be brought against the state, the State Treasurer, the Oregon Investment Council, the Public Employees Retirement Board, or the officers or employees of the board by reason of:

(a) A breach of any duty in administering or investing of funds in the Deferred Compensation Fund;

(b) A breach of any duty in administering or investing of the funds of participating local governments; or

(c) Any losses suffered by a state plan participant or local plan participant or the beneficiaries of those participants because of the participant's choice of an investment option available through the deferred compensation investment program established under ORS 243.421.

(2) Any claim that the council, the board, the State Treasurer or the system, or any of their officers or employees, violated federal or state securities laws, including antifraud provisions, in the implementation or administration of ORS 243.401 to 243.507 is subject to the provisions of ORS 30.260 to 30.300. With respect to such claims, the state shall defend, save harmless and indemnify the State Treasurer, the system, members of the council, the board, and their officers and employees, as provided for other torts under the provisions of ORS 30.260 to 30.300.

(3) The limitations on liability established by this section do not include an exemption from any liability that may be imposed under the provisions of ORS chapter 59. Except to the extent that the state deferred compensation plan and the deferred compensation investment program are exempted from registration and licensing requirements under ORS 243.421, ORS chapter 59 applies to the administration and investment of the Deferred Compensation Fund, the state deferred compensation plan, local government deferred compensation plans and the deferred compensation investment program. [1997 c.179 §18]

**243.490** [1977 c.721 §7; repealed by 1997 c.179 §36]

**243.495** [1977 c.721 §13; 1983 c.789 §7; 1991 c.618 §8; repealed by 1997 c.179 §36]

(Deferred Compensation Advisory Committee)

**243.505 Deferred Compensation Advisory Committee.** (1) The Deferred Compensation Advisory Committee shall be appointed by the Public Employees Retirement Board, consisting of seven members with knowledge of deferred compensation plans.

(2) At the direction of the board, the committee shall advise the Public Employees Retirement Board on policies and procedures and such other matters as the board may request.

(3) The term of office of each member is three years, but a member serves at the pleasure of the board. Before the expiration of the term of a member, the board shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the Deferred Compensation Advisory Committee is entitled to compensation and expenses as provided in ORS 292.495.

(5) The Deferred Compensation Advisory Committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the committee determines.

(6) A majority of the members of the committee constitutes a quorum for the transaction of business.

(7) The Deferred Compensation Advisory Committee may meet at a place, day and hour determined by the committee. The committee also may meet at other times and places specified by the call of the chairperson or of a majority of the members of the committee. [1991 c.618 §10; 1997 c.179 §19; 1999 c.406 §1]

(Payment of Deferred Compensation to Alternate Payee)

**243.507 Payment of deferred compensation to alternate payee under court decree or order; procedure; compliance with federal requirements; administrative expenses; limitations.** (1) Notwithstanding any other provision of law, deferred compensation under a deferred compensation plan that would otherwise be paid by a public employer to an eligible employee shall be paid, in whole or in part, to an alternate payee if and to the extent expressly provided for in the terms of any 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. Any payment under this subsection to an alternate payee bars recovery by any other person.

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

(a) That payments to the alternate payee may commence on the date the employee separates from service or at such later date as may be allowed under the provisions of the deferred compensation plan.

(b) That the alternate payee may elect to receive payment in any manner available to the employee under the deferred compensation plan, without regard to the form of payment elected by the employee.

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

(d) That all or a portion of the deferred compensation account of the eligible employee be segregated in an account in the name of and for the benefit of the alternate payee, and that the alternate payee have the same rights and privileges as an eligible employee only concerning the investment or deposit of funds under the deferred compensation plan.

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

(4) Payment of all or any part of deferred compensation to an alternate payee under this section shall be reported for state and federal income tax purposes as payment to the eligible employee. Any amount required to be withheld for state or federal income tax purposes shall be withheld from the payment to the alternate payee.

(5) If an eligible employee transfers from a deferred compensation plan of a public employer to a deferred compensation plan established by another public employer, the new employer is not required to accept as part of the transfer any portion of the eligible employee's account with the former employer that is subject to decree, order or agreement requiring payment of that portion of the eligible employee's account to an alternate payee.

(6) If an eligible employee transfers from a deferred compensation plan of a public employer to a deferred compensation plan established by another public employer, the employee's previous employer shall not transfer to the plan established by the new employer any portion of the eligible employee's account that is subject to a decree, order or agreement requiring payment of that portion of the eligible employee's account to an alternate payee.

(7) The Public Employees Retirement Board, or the plan administrator for any local government deferred compensation plan, may adopt rules, policies or other regulations for the purpose of maintaining compliance of a deferred compensation plan with section 457 of the Internal Revenue Code or any other provision of federal law that affects the tax qualification of a deferred compensation plan. Rules, policies or other regulations adopted under this subsection may vary from the express language of this section if the rules, policies or other regulations are required for the purpose of maintaining compliance of a deferred compensation plan with section 457 of the Internal Revenue Code or any other provision of federal law that affects the tax qualification of a deferred compensation plan.

(8) Any public employer or deferred compensation plan that is required by the provisions of this section to make a

payment to an alternate payee shall charge and collect out of the deferred compensation payable to the eligible employee and the alternate payee actual and reasonable administrative expenses and related costs incurred by the public employer or deferred compensation plan in obtaining data and making calculations that are necessary by reason of the provisions of this section. A public employer or deferred compensation plan may not charge more than \$300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. A public employer or deferred compensation plan that charges and collects administrative expenses and related costs under the provisions of this subsection shall allocate those expenses and costs between the eligible employee and the alternate payee based on the fraction of the benefit received by the member or alternate payee.

(9) As used in this section:

(a) "Alternate payee" means a spouse, former spouse, child or other dependent of a member.

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

(c) "Eligible employee" means a state plan participant or local plan participant.

(d) "Public employer" means the state or a local government that establishes a deferred compensation plan. [1993 c.715 §5; 1997 c.179 §32]

**243.510** [1955 c.368 §1; repealed by 1975 c.609 §25]

**243.520** [1955 c.368 §2; repealed by 1975 c.609 §25]

**243.530** [1955 c.368 §3; repealed by 1975 c.609 §25]

**243.540** [1955 c.368 §4; repealed by 1975 c.609 §25]

#### DEPENDENT CARE ASSISTANCE PLAN

**243.550 Dependent care assistance plan.** (1) The state or any agency thereof shall establish in its accounting system allowances for employees to dedicate part of their salary to a dependent care assistance plan.

(2) Upon application by a public employee, the state or any agency thereof shall allow the employee to participate in a dependent care assistance plan at that place of employment.

(3) Portions of a public employee's salary dedicated to a dependent care assistance plan shall be included in any computation of benefits under that employee's public employee retirement program. [1987 c.621 §1]

**Note:** 243.550 to 243.585 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

#### EXPENSE REIMBURSEMENT PLAN

**243.555 Definitions for ORS 243.555 to 243.575.** As used in ORS 243.555 to 243.575:

(1) "Expense reimbursement plan" means a plan established by the Public Employees' Benefit Board in accordance with state and federal tax laws to reimburse qualified employee expenses.

(2) "Payroll disbursing officer" means the state officer or official authorized to disburse moneys in payment of salaries and wages of employees of a state agency.

(3) "Qualified employee expenses" includes expenses for dependent care, medical expenses, insurance premiums and any other expenses qualified for tax free reimbursement under the federal Internal Revenue Code.

(4) "State agency" means every state officer, board, commission, department or other activity of state government. [1987 c.621 §2; 1997 c.222 §46]

**Note:** See note under 243.550.

**243.560 Rulemaking; charge for administration; records.** (1) The Public Employees' Benefit Board may provide, administer and maintain an expense reimbursement plan for the benefit of eligible employees of this state.

(2) In providing an expense reimbursement plan, the board shall adopt rules to:

- (a) Determine the qualifications of eligible employees and the expenses eligible for reimbursement.
- (b) Establish limits on the amount by which an eligible employee's compensation may be reduced.
- (c) Establish procedures for enrollment of eligible employees in an expense reimbursement plan.
- (d) Establish requirements for verification of reimbursable expenses.

(3) The board may assess a charge to participating employees to pay the cost of administering the plan or may pay some or all of the cost from funds authorized to pay general administration expenses incurred by the board or from earnings on moneys deposited with the account administrator as designated by the board.

(4) The state shall maintain accounts and records necessary and appropriate to the efficient administration of ORS 243.550 to 243.585 and 657A.440 or that may be required under federal or state law. [1987 c.621 §3; 1989 c.160 §1; 1997 c.222 §47]

**Note:** See note under 243.550.

**243.565 Administration of plan.** (1) The Public Employees' Benefit Board may contract with a private organization for administration of an expense reimbursement program.

(2) An agreement or contract entered into pursuant to this section may provide that the administering organization shall exercise the authority and responsibility of the board in administering the expense reimbursement program. [1987 c.621 §6; 1997 c.222 §48]

**Note:** See note under 243.550.

**243.570 Compensation reduction agreement.** (1) After the adoption of an expense reimbursement plan by the Public Employees' Benefit Board, and prior to the effective date of the plan, the state shall enter into a compensation reduction agreement with eligible employees electing to participate in the plan for the purpose of funding reimbursements under the plan.

(2) The payroll disbursing officer is authorized, upon the enrollment of an eligible employee in the plan, to reduce each pay period the compensation of the eligible employee by the amount specified in the compensation reduction agreement. The payroll disbursing officer may pay that amount to the account administrator as designated by the board. All interest income shall be credited to the account. [1987 c.621 §4; 1989 c.160 §2; 1997 c.222 §49]

**Note:** See note under 243.550.

**243.575 Computation of retirement and pension benefits; taxable income.** (1) The amount by which an eligible employee's compensation is reduced under ORS 243.570 shall continue to be included as regular salary for the purpose of computing the retirement and pension benefits earned by the employee, but that amount shall not be considered current taxable income for the purpose of computing social security benefits or federal and state income taxes withheld on behalf of the employee.

(2) All amounts by which compensation is reduced under ORS 243.570 shall remain assets of this state until such time as the amounts are disbursed to or on behalf of eligible employees in accordance with the terms of compensation reduction agreements between the employees and the state. [1987 c.621 §§5,7]

**Note:** See note under 243.550.

**243.580** [1987 c.621 §8; repealed by 1989 c.160 §4]

**243.585 Accounting system allowances for dedication of salary.** (1) Any political subdivision in this state may establish in its accounting system allowances for employees to dedicate part of their salary to expenses for dependent care, medical expenses, insurance premiums and any other expenses qualified for tax-free reimbursement under the federal Internal Revenue Code.

(2) Upon application by a public employee, a political subdivision that has established allowances described in subsection (1) of this section may allow the employee to participate in an expense reimbursement plan qualified under the federal Internal Revenue Code at that place of employment.

(3) Portions of a public employee's salary dedicated to an expense reimbursement plan under this section shall be included in any computation of benefits under that employee's public employee retirement program.

(4) The amount by which an eligible employee's compensation is reduced under subsections (1) to (3) of this section shall continue to be included as regular salary for the purpose of computing the retirement and pension benefits earned by the employee, but that amount shall not be considered current taxable income for the purpose of computing social security benefits or federal and state income taxes withheld on behalf of the employee.

(5) All amounts by which compensation is reduced under subsection (4) of this section shall remain assets of the political subdivision until such time as the amounts are disbursed to or on behalf of eligible employees in accordance with the terms of compensation reduction agreements between the employees and the state.

(6) The amount by which an eligible employee's salary is reduced shall be deposited with the account administrator as designated by the Public Employees' Benefit Board for disbursement to, or on behalf of, eligible employees in accordance with the terms of compensation reduction agreements between the employees and the state. [1987 c.621 §§9, 10, 11; 1989 c.160 §3; 1997 c.222 §50]

**Note:** See note under 243.550.

**243.610** [1955 c.382 §1; repealed by 1975 c.609 §25]

**243.620** [1955 c.382 §2; 1961 c.507 §1; repealed by 1975 c.609 §25]

## COLLECTIVE BARGAINING

(Generally)

**243.650 Definitions for ORS 243.650 to 243.782.** As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. However, an appropriate bargaining unit cannot include both academically licensed and unlicensed or nonacademically licensed school employees.

Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation shall not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

(2) "Board" means the Employment Relations Board.

(3) "Certification" means official recognition by the board that a labor organization is the exclusive representative for all of the employees in the appropriate bargaining unit.

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. Nothing in this subsection shall be construed to prohibit a public employer and a certified or recognized representative of its employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law, so long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

(5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute are required by law to submit their differences to a third party for a final and binding decision.

(6) "Confidential employee" means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

(7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.

(b) "Employment relations" does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

(c) After June 6, 1995, "employment relations" shall not include subjects which the Employment Relations Board determines to have a greater impact on management's prerogative than on employee wages, hours, or other terms and

conditions of employment.

(d) "Employment relations" shall not include subjects that have an insubstantial or de minimis effect on public employee wages, hours, and other terms and conditions of employment.

(e) For school district bargaining, "employment relations" shall expressly exclude class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, the time between student classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS 329.704, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(f) For all other employee bargaining except school districts, "employment relations" expressly excludes staffing levels and safety issues (except those staffing levels and safety issues which have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(8) "Exclusive representative" means the labor organization that, as a result of certification by the board or recognition by the employer, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit.

(9) "Fact-finding" means identification of the major issues in a particular labor dispute by one or more impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.

(10) "Fair-share agreement" means an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more of the employees in an appropriate bargaining unit covered by such union security agreement declaring they desire that such agreement be rescinded, the board shall take a secret ballot of the employees in such unit and certify the results thereof to the recognized or certified bargaining representative and to the public employer. Unless a majority of the votes cast in an election favor such union security agreement, the board shall certify deauthorization thereof. A petition for deauthorization of a union security agreement must be filed not more than 90 calendar days after the collective bargaining agreement is executed. Only one such election shall be conducted in any appropriate bargaining unit during the term of a collective bargaining agreement between a public employer and the recognized or certified bargaining representative.

(11) "Final offer" means the proposed contract language and cost summary submitted to the mediator within seven days of the declaration of impasse.

(12) "Labor dispute" means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employee.

(13) "Labor organization" means any organization that has as one of its purposes representing employees in their employment relations with public employers.

(14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior to the date scheduled for an interest arbitration hearing.

(15) "Legislative body" means the Legislative Assembly, the city council, the county commission and any other board or commission empowered to levy taxes.

(16) "Managerial employee" means an employee of the State of Oregon who possesses authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, "managerial employee" shall not be construed to include faculty members at a community college, college or university.

(17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute between the public employer and the exclusive representative regarding employment relations.

(18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the

organization serving as exclusive representative of the employees. The payment shall be equivalent to regular union dues and assessments, if any, or shall be an amount agreed upon by the public employer and the exclusive representative of the employees.

(19) "Public employee" means an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under section 41, Article I of the Oregon Constitution, or persons who are confidential employees, supervisory employees or managerial employees.

(20) "Public employer" means the State of Oregon, and the following political subdivisions: Cities, counties, community colleges, school districts, special districts, mass transit districts, metropolitan service districts, public service corporations or municipal corporations and public and quasi-public corporations.

(21) "Public employer representative" includes any individual or individuals specifically designated by the public employer to act in its interests in all matters dealing with employee representation, collective bargaining and related issues.

(22) "Strike" means a public employee's refusal in concerted action with others to report for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his or her absence in whole or in part from the full, faithful or proper performance of his or her duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

(23) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement shall not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, no nurse, charge nurse or similar nursing position shall be deemed to be supervisory unless such position has traditionally been classified as supervisory.

(24) "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672.

(25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision. [Formerly 243.711; 1975 c.728 §1; 1978 c.5 §1; 1987 c.792 §1; 1995 c.286 §1; 1999 c.59 §61; 2001 c.104 §75]

**243.656 Policy statement.** The Legislative Assembly finds and declares that:

(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

(2) Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employee organizations can alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees;

(3) Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards employees and the public from injury, impairment and interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers and public employees;

(4) The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government; and

(5) It is the purpose of ORS 243.650 to 243.782 to obligate public employers, public employees and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers. [1973 c.536 §2]

**243.662 Rights of public employees to join labor organizations.** Public employees have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations. [Formerly 243.730]

**243.666 Certified or recognized labor organization as exclusive employee group representative; protection of employee nonassociation rights.** (1) A labor organization certified by the Employment Relations Board or recognized by the public employer is the exclusive representative of the employees of a public employer for the purposes of collective bargaining with respect to employment relations. Nevertheless any agreements entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof to the employer of the employee that this has been done.

(2) Notwithstanding the provisions of subsection (1) of this section, an individual employee or group of employees at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization, if:

(a) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.

(3) Nothing in this section prevents a public employer from recognizing a labor organization which represents at least a majority of employees as the exclusive representative of the employees of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative in accordance with ORS 243.686. [Formerly 243.735; 1983 c.740 §65]

(Unfair Labor Practices)

**243.672 Unfair labor practices; complaints; filing fees.** (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization. Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If such a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing shall prohibit the deduction of the payment-in-lieu-of-dues from the salaries or wages of such employees.

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

(e) Refuse to bargain collectively in good faith with the exclusive representative.

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

(h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign such contract.

(2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782.

(b) Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.

(c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(d) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

(e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(f) For any labor organization to engage in unconventional strike activity not protected for private sector employees under the National Labor Relations Act on June 6, 1995. This provision shall apply to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

(g) For a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other statewide elected officials are not considered members of a governing body for purposes of this paragraph. Nothing in this unfair labor practice provision shall be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

(3) An injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor practice complaint filed, a fee of \$250 is imposed. For each answer to an unfair labor practice complaint filed, a fee of \$100 is imposed. The Employment Relations Board may, in its discretion, order filing fee reimbursement to the prevailing party in any case in which the complaint or answer is found to have been frivolous or filed in bad faith. [1973 c.536 §4; 1995 c.286 §2]

**243.676 Processing of unfair labor practice complaints.** (1) Whenever a written complaint is filed alleging that any person has engaged in or is engaging in any unfair labor practice listed in ORS 243.672 (1) and (2) and 243.752, the Employment Relations Board or its agent shall:

(a) Cause to be served upon such person a copy of the complaint;

(b) Investigate the complaint to determine if a hearing on the unfair labor practice charge is warranted. If the investigation reveals that no issue of fact or law exists, the board may dismiss the complaint; and

(c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or an agent of the board not more than 20 days after a copy of the complaint has been served on the person.

(2) Where, as a result of the hearing required pursuant to subsection (1)(c) of this section, the board finds that any person named in the complaint has engaged in or is engaging in any unfair labor practice charged in the complaint, the board shall:

(a) State its findings of fact;

(b) Issue and cause to be served on such person an order that the person cease and desist from the unfair labor practice;

(c) Take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290;

(d) Designate the amount and award representation costs, if any, to the prevailing party; and

(e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal, including proceedings for Supreme Court review, of a board order.

(3) Where the board finds that the person named in the complaint has not engaged in or is not engaging in an unfair labor practice, the board shall:

(a) Issue an order dismissing the complaint; and

(b) Designate the amount and award representation costs, if any, to the prevailing party.

(4) The board may award a civil penalty to any person as a result of an unfair labor practice complaint hearing, in the aggregate amount of up to \$1,000 per case, without regard to attorney fees, if:

(a) The complaint has been affirmed pursuant to subsection (2) of this section and the board finds that the person who has committed, or who is engaging, in an unfair labor practice has done so repetitively, knowing that the action

taken was an unfair labor practice and took the action disregarding this knowledge, or that the action constituting the unfair labor practice was egregious; or

(b) The complaint has been dismissed pursuant to subsection (3) of this section, and that the complaint was frivolously filed, or filed with the intent to harass the other person, or both.

(5) As used in subsections (1) to (4) of this section, "person" includes but is not limited to individuals, labor organizations, associations and public employers. [1973 c.536 §5; 1979 c.219 §1; 1983 c.504 §1; 1983 c.559 §1]

(Representation Matters)

**243.682 Representation questions; investigation and hearings on petitions; elections.** If a question of representation exists, the Employment Relations Board shall:

(1) Upon application of a public employer, public employee or a labor organization, designate the appropriate bargaining unit, and in making its determination shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.

(2) Investigate and conduct a hearing on a petition that has been filed by:

(a) A labor organization alleging that 30 percent of the employees in an appropriate bargaining unit desire to be represented for collective bargaining by an exclusive representative;

(b) A labor organization alleging that 30 percent of the employees in an appropriate bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit;

(c) A public employer alleging that one or more labor organizations has presented a claim to the public employer requesting recognition as the exclusive representative in an appropriate bargaining unit; or

(d) An employee or group of employees alleging that 30 percent of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit.

(3) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to subsection (2) of this section that a question of representation exists, it shall conduct an election by secret ballot, at a time and place convenient for the employees of the jurisdiction and also within a reasonable period of time after the filing has taken place, and certify the results thereof. [1973 c.536 §7]

**243.686 Representation elections; ballot form; determining organization to be certified; consent elections.** (1) The Employment Relations Board shall place on the ballot only those labor organizations designated to be placed on the ballot by more than 10 percent of the employees in an appropriate bargaining unit.

(2) The ballot shall contain a provision for marking no representation.

(3) The board shall determine who is eligible to vote in the election and require the employer to provide a complete list of all such eligible persons, their names, addresses and job classifications to each candidate organization on the ballot at least 20 days before the election is to occur.

(4) The labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

(5) In any election where there are more than two choices on the ballot and none of the choices receives a majority of the votes cast, a runoff election shall be conducted. The ballot in the runoff election shall contain the two choices on the original ballot that received the largest number of votes.

(6)(a) In conducting an election involving the faculty of a university administered by the State Board of Higher Education, the Employment Relations Board shall place on the same ballot provisions for voting on two issues:

(A) For or against representation; and

(B) For those labor organizations designated to be placed on the ballot by more than 10 percent of the employees in an appropriate bargaining unit.

(b) If a majority of votes in paragraph (a)(A) of this subsection are cast in favor of no representation, the board shall not count the votes cast for labor organizations and shall certify no representative for the unit.

(c) If a majority of votes in paragraph (a)(A) of this subsection are cast in favor of representation, the board shall count the votes in paragraph (a)(B) of this subsection for the designated labor organizations and, if an organization receives a majority of those votes cast, shall certify that organization as the exclusive representative. If no labor organization receives a majority of the votes cast in paragraph (a)(B) of this subsection, a runoff election shall be conducted. The ballot in the runoff election shall contain only the two labor organizations that received the largest

number of votes.

(7) Nothing in this section is intended to prohibit the waiving of hearings by stipulation for the purpose of a consent election, in conformity with the rules of the board. [1973 c.536 §8; 1983 c.83 §27; 1997 c.11 §4]

**243.692 Limitation on successive representation elections.** (1) No election shall be conducted under ORS 243.682 (3) in any appropriate bargaining unit within which during the preceding 12-month period an election was held, nor during the term of any lawful collective bargaining agreement between a public employer and an employee representative. However, a contract with a term of more than three years shall be a bar for only the first three years of its term.

(2) Notwithstanding subsection (1) of this section, the Employment Relations Board shall rule that a contract will not be given the effect of barring an election if it finds that:

(a) Unusual circumstances exist under which the contract is no longer a stabilizing force; and

(b) An election should be held to restore stability to the representation of employees in the unit.

(3) A petition for an election where a contract exists must be filed not more than 90 calendar days and not less than 60 calendar days before the end of the contract period. If the contract is for more than three years, a petition for election may be filed any time after three years from the effective date of the contract. [1973 c.536 §9; 1999 c.572 §1]

(Bargaining; Mediation; Fact-Finding)

**243.696 State agency representatives in bargaining; Chief Justice as representative of judicial branch.** (1) The Oregon Department of Administrative Services shall represent all state agencies which have bargaining units in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of exempt, unclassified and classified employees, except those unclassified employees governed by the provisions of ORS 240.240. The department may delegate such collective bargaining responsibility to operating agencies as may be appropriate.

(2) The Chief Justice of the Supreme Court shall represent the judicial department in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of officers and employees of the courts of this state who are state officers or employees. The Chief Justice may delegate such collective bargaining responsibility to the state court administrator. [1973 c.536 §10; 1979 c.468 §25; 1983 c.763 §64]

**243.698 Expedited bargaining process; notice; implementation of proposed changes.** (1) When the employer is obligated to bargain over employment relations during the term of a collective bargaining agreement and the exclusive representative demands to bargain, the bargaining may not, without the consent of both parties and provided the parties have negotiated in good faith, continue past 90 calendar days after the date the notification specified in subsection (2) of this section is received.

(2) The employer shall notify the exclusive representative in writing of anticipated changes that impose a duty to bargain.

(3) Within 14 calendar days after the employer's notification of anticipated changes specified in subsection (2) of this section is sent, the exclusive representative may file a demand to bargain. If a demand to bargain is not filed within 14 days of the notice, the exclusive representative waives its right to bargain over the change or the impact of the change identified in the notice.

(4) The expedited bargaining process shall cease 90 calendar days after the written notice described in subsection (2) of this section is sent, and the employer may implement the proposed changes without further obligations to bargain. At any time during the 90-day period, the parties jointly may agree to mediation, but that mediation shall not continue past the 90-day period from the date the notification specified in subsection (2) of this section is sent. Neither party may seek binding arbitration during the 90-day period. [1995 c.286 §13]

**Note:** 243.698 was added to and made a part of 243.650 to 243.782 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**243.702 Renegotiation of invalid provisions in agreements.** (1) In the event any words or sections of a collective bargaining agreement are declared to be invalid by any court of competent jurisdiction, by ruling by the Employment Relations Board, by statute or constitutional amendment or by inability of the employer or the employees to perform to the terms of the agreement, then upon request by either party the invalid words or sections of the collective bargaining

agreement shall be reopened for negotiation.

(2) Renegotiation of a collective bargaining agreement pursuant to this section is subject to ORS 243.698. [1973 c.536 §11; 1995 c.286 §4]

**243.706 Agreement may provide for grievance and other disputes to be resolved by binding arbitration or other resolution process; powers of arbitrator.** (1) A public employer may enter into a written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding arbitration or any other dispute resolution process agreed to by the parties. As a condition of enforceability, any arbitration award that orders the reinstatement of a public employee or otherwise relieves the public employee of responsibility for misconduct shall comply with public policy requirements as clearly defined in statutes or judicial decisions including but not limited to policies respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or deadly force and serious criminal misconduct, related to work. In addition, with respect to claims that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based upon the public employer's alleged previous differential treatment of employees for the same or similar conduct, the arbitration award must conform to the following principles:

(a) Some misconduct is so egregious that no employee can reasonably rely on past treatment for similar offenses as a justification or defense to discharge or other discipline.

(b) Public managers have a right to change disciplinary policies at any time, notwithstanding prior practices, if such managers give reasonable advance notice to affected employees and the change does not otherwise violate a collective bargaining agreement.

(2) In addition to subsection (1) of this section, a public employer may enter into a written agreement with the exclusive representative of its employees providing that a labor dispute over conditions and terms of a contract may be resolved through binding arbitration.

(3) In an arbitration proceeding under this section, the arbitrators, or a majority of the arbitrators, may:

(a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

(A) Compel the attendance of a witness properly served by either party; and

(B) Require from either party the production of books, papers and documents the arbitrators find are relevant to the proceeding;

(b) Administer oaths or affirmations to witnesses; and

(c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

(4) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each party to the arbitration proceeding.

(5) The arbitrators issuing a subpoena under this section may rule on objections to the issuance of the subpoena.

(6) If a person fails to comply with a subpoena issued under this section or if a witness refuses to testify on a matter on which the witness may be lawfully questioned, the party who requested the subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the application of the attorney of record for the party or on the application of the arbitrators, or a majority of the arbitrators, the court may require the person or witness to show cause why the person or witness should not be punished for contempt of court to the same extent and purpose as if the proceedings were pending before the court.

(7) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). [1973 c.536 §12; 1995 c.286 §5; 1999 c.75 §1]

**243.710** [1963 c.579 §2; repealed by 1969 c.671 §1 (243.711 enacted in lieu of 243.710)]

**243.711** [1969 c.671 §2 (enacted in lieu of 243.710); 1973 c.536 §1; renumbered 243.650]

**243.712 Mediation upon failure to agree after 150-day period; impasse; final offer; fact-finding; effect of subsequent arbitration decision.** (1) If after a 150-calendar-day period of good faith negotiations over the terms of an agreement or 150 days after certification or recognition of an exclusive representative, no agreement has been signed, either or both of the parties may notify the Employment Relations Board of the status of negotiations and the need for assignment of a mediator. Any period of time in which the public employer or labor organization has been found by the Employment Relations Board to have failed to bargain in good faith shall not be counted as part of the

150-day period. This provision cannot be invoked by the party found to have failed to bargain in good faith. The parties may agree to request a mediator before the end of the 150-day period. Upon receipt of such notification, the board shall appoint a mediator and shall notify the parties of the appointment. The 150 days of negotiation shall begin when the parties meet for the first bargaining session and each party has received the other party's initial proposal.

(2) The board on the request of one of the parties shall render assistance to resolve the labor dispute according to the following schedule:

(a) Mediation shall be provided by the State Conciliation Service as provided by ORS 662.405 to 662.455. Any time after 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Notification of an impasse shall be filed in writing with the board, and copies of the notification shall be submitted to the parties on the same day the notification is filed with the board.

(b) Within seven days of the declaration of impasse, each party shall submit to the mediator in writing the final offer of the party, including a cost summary of the offer. Upon receipt of the final offers, the mediator shall make public the final offers, including any proposed contract language and each party's cost summary dealing with those issues, on which the parties have failed to reach agreement. Each party's proposed contract language shall be titled "Final Offer."

(c) Within 30 days after the mediator makes public the parties' final offers, the parties may agree and must jointly petition the Employment Relations Board to appoint a fact finder. If the parties jointly petition for fact-finding, a fact finder shall be appointed and the hearing conducted as provided in ORS 243.722.

(d) If no agreement has been reached 30 days after the mediator makes public the final offers, or if the parties participated in fact-finding, 30 days after the receipt of the fact finder's report, the public employer may implement all or part of its final offer, and the public employees have the right to strike. After a collective bargaining agreement has expired, and prior to agreement on a successor contract, the status quo with respect to employment relations shall be preserved until completion of impasse procedures except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise.

(e) Nothing in this section shall be construed to prohibit the parties at any time from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration. The arbitration shall be scheduled and conducted in accordance with ORS 243.746. The arbitration shall supersede the dispute resolution procedures set forth in ORS 243.726 and 243.746. [1973 c.536 §13; 1987 c.84 §1; 1995 c.286 §6]

**243.716 Use of volunteers not contracting out for services.** The use of volunteers to provide services shall not be considered contracting out for services. The use of reserve police personnel that does not require layoff shall not be considered contracting out for services. [1995 c.286 §14]

**Note:** 243.716 was added to and made a part of 243.650 to 243.782 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**243.720** [1963 c.579 §1; repealed by 1973 c.536 §39]

**243.722 Fact-finding procedure; costs; basis for findings and opinions; effect of subsequent arbitration decision.** (1) In carrying out the fact-finding procedures authorized in ORS 243.712 (2)(c), the public employer and the exclusive representative may select their own fact finder.

(2)(a) Where the parties have not selected their own fact finder within five days after written acknowledgment by the Employment Relations Board that fact-finding has been jointly initiated, the board shall submit to the parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon fact-finding interest arbitrations for which each person has issued an award shall be included. Each party shall alternately strike three names from the list. The order of striking shall be determined by lot. The remaining individual shall be designated the "fact finder."

(b) When both parties desire a panel of three fact finders instead of one as provided in this subsection, the board shall submit to the parties a list of seven qualified, unbiased, disinterested persons. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining three persons shall be designated "fact finders."

(c) When the parties have not designated the fact finder and notified the board of their choice within five days after receipt of the list, the board shall appoint the fact finder from the list. However, if one of the parties strikes the names

as prescribed in this subsection and the other party fails to do so, the board shall appoint the fact finder only from the names remaining on the list.

(d) The concerns regarding the bias and qualifications of the person designated by lot or by appointment may be challenged by a petition filed directly with the board. A hearing shall be held by the board within 10 days of filing the petition and the board shall issue a final and binding decision regarding the person's neutrality within 10 days of the hearing.

(3) The fact finder shall establish dates and places of hearings. Upon the request of either party or the fact finder, the board shall issue subpoenas. The fact finder may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute. Not more than 30 days from the date of conclusion of the hearings, the fact finder shall make written findings of fact and recommendations for resolution of the dispute and shall serve such findings and recommendations upon the parties and upon the board. Service may be personal or by registered or certified mail. Not more than five working days after the findings and recommendations have been sent, the parties shall notify the board and each other whether or not they accept the recommendations of the fact finder. If the parties do not accept them, the board, five days after receiving notice that one or both of the parties do not accept the findings, shall publicize the fact finder's findings of facts and recommendations.

(4) The parties may voluntarily agree at any time during or after fact-finding to submit any or all of the issues in dispute to final and binding arbitration, and if such agreement is reached prior to the publication of the fact finder's findings of facts and recommendations, the board shall not publicize such findings and recommendations.

(5) The cost of fact-finding shall be borne equally by the parties involved in the dispute.

(6) Fact finders shall base their findings and opinions on the matters prescribed in this subsection in accordance with the criteria set out in ORS 243.746 (4)(a) to (h). [1973 c.536 §14; 1995 c.286 §7]

(Strikes)

**243.726 Public employee strikes; equitable relief against certain strikes; effect of unfair labor practice charge on prohibited strike.** (1) Participation in a strike shall be unlawful for any public employee who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the Employment Relations Board or recognized by the employer; or is included in an appropriate bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbitration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290.

(2) It shall be lawful for a public employee who is not prohibited from striking under subsection (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike over mandatory subjects of bargaining provided:

(a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes have been complied with in good faith;

(b) Thirty days have elapsed since the board has made public the fact finder's findings of fact and recommendations or the mediator has made public the parties' final offers;

(c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike and stating the reasons for its intent to strike to the board and the public employer;

(d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or renegotiation under ORS 243.698; and

(e) The union's strike does not include unconventional strike activity not protected under the National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice under ORS 243.672 (2)(f).

(3)(a) Where the strike occurring or is about to occur creates a clear and present danger or threat to the health, safety or welfare of the public, the public employer concerned may petition the circuit court of the county in which the strike has taken place or is to take place for equitable relief including but not limited to appropriate injunctive relief.

(b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of Marion County.

(c) If, after hearing, the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall include an order that the labor dispute be submitted to final and binding arbitration within 10 days of the court's order pursuant to procedures in ORS 243.746.

(4)(a) No labor organization shall declare or authorize a strike of public employees that is or would be in violation of this section. When it is alleged in good faith by the public employer that a labor organization has declared or authorized a strike of public employees that is or would be in violation of this section, the employer may petition the

board for a declaration that the strike is or would be unlawful. The board, after conducting an investigation and hearing, may make such declaration if it finds that such declaration or authorization of a strike is or would be unlawful.

(b) When a labor organization or individual disobeys an order of the appropriate circuit court issued pursuant to enforcing an order of the board involving this section and ORS 243.736, they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the amount of the fine shall be at the discretion of the court.

(5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike. The board upon the filing of an unfair labor charge alleging that a public employer has committed an unfair labor practice during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the court of competent jurisdiction for appropriate relief or a restraining order.

(6) As used in this section, "danger or threat to the health, safety or welfare of the public" does not include an economic or financial inconvenience to the public or to the public employer that is normally incident to a strike by public employees. [1973 c.536 §16; 1979 c.257 §1; 1989 c.1089 §1; 1991 c.724 §28; 1995 c.286 §8]

**243.730** [1963 c.579 §3; 1973 c.536 §3; renumbered 243.662]

**243.732 Refusal to cross picket line as prohibited strike.** Public employees, other than those engaged in a nonprohibited strike, who refuse to cross a picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of ORS 243.726, pertaining to prohibited strikes. [1973 c.536 §23]

**243.735** [1969 c.671 §5; 1973 c.536 §6; renumbered 243.666]

**243.736 Strikes by certain emergency and security personnel.** (1) It shall be unlawful for any emergency telephone worker, police officer, firefighter or guard at a correctional institution or mental hospital to strike or recognize a picket line of a labor organization while in the performance of official duties.

(2) As used in this section, "emergency telephone worker" means a person whose official focal duties are receiving information through a 9-1-1 emergency reporting system under ORS 401.710 to 401.790, relaying such information to public or private safety agencies or dispatching emergency equipment or personnel in response to such information. [1973 c.536 §17; 1985 c.232 §1; 1989 c.793 §20]

**243.740** [1963 c.579 §4; repealed by 1973 c.536 §39]

(Arbitration)

**243.742 Binding arbitration when strike prohibited.** (1) It is the public policy of the State of Oregon that where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290, providing for compulsory arbitration, shall be liberally construed.

(2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation of a labor dispute, have not culminated in a signed agreement between the parties who are prohibited from striking, the public employer and exclusive representative of its employees shall include with the final offer filed with the mediator a petition to the Employment Relations Board in writing which initiates binding arbitration for bargaining units with employees referred to in ORS 243.736 (1). Arbitration shall be scheduled by mutual agreement not earlier than 30 days following the submission of the final offer packages to the mediator. Arbitration shall be scheduled in accordance with the procedures prescribed in ORS 243.746. [1973 c.536 §18; 1995 c.286 §9]

**243.745** [1969 c.671 §6; repealed by 1973 c.536 §39]

**243.746 Selection of arbitrator; arbitration procedure; last best offers; bases for findings and opinions; sharing arbitration costs.** (1) In carrying out the arbitration procedures authorized in ORS 243.712 (2)(e), 243.726 (3)(c) and 243.742, the public employer and the exclusive representative may select their own arbitrator.

(2) Where the parties have not selected their own arbitrator within five days after notification by the Employment Relations Board that arbitration is to be initiated, the board shall submit to the parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon interest arbitrations and fact-findings for which each person has

issued an award shall be included. Each party shall alternately strike three names from the list. The order of striking shall be determined by lot. The remaining individual shall be designated the “arbitrator”:

(a) When the parties have not designated the arbitrator and notified the board of their choice within five days after receipt of the list, the board shall appoint the arbitrator from the list. However, if one of the parties strikes the names as prescribed in this subsection and the other party fails to do so, the board shall appoint the arbitrator only from the names remaining on the list.

(b) The concerns regarding the bias and qualifications of the person designated by lot or by appointment may be challenged by a petition filed directly with the board. A hearing shall be held by the board within 10 days of filing of the petition and the board shall issue a final and binding decision regarding the person’s neutrality within 10 days of the hearing.

(3) The arbitrator shall establish dates and places of hearings. Upon the request of either party or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date of the hearing, each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects, and neither party may change the last best offer package unless pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for the hearing may thereafter be changed only for compelling reasons or by mutual consent of the parties. If either party provides notice of a change in its position within 24 hours of the 14-day deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute.

(4) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties’ last best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary priority to paragraphs (b) to (h) of this subsection as follows:

(a) The interest and welfare of the public.

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

(c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

(d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received.

(e) Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, “comparable” is limited to communities of the same or nearest population range within Oregon. Notwithstanding the provisions of this paragraph, the following additional definitions of “comparable” apply in the situations described as follows:

(A) For any city with a population of more than 325,000, “comparable” includes comparison to out-of-state cities of the same or similar size;

(B) For counties with a population of more than 400,000, “comparable” includes comparison to out-of-state counties of the same or similar size; and

(C) For the State of Oregon, “comparable” includes comparison to other states.

(f) The CPI-All Cities Index, commonly known as the cost of living.

(g) The stipulations of the parties.

(h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and order. The opinion and order shall be served on the parties and the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be based on the criteria prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute. [1973 c.536 §19; 1995 c.286 §10; 2001 c.104 §76]

**243.750** [1963 c.579 §5; repealed by 1969 c.671 §3 (243.751 enacted in lieu of 243.750)]

**243.751** [1969 c.671 §4 (enacted in lieu of 243.750); repealed by 1973 c.536 §39]

**243.752 Arbitration decision final; enforcement; effective date of compensation increases; modifying award.**

(1) A majority decision of the arbitration panel, under ORS 243.706, 243.726, 243.736, 243.742 and 243.746, if supported by competent, material and substantial evidence on the whole record, based upon the factors set forth in ORS 243.746 (4), shall be final and binding upon the parties. Refusal or failure to comply with any provision of a final and binding arbitration award is an unfair labor practice. Any order issued by the Employment Relations Board pursuant to this section may be enforced at the instance of either party or the board in the circuit court for the county in which the dispute arose.

(2) The arbitration panel may award increases retroactively to the first day after the expiration of the immediately preceding collective bargaining agreement. At any time the parties, by stipulation, may amend or modify an award of arbitration. [1973 c.536 §20; 1981 c.423 §1; 1983 c.504 §2]

**243.756 Employment conditions during arbitration.** During the pendency of arbitration proceedings that occur after the expiration of a previous collective bargaining agreement, all wages and benefits shall remain frozen at the level last in effect before the agreement expired, except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise. [1973 c.536 §21; 1995 c.286 §11]

**243.760** [1963 c.579 §6; repealed by 1973 c.536 §39]

**243.762 Alternative arbitration procedure under collective bargaining agreement.** Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290 is intended to prohibit a public employer and the exclusive representative of its employees from entering into a collective bargaining agreement which provides for a compulsory arbitration procedure which is substantially equivalent to ORS 243.742 to 243.756. [1973 c.536 §22]

(Miscellaneous)

**243.766 Board duties in administration of collective bargaining laws.** The Employment Relations Board shall:

(1) Establish procedures for, investigate and resolve any disputes concerning the designation of an appropriate bargaining unit.

(2) Establish procedures for, resolve disputes with respect to, and supervise the conduct of elections for the determination of employee representation.

(3) Conduct proceedings on complaints of unfair labor practices by employers, employees and labor organizations and take such actions with respect thereto as it deems necessary and proper.

(4) Petition the appropriate circuit court for enforcement of any order issued by the board pursuant to ORS 243.650 to 243.782.

(5) Hold such hearings and make such inquiries as it deems necessary to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents and issue subpoenas.

(6) Conduct studies on problems relating to public employment relations and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and labor organizations necessary to carry out its functions and responsibilities; make available to public employers, labor organizations, mediators, members of fact-finding boards, arbitrators and other concerned parties statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiation.

(7) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with ORS 183.310 to 183.550. [1973 c.536 §24]

**243.770** [1965 c.390 §5; 1971 c.582 §10; repealed by 1973 c.536 §39]

**243.772 Effect of collective bargaining laws on local charters and ordinances.** Any provisions of local charters and ordinances adopted pursuant thereto in existence on October 5, 1973, and not in conflict with the rights and duties established in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290 may remain in full force and effect after the Employment Relations Board has determined that no conflict exists. [1973 c.536 §15]

**243.775** [1995 c.600 §2; renumbered 243.800 in 1997]

**243.776 Rights and responsibilities of public employees.** The rights and responsibilities prescribed for state officers and employees in ORS 292.055 shall accrue to employees of all public employers. [1973 c.536 §32]

**243.778 Student representation when bargaining unit includes higher education faculty; duties of student representatives; confidentiality requirements.** (1) When an appropriate bargaining unit includes members of the faculty of an institution of higher education, the duly organized and recognized entity of student government at that institution may designate three representatives to meet and confer with the public employer of those members of the faculty and the exclusive representative of that appropriate bargaining unit prior to collective bargaining.

(2) During the course of collective bargaining between the public employer and the exclusive representative described in subsection (1) of this section, the representatives of student government designated under subsection (1) of this section shall:

(a) Be allowed to attend and observe all meetings between the public employer and the exclusive representative at which collective bargaining occurs;

(b) Have access to all written documents pertaining to the collective bargaining negotiations exchanged by the public employer and the exclusive representative, including copies of any prepared written transcripts of the bargaining session;

(c) Be allowed to comment in good faith during the bargaining sessions upon matters under consideration; and

(d) Be allowed to meet and confer with the exclusive representative and the public employer regarding the terms of an agreement between them prior to the execution of a written contract incorporating that agreement.

(3) Rules regarding confidentiality and release of information shall apply to student representatives in the same manner as employer and employee bargaining unit representatives.

(4) As used in this section:

(a) "Institution of higher education" means an institution under the control of the State Board of Higher Education.

(b) "Meet and confer" means the performance of the mutual obligation of the representatives of student government designated under subsection (1) of this section, the exclusive representative and the public employer, or any two of them, to meet at the request of one of them at reasonable times at a place convenient to all to conduct in good faith an interchange of views concerning the duties of each under this section, employment relations of the faculty, the negotiation of an agreement and the execution of a written agreement. [1975 c.679 §2]

**243.780** [1965 c.543 §§2,3,4; 1969 c.80 §35b; repealed by 1973 c.536 §39]

**243.782 Representation by counsel authorized.** (1) For purposes of proceedings commenced pursuant to ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290, a person may be represented by counsel or any other agent authorized by such person.

(2) As used in subsection (1) of this section, "person" means any individual, a labor organization or a public employer. [1973 c.536 §33]

**243.785** [1969 c.671 §7; repealed by 1973 c.536 §39]

**243.787** [1969 c.671 §8; repealed by 1973 c.536 §39]

**243.789** [1969 c.671 §11; repealed by 1973 c.536 §39]

**243.791** [1969 c.671 §12; repealed by 1973 c.536 §39]

**243.793** [1969 c.671 §9; repealed by 1973 c.536 §39]

**243.795** [1969 c.671 §10; repealed by 1973 c.536 §39]

## OPTIONAL RETIREMENT PLAN FOR HIGHER EDUCATION EMPLOYEES

**243.800 Optional retirement plan for certain academic and administrative higher education employees.** (1) Notwithstanding any provision of ORS chapter 238 or ORS 243.910 to 243.945, the State Board of Higher Education may establish and administer an optional retirement plan for administrative and academic employees of the Oregon University System who are eligible for membership in the Public Employees Retirement System. The optional retirement plan must be a qualified plan under the Internal Revenue Code, capable of accepting funds transferred under subsection (7) of this section without the transfer being treated as a taxable event under the Internal Revenue Code, and willing to accept those funds. Retirement and death benefits shall be provided under the plan by the purchase of annuity contracts, fixed or variable or a combination thereof, or by contracts for investments in mutual funds.

(2) The State Board of Higher Education shall select at least two life insurance companies providing fixed and variable annuities and at least two investment companies providing mutual funds, but not more than five companies in total, for the purpose of providing benefits under the optional retirement plan authorized by this section. The State Board of Higher Education shall establish selection criteria for the purpose of this subsection.

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

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

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

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

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

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

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

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

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

(6)(a) An administrative or academic employee who elects to participate in the optional retirement plan authorized by this section and who has not made contributions to the Public Employees Retirement System during each of five calendar years shall be considered by the Public Employees Retirement Board to be a terminated member under the provisions of ORS 238.095 effective as of the effective date of the election, and the amount credited to the member account of the member shall be transferred directly to the optional retirement plan by the Public Employees Retirement Board in the manner provided by subsection (7) of this section.

(b) An administrative or academic employee who elects to participate in the optional retirement plan authorized by this section and who has made contributions to the Public Employees Retirement System during each of five calendar years shall be considered to be an inactive member by the Public Employees Retirement Board and shall retain all the rights, privileges and options under ORS chapter 238 unless the employee withdraws the amounts credited to the member account of the member pursuant to ORS 238.265.

(7) Any withdrawals from the Public Employees Retirement Fund under subsection (6) of this section, whether by

termination under subsection (6)(a) of this section or by elective withdrawal under subsection (6)(b) of this section, shall be transferred directly to the optional retirement plan by the Public Employees Retirement Board and shall not be made available to the employee.

(8) An employee participating in the optional retirement plan authorized by this section shall contribute monthly an amount equal to the percentage of the employee's salary that the employee would otherwise have contributed as an employee contribution to the Public Employees Retirement System if the employee had not elected to participate in the optional retirement plan.

(9) The State Board of Higher Education shall contribute monthly to the optional retirement plan authorized under this section the percentage of salary of each employee participating in the plan equal to the percentage of salary that would otherwise have been contributed as an employer contribution on behalf of the employee to the Public Employees Retirement System if the employee had not elected to participate in the optional retirement plan.

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

(11) Benefits under the optional retirement plan authorized under this section are payable to employees who elect to participate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accordance with the terms of the annuity contracts or the terms of the contract with the mutual fund. Employees electing to participate in the plan agree that benefits payable under the plan are not obligations of the State of Oregon or of the Public Employees Retirement System. [Formerly 243.775; 2001 c.945 §66]

**Note:** 243.800 was added to and made a part of ORS chapter 243 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

## TAX-SHELTERED ANNUITIES FOR EDUCATIONAL EMPLOYEES

**243.810 Definitions for ORS 243.810 to 243.830.** As used in ORS 243.810 to 243.830, unless the context requires otherwise:

(1) "Educational institution" means an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on or an education service district.

(2) "Employer" means the State Board of Higher Education, any other state agency, a community college district, a school district, the Oregon Health and Science University or an education service district employing an individual who performs services for an educational institution. [1965 c.606 §1; 1979 c.227 §1; 1981 c.407 §2; 1995 c.162 §66]

**243.820 Agreement for payment of annuity premium or investment company share contribution.** (1) In order to obtain the advantages of section 403(b) of title 26, United States Code, or any equivalent provision of federal law, an employer subject to ORS 243.810 to 243.830 may agree with an individual employed by it, who performs services for an educational institution, that:

(a) The employee's salary will be reduced monthly by a stated amount, or the employee will forego monthly a salary increase of a stated amount; and

(b) The employer will contribute monthly an amount equal to the stated amount determined under paragraph (a) of this subsection for such month, as premiums for an annuity contract or for shares of an investment company registered under the federal Investment Act of 1940 for such employee. The amount contributed by the employer shall not exceed the stated amount.

(2) Notwithstanding any other provision of law, pursuant to an agreement under subsection (1) of this section, the stated amounts shall be forwarded by the employer as annuity premiums to the company or association with which it has entered into an annuity contract or to the investment company or its transfer agent for the benefit of such employee. [1965 c.606 §2; 1981 c.407 §1]

**243.830 Effect of agreement on retirement contributions and benefits.** An agreement executed pursuant to ORS 243.820 by an employee who is subject to ORS chapter 238 or a similar retirement program for public employees in no way affects the contributions to be made or the benefits to be provided for such employee under ORS chapter 238 or the other similar program. Reduction of salary or foregoing a salary increase by a stated amount under ORS 243.820 shall not be deemed a reduction in salary for the purpose of such contributions and benefits. [1965 c.606 §3;

## COACHES PLAN

**243.850 Qualified football coaches plan; participation; salary deduction.** (1) An eligible football coach and the State Board of Higher Education may enter into an agreement to provide that:

(a) The coach's salary will be reduced monthly by a stated amount that is not less than \$25 a month, or the coach will forgo monthly a salary increase of a stated amount that is not less than \$25 month; and

(b) The State Board of Higher Education will contribute monthly an amount equal to the stated amount determined under paragraph (a) of this subsection for the month to a designated qualified football coaches plan. The amount contributed by the employer shall not exceed the stated amount.

(2) The amount by which an eligible football coach's salary or wages is reduced by reason of the salary reduction or forgoing of a salary increase authorized by subsection (1) of this section shall continue to be included as regular compensation for the purpose of computing the retirement, pension and social security benefits earned by the coach, but that amount shall not be considered current taxable income for the purpose of computing federal and state income taxes withheld on behalf of that coach.

(3) For the purposes of this section:

(a) "Qualified football coaches plan" has that meaning given in 29 U.S.C. 1002(37).

(b) "Eligible football coach" means a staff member of the state system of higher education who primarily coaches football as a full-time employee of a four-year university described in 26 U.S.C. 170(b)(1)(A)(ii). [1991 c.604 §1; 1993 c.160 §1; 1997 c.11 §5]

## HIGHER EDUCATION SUPPLEMENTAL RETIREMENT BENEFITS

**243.910 Definitions for ORS 243.910 to 243.945.** As used in ORS 243.910 to 243.945:

(1) "Board" means the State Board of Higher Education for all institutions under the jurisdiction of that board as set forth in ORS 352.002, and for the Oregon Health and Science University means the Oregon Health and Science University Board of Directors.

(2) "Employees" means the persons appointed or employed by or under the authority of the board who hold academic rank as determined by the board.

(3) "System" means the Public Employees Retirement System established by ORS 238.600. [1965 c.297 §1; 1995 c.162 §67]

**243.920 Assisting employees to obtain supplemental benefits; employee contribution.** (1) The board may, in its discretion, assist its employees who are members of the Public Employees Retirement System and who elect to be so assisted by filing an election as provided in ORS 243.940, in the purchase of retirement benefits supplementing the benefits to which those employees are entitled under the system. For this purpose the board and its employees may enter into contracts with one or more life insurance or annuity companies.

(2) Each employee who elects to be assisted under subsection (1) of this section shall, as a condition to such election, either:

(a) Agree to contribute through payroll deductions toward the purchase of the supplementary retirement benefits a percentage of the annual salary of the employee in excess of \$4,800 equal to the percentage rate applicable to contributions made by the employee under the system, the amounts deducted from payrolls as employee contributions to be paid promptly by the board to the life insurance or annuity company in accordance with the terms of the applicable contract; or

(b) Agree either to a reduction in salary or to the foregoing of a salary increase in accordance with ORS 243.820, in an amount not less than the amount otherwise required to be contributed under paragraph (a) of this subsection. [1965 c.297 §2(1), (2); 1969 c.626 §1]

**243.930 Board contributions; investment; purchase of benefits.** (1) If an employee assisted under ORS 243.920 (1) has made contributions to the Public Employees Retirement Fund during each of five calendar years as provided in ORS chapter 238, the board shall contribute an amount toward the purchase of the supplemental retirement benefits equal to the contributions toward the purchase made by the employee on annual salary in excess of \$4,800. The amounts of those contributions by the board shall be paid promptly by the board to the life insurance or annuity

company in accordance with the terms of the applicable contract.

(2) If an employee assisted under ORS 243.920 (1) has not made contributions to the Public Employees Retirement Fund during each of five calendar years as provided in ORS chapter 238, the board shall contribute an amount toward the purchase of the supplemental retirement benefits equal to that which it would contribute for current service under the Public Employees Retirement System with respect to the annual salary in excess of \$4,800 of the employee if the employee contributed under the system on that part of the salary.

(3) The amounts of contributions by the board under subsection (2) of this section, at intervals designated by the Public Employees Retirement Board, shall be paid into the Public Employees Retirement Fund. The Public Employees Retirement Board shall keep a separate account for those amounts and prorated earnings thereof, and for investment purposes the moneys in the separate account shall be commingled with those of the Public Employees Retirement Fund and shall be invested in the same manner as moneys of the Public Employees Retirement Fund are invested.

(4) When an employee, with respect to whose annual salary in excess of \$4,800 the board has contributed under subsection (2) of this section, has made contributions to the Public Employees Retirement Fund during each of five calendar years as provided in ORS chapter 238, an amount equal to the contributions made under ORS 243.920 (2) shall be paid promptly to the life insurance or annuity company out of the separate account referred to in subsection (3) of this section, which hereby is appropriated for that purpose, for the purchase of additional supplemental retirement benefits for the employee. If the moneys in the separate account are not sufficient for that purpose, the amount of the deficiency shall be paid promptly by the board to the life insurance or annuity company for that purchase.

(5) If an employee is separated from the service of the board before the employee has made contributions to the Public Employees Retirement Fund during each of five calendar years as provided in ORS chapter 238, the amounts of contributions by the board paid into the Public Employees Retirement Fund under subsection (3) of this section and prorated earnings thereof shall remain in the separate account referred to in subsection (3) of this section for the purpose described in subsection (4) of this section, and the employee is not entitled to any part thereof or any benefit derived therefrom. [1965 c.297 §2(3), (4); 1969 c.626 §2]

**243.935 Employer assumption of full amount of employee contributions.** Pursuant to the provisions of ORS 238.205, an employer may “pick-up,” assume or pay the full amount of contributions which would otherwise have been made by an employee assisted under ORS 243.920, whether the employee agreed to make the contributions by payroll deduction, reduction in salary or the foregoing of a salary increase. [1989 c.799 §18]

**243.940 Employee election; cancellation of election.** (1) Employees may elect to be assisted by the board under ORS 243.920 (1), or may cancel that election, only as provided in this section.

(2) An employee who is a member of the Public Employees Retirement System before the board commences to assist its employees under ORS 243.920 (1) may elect to be so assisted by the board not later than one month before that commencement.

(3) An employee who becomes a member of the system after the board commences to assist its employees under ORS 243.920 (1) may elect to be so assisted by the board not later than one month before the employee becomes a member of the system.

(4) An employee who is a member of the system and who has not filed an election under subsection (2) or (3) of this section, or who has filed that election but thereafter canceled it, thereafter may elect to be assisted by the board under ORS 243.920 (1) only within the first 60 days of any calendar year commencing after the board commences to assist its employees under ORS 243.920 (1).

(5) An employee who has filed an election under subsection (2), (3) or (4) of this section may cancel that election only within the first 60 days of any calendar year commencing after the board commences to assist its employees under ORS 243.920 (1).

(6) An election or cancellation thereof under this section shall be filed in writing with the board. The board shall inform the Public Employees Retirement Board in writing of all elections or cancellations so filed. [1965 c.297 §3]

**243.945 Employees not eligible for assistance.** Notwithstanding ORS 243.910 to 243.945, any person who is hired on or after September 9, 1995, is not eligible to be assisted by the Oregon University System under the provisions of ORS 243.910 to 243.945. [1995 c.600 §4]

**243.950 Public Safety Memorial Fund.** The Public Safety Memorial Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned, if any, shall inure to the benefit of the Public Safety Memorial Fund. All moneys deposited in the fund are continuously appropriated to the Department of Public Safety Standards and Training for the purposes of ORS 243.954 to 243.970, to be expended by the Public Safety Memorial Fund Board, established by ORS 243.952, as provided in ORS 243.954 to 243.970. However, the board may not expend more than \$60,000 per biennium of the moneys for administrative costs of the board incurred under ORS 243.954 to 243.970. [1999 c.981 §3]

**Note:** 243.950 to 243.974 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**243.952 Public Safety Memorial Fund Board; officers; quorum; meetings; staff.** (1) There is established within the Board on Public Safety Standards and Training a Public Safety Memorial Fund Board consisting of six members appointed by the Governor from the membership of the Board on Public Safety Standards and Training. The Governor shall appoint members to represent each of the following:

- (a) Police officers;
- (b) Fire service professionals;
- (c) Corrections personnel; and
- (d) The public.

(2)(a) Before the expiration of the term of a member of the Public Safety Memorial Fund Board, the Governor shall appoint a successor whose term begins immediately upon the expiration of the term of the current member. A member is eligible for reappointment.

(b) In case of a vacancy for any cause, the Governor shall appoint a person to fill the office for the unexpired term.

(3)(a) The Public Safety Memorial Fund Board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.

(b) A majority of the members of the board constitutes a quorum for the transaction of business.

(4) The Public Safety Memorial Fund Board shall meet at least once every three months at a place, day and hour determined by the board. The board also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(5) The Department of Public Safety Standards and Training shall provide staff for the Public Safety Memorial Fund Board.

(6) Members of the Public Safety Memorial Fund Board are entitled to per diem and expenses as provided in ORS 292.495. [1999 c.981 §14]

**Note:** See note under 243.950.

**243.954 Definitions for ORS 243.956 and 243.958.** As used in this section and ORS 243.956 and 243.958:

(1) "Family member" means:

- (a) The spouse of a public safety officer.
- (b) A child of a public safety officer.
- (c) A person who qualifies as a dependent of a public safety officer for state income tax purposes.

(2) "Disability" means a disability resulting from a sudden, severe and unexpected injury.

(3) "Permanent total disability" has the meaning given that term in ORS 656.206.

(4) "Public safety officer" means:

- (a) Corrections officers, as defined in ORS 181.610.
- (b) Fire service professionals, as defined in ORS 181.610, and includes volunteer firefighters as defined in ORS 652.050.
- (c) Parole and probation officers, as defined in ORS 181.610.
- (d) Police officers, as defined in ORS 181.610, and includes reserve officers, as defined in ORS 181.610.
- (e) Youth correction officers, as defined in ORS 181.610. [1999 c.981 §4; 2001 c.493 §3]

**Note:** See note under 243.950.

**243.956 Eligibility for benefits from fund.** (1)(a) A person is eligible for an award of benefits from the Public Safety Memorial Fund if the person:

- (A)(i) Is a family member of a public safety officer who was killed in the line of duty or, if off duty, while interceding in a crime or who has a job-related permanent total disability; or
  - (ii) Is a public safety officer who has a job-related permanent total disability; and
  - (B) Has submitted an application for an award of benefits under ORS 243.958 within six months of the date of the public safety officer's death or disability.
- (b) Notwithstanding paragraph (a) of this subsection, a person is not eligible for an award of benefits if:
- (A) The person's actions were a substantial contributing factor to the death or disability of the public safety officer;
  - (B) The public safety officer's intentional misconduct caused the death or disability;
  - (C) The public safety officer intended to bring about the officer's death or disability;
  - (D) The public safety officer was voluntarily intoxicated at the time of the injury that caused the death or disability;
- or
- (E) The public safety officer was performing the officer's duties in a grossly negligent manner at the time of the injury that caused the death or disability.

(2) Within 14 days after notification from an employer that a public safety officer has been killed as described in subsection (1) of this section, the Public Safety Memorial Fund Board, or the chairperson of the board if the board is unable to meet in a timely manner, may pay \$25,000 to the family member designated on the beneficiary form described in ORS 243.974.

(3) The board:

(a) If alternative coverage is not provided, shall award benefits to the spouse and each child of the public safety officer in an amount sufficient to allow the spouse and children to purchase health and dental insurance comparable to that provided by the public safety officer:

- (A) For five years or until the spouse remarries, whichever occurs first; and
- (B) Until the child attains 18 years of age or, if the child is attending school, 23 years of age.

(b) If alternative coverage is not provided, shall award benefits to a public safety officer who has a job-related permanent total disability in an amount sufficient to allow the public safety officer to purchase health and dental insurance comparable to the health and dental insurance coverage that the public safety officer had immediately prior to the disability. The board shall award benefits under this paragraph for five years.

(c) May award benefits to an eligible applicant under ORS 243.958:

(A) Who is the spouse of the public safety officer or is a public safety officer who has a job-related permanent total disability, in an amount up to the equivalent of 12 monthly mortgage payments on the residence of the spouse or the public safety officer if there is no mortgage insurance to cover the cost.

(B) Who is a family member of the public safety officer or is a public safety officer who has a job-related permanent total disability, in the form of scholarships for the applicant's higher education. The board may award scholarships for an applicant's undergraduate degree only. In determining the amount of a scholarship, the board shall consider the applicant's financial need, the funds available in the Public Safety Memorial Fund and the anticipated demands on the fund. The board may not grant a scholarship in an amount exceeding the highest tuition charged by a state institution of higher education for an undergraduate program. [1999 c.981 §5; 2001 c.493 §1]

**Note:** See note under 243.950.

**Note:** Section 12, chapter 981, Oregon Laws 1999, provides:

**Sec. 12.** (1) Except as otherwise provided in subsection (2) of this section, sections 4 to 13 of this 1999 Act [243.954 to 243.970] apply to public safety officers who die or become disabled as described in section 5 of this 1999 Act [243.956] on or after the effective date of this 1999 Act [October 23, 1999].

(2) Subject to the availability of funds, the Public Safety Memorial Fund Board may award benefits under sections 4 to 13 of this 1999 Act to family members of public safety officers who died or became disabled as described in section 5 of this 1999 Act after January 1, 1997, but prior to the effective date of this 1999 Act. [1999 c.981 §12]

**243.958 Application for benefits.** (1) An applicant for benefits under this section must file an application under oath on a form furnished by the Public Safety Memorial Fund Board. The application must include:

- (a) The name and address of the applicant and the applicant's relationship to the public safety officer;
- (b) The public safety officer's name and date of death or disability, and the agency that employed the public safety officer;
- (c) The amount of benefits, payments or awards, if any, payable from any source, that the applicant has received or for which the applicant is eligible as a result of the death or disability of the public safety officer;
- (d) Releases authorizing the surrender to the board of reports, documents and other information relating to matters specified in this subsection; and
- (e) Any other information that the board determines is necessary.

(2) The board may require that an applicant submit with the application any materials that substantiate the facts stated in the application.

(3) If the board finds that an application does not contain the required information or materials or finds that the facts stated therein have not been substantiated, it shall notify the applicant in writing that specific additional items of information or materials are required and that the applicant has 180 days from the date of mailing of the notice in which to furnish the additional items to the board. Unless an applicant requests and is granted an extension of time by the board, the board shall reject with prejudice the claim of the applicant for failure to file the additional information or materials within the specified time.

(4) An applicant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the board has completed its consideration of the original application.

(5)(a) An applicant who is otherwise eligible for an award of benefits under ORS 243.956 may, notwithstanding ORS 243.956 (1)(a)(B), file an application requesting an award for higher education expenses at any time up to:

- (A) Five years after the date on which the applicant graduated from high school if:
  - (i) The applicant was a minor at the time the public safety officer died or became disabled; and
  - (ii) An application for an award of some type of benefits was filed by any eligible applicant within the six-month period required by ORS 243.956;
- (B) The date the applicant remarries, if the applicant is the surviving spouse of a public safety officer who was killed, or the date the applicant divorces the public safety officer, if the applicant is the spouse of a public safety officer who has a job-related permanent total disability; or
- (C) Five years after the date of the injury that caused the disability, if the applicant is a public safety officer who has a job-related permanent total disability.

(b) An applicant under paragraph (a)(A) of this subsection need not be the same person who made the original application. An application filed under this subsection is a supplemental application.

(c) The board may extend the time period for applying under paragraph (a)(A) of this subsection.

(6) Additional information or materials, an amended application or a supplemental application pursuant to subsection (3), (4) or (5) of this section is considered to have been filed at the same time as the original application.

[1999 c.981 §6; 2001 c.493 §2]

**Note:** See note under 243.950.

**243.960 Application information public record.** All information submitted to the Public Safety Memorial Fund Board by an applicant is a public record under ORS 192.410 and is open to public inspection unless the board determines that the information should be kept confidential. [1999 c.981 §7]

**Note:** See note under 243.950.

**243.962 Determination of award amount.** (1) In determining the amount of benefits for which an applicant is eligible, the Public Safety Memorial Fund Board shall:

- (a) Consider the facts stated in the application filed pursuant to ORS 243.958;
- (b) Consider the amount of funds available for benefit awards, as provided in the current biennial board budget approved by the Legislative Assembly or the Emergency Board, and the anticipated claims against those funds; and
- (c) Award the resultant amount to the applicant as provided in ORS 243.968.

(2) In determining the amount of an award to be made to an applicant, the board may consider the number and type of claims filed and the number and type of claims anticipated to be filed with the board during the current

biennial budget period. If the board determines that insufficient funds will be available during the current biennial budget period to pay all approved and anticipated claims, the board may prioritize claims or prorate the amounts awarded based upon the anticipated available funds. The board's decision to prioritize claims or prorate the amounts awarded is not subject to administrative or judicial review, including review under ORS 243.966. [1999 c.981 §8]

**Note:** See note under 243.950.

**243.964 Order.** After processing an application filed under ORS 243.958, the Public Safety Memorial Fund Board shall enter an order stating:

- (1) The board's findings of fact;
- (2) The board's decision as to whether benefits are due under ORS 243.954 to 243.970;
- (3) The amount of benefits, if any, that is due under ORS 243.954 to 243.970, as determined under ORS 243.962; and
- (4) The manner in which the board will pay the award pursuant to ORS 243.968. [1999 c.981 §9]

**Note:** See note under 243.950.

**243.966 Reconsideration; no review.** If an applicant disagrees with the order entered under ORS 243.964, the applicant may request reconsideration by the Public Safety Memorial Fund Board by filing the request with the board no later than 30 days after entry of the order. The board shall reconsider any order for which a request for reconsideration is timely received. The board shall notify the applicant of its decision on reconsideration within 30 days of the board's receipt of the request for reconsideration. The board's decision is final and not subject to administrative or judicial review. [1999 c.981 §10; 2001 c.493 §5]

**Note:** See note under 243.950.

**243.968 Payment of awards.** (1) The Public Safety Memorial Fund Board shall pay an award made under ORS 243.954 to 243.970. Payment may be made in a lump sum or in periodic payments to the applicant or payee or may be made directly to service providers.

(2) When a person eligible to receive an award under ORS 243.954 to 243.970 is younger than 18 years of age or is incompetent, the award may be paid to a relative, guardian or attorney of such person on behalf of and for the benefit of such person. In such case, the payee shall:

- (a) File an annual accounting of the award with the board; and
- (b) Take such other action that the board determines is necessary and appropriate for the benefit of the beneficiary of the award.

(3) Payment of claims is subject to availability of funds for benefit awards as provided in the board's current biennial budget approved by the Legislative Assembly or the Emergency Board. [1999 c.981 §11]

**Note:** See note under 243.950.

**243.970 Authority of board; rules; report.** To carry out the provisions and purposes of ORS 243.954 to 243.970, the Public Safety Memorial Fund Board may:

- (1) Request from law enforcement officials and from any other agency of the state or any local governmental unit such assistance and information as will enable the board to carry out its functions and duties.
- (2) Request the assistance of the State Treasurer.
- (3) Accept gifts, grants and donations from public and private sources. Such gifts, grants and donations shall be deposited by the board in the Public Safety Memorial Fund.
- (4) Adopt rules pursuant to ORS 183.310 to 183.550.
- (5) Determine all claims for awards filed with the board under ORS 243.958.
- (6) Report biennially to the Governor and the Legislative Assembly on its activities, pursuant to ORS 192.245. [1999 c.981 §13]

**Note:** See note under 243.950.

**243.972 Gifts; requirements for tax deductibility.** The Public Safety Memorial Fund Board shall investigate whether gifts made to the board under ORS 243.970 are, or could be, tax deductible contributions for the donors. If the gifts do not qualify as tax deductible contributions, the board shall take whatever actions are necessary to ensure that gifts meet the requirements for tax deductibility, unless such action would alter the purposes of ORS 243.954 to 243.970. [1999 c.981 §18]

**Note:** See note under 243.950.

**243.974 Designation of beneficiary; notice required when public safety officer killed.** (1) As used in this section, “public safety officer” has the meaning given that term in ORS 243.954.

(2) At the time a public safety officer is hired or utilized as a volunteer, the agency employing or utilizing the public safety officer shall provide the public safety officer with a designation of beneficiary form on which the public safety officer may designate one or more family members, as defined in ORS 243.954, to receive a benefit under ORS 243.956 (2). The agency shall keep a current copy of the beneficiary form in the public safety officer’s personnel file as long as the public safety officer is employed or utilized as a volunteer by the agency or until the beneficiary form is needed by the Public Safety Memorial Fund Board.

(3) No later than three days after a public safety officer is killed as described in ORS 243.956 (1), the agency employing or utilizing the public safety officer shall notify the board of that fact. [1999 c.981 §15; 2001 c.493 §4]

**Note:** See note under 243.950.