

## B-Engrossed House Bill 2189

Ordered by the Senate June 9  
Including House Amendments dated April 6 and Senate Amendments  
dated June 9

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Oregon Department of Administrative Services)

### SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides that salary used to determine benefits of members of Public Employees Retirement System includes wages of deceased member paid to spouse or dependent children.

Provides that rules for accrual of retirement credit by school employees under Oregon Public Service Retirement Plan apply to employees of Oregon Health and Science University engaged in teaching or other school activity.

**Modifies break in service rules governing membership in Oregon Public Service Retirement Plan by person who leaves public employment for more than six months.**

**Provides that person does not have break in service by reason of period of time during which person is absent from employment and receives disability retirement allowance.**

**Provides that person does not have break in service by reason of period of time during which person leaves employment based on seasonal nature of employment.**

**Provides that if person is vested in Public Employees Retirement System and was not providing service with participating employer in qualifying position on August 28, 2003, person has break in service only if person does not return to service with person's last pre-August 28, 2003, participating employer before January 1, 2006.**

**Requires that service under Oregon Public Service Retirement Plan by person who has break in service be treated as creditable service under ORS chapter 238 (Public Employees Retirement System) for purpose of any statute in ORS chapter 238 that requires that member complete specified period of creditable service as condition of retiring or receiving other benefit. Requires that creditable service under ORS chapter 238 by person who has break in service be treated as retirement credit under ORS chapter 238A (Oregon Public Service Retirement Plan) for purpose of any statute in ORS chapter 238A that requires that member have specified amount of retirement credit as condition of retiring or receiving other benefit.**

**Provides that earliest retirement age under Oregon Public Service Retirement Plan for person who has break in service is earliest retirement age for service under ORS chapter 238.**

**Requires that Public Employees Retirement Board commence payment of death benefit under Oregon Public Service Retirement Plan as of date of death of member. Allows surviving spouse or other person entitled to death benefit to elect to delay payment of benefit until specified date.**

**Requires Oregon Department of Administrative Services to establish more than one overtime average for class of state employees based on geographic placement of employees.**

**Requires that Public Employees Retirement Board use definition of "salary" provided by ORS chapter 238 for purpose of computing employee contributions of certain members of individual account program of Oregon Public Service Retirement Plan.**

**Establishes calculation for hours of service and retirement credit of community college academic employees under Oregon Public Service Retirement Plan.**

**Declares emergency, effective on passage.**

### A BILL FOR AN ACT

1  
2 Relating to public employee retirement; creating new provisions; amending ORS 238.005, 238A.005,  
3 238A.025, 238A.130, 238A.140, 238A.165, 238A.190, 238A.230 and 238A.305 and section 2a, chapter  
4 733, Oregon Laws 2003; and declaring an emergency.

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

6

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

**WAGES OF DECEASED MEMBERS**

**SECTION 1.** ORS 238.005 is amended to read:

238.005. For purposes of this chapter:

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

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

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

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

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

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

(5) "Creditable service" means any period of time during which an active member is being paid a salary by a participating public employer and for which benefits under this chapter are funded by employer contributions and earnings on the fund. For purposes of computing years of "creditable service," full months and major fractions of a month shall be considered to be one-twelfth of a year and shall be added to all full years. "Creditable service" includes all retirement credit received by a member.

(6) "Earliest service retirement age" means the age attained by a member when the member could first make application for retirement under the provisions of ORS 238.280.

(7) "Employee" includes, in addition to employees, public officers, but does not include:

(a) Persons engaged as independent contractors.

(b) Seasonal, emergency or casual workers whose periods of employment with any public employer or public employers do not total 600 hours in any calendar year.

(c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such persons.

(d) Persons employed and paid from federal funds received under the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other federal program intended primarily to alleviate unemployment. However, any such person shall be considered an "employee" if not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects to have the person so considered by an irrevocable written notice to the board.

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

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

(a) The average salary per calendar year paid by one or more participating public employers to an employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee, in which three years the employee was paid

1 the highest salary. The three calendar years in which the employee was paid the largest total salary  
2 may include calendar years in which the employee was employed for less than a full calendar year.  
3 If the number of calendar years of active membership before the effective date of retirement of the  
4 employee is three or fewer, the final average salary for the employee is the average salary per cal-  
5 endar year paid by one or more participating public employers to the employee in all of those years,  
6 without regard to whether the employee was employed for the full calendar year.

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

10 (9) "Firefighter" does not include a volunteer firefighter, but does include:

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

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

15 (10) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-  
16 lowing.

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

18 (12)(a) "Member" means a person who has established membership in the system and whose  
19 membership has not been terminated as described in ORS 238.095. "Member" includes active, inac-  
20 tive and retired members.

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

24 (c) "Inactive member" means a member who is absent from the service of all employers partic-  
25 ipating in the system, whose membership has not been terminated in the manner described by ORS  
26 238.095, and who is not retired for service or disability. "Inactive member" includes a member who  
27 would be an active member except that the person's only employment with a participating public  
28 employer is in a position that does not meet the requirements of ORS 238.015 (4).

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

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

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

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

35 (14) "Normal retirement age" means:

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

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

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

45 (16) "Police officer" includes:

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

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

8 (c) Employees of the Oregon Liquor Control Commission who are classified as enforcement of-  
9 ficers by the administrator of the commission.

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

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

14 (f) Parole and probation officers employed by the Department of Corrections, parole and pro-  
15 bation officers who are transferred to county employment under ORS 423.549 and adult parole and  
16 probation officers, as defined in ORS 181.610, who are classified as police officers for the purposes  
17 of this chapter by the county governing body. If a county classifies adult parole and probation offi-  
18 cers as police officers for the purposes of this chapter, and the employees so classified are repres-  
19 ented by a labor organization, any proposal by the county to change that classification or to cease  
20 to classify adult parole and probation officers as police officers for the purposes of this chapter is  
21 a mandatory subject of bargaining.

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

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

25 (i) Employees of the State Department of Agriculture who are classified as livestock police of-  
26 ficers by the Director of Agriculture.

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

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

30 (L) Corrections officers as defined in ORS 181.610.

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

33 (n) The Director of the Department of Corrections.

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

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

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

45 (r) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,

1 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who  
2 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the  
3 Department of Corrections or the Oregon Youth Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **SECTION 2.** ORS 238A.005 is amended to read:

16 238A.005. For the purposes of this chapter:

17 (1) "Active member" means a member of the pension program or the individual account program  
18 of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

19 (2) "Actuarial equivalent" means a payment or series of payments having the same value as the  
20 payment or series of payments replaced, computed on the basis of interest rate and mortality as-  
21 sumptions adopted by the board.

22 (3) "Board" means the Public Employees Retirement Board.

23 (4) "Eligible employee" means a person who performs services for a participating public em-  
24 ployer, including elected officials other than judges. "Eligible employee" does not include:

25 (a) Persons engaged as independent contractors;

26 (b) Aliens working under a training or educational visa;

27 (c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190,  
28 provided sheltered employment or make-work by a public employer;

29 (d) Persons categorized by a participating public employer as student employees;

30 (e) Any person who is an inmate of a state institution;

31 (f) Employees of foreign trade offices of the Economic and Community Development Department  
32 who live and perform services in foreign countries under the provisions of ORS 285A.090 (13);

33 (g) An employee of the Oregon Health and Science University actively participating in an al-  
34 ternative retirement program established by the university under ORS 353.250;

35 (h) Employees of the Oregon University System who are actively participating in an optional  
36 retirement plan offered under ORS 243.800;

37 (i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003,  
38 for membership in the system under the provisions of ORS chapter 238 or other law;

39 (j) Any person who belongs to a class of employees who are not eligible to become members of  
40 the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

41 (k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who  
42 continues to receive retirement benefits while employed; and

43 (L) Judges.

44 (5) "Firefighter" means:

45 (a) A person employed by a local government, as defined in ORS 174.116, whose primary job

1 duties include the fighting of fires;

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

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

7 (6) "Fund" means the Public Employees Retirement Fund.

8 (7)(a) "Hour of service" means:

9 (A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment  
10 by a participating public employer for performance of duties in a qualifying position; and

11 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave  
12 during which an employee does not perform duties but for which the employee is directly or indi-  
13 rectly paid or entitled to payment by a participating public employer for services in a qualifying  
14 position, as long as the hour is within the number of hours regularly scheduled for the performance  
15 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-  
16 thorized leave.

17 (b) "Hour of service" does not include any hour for which payment is made or due under a plan  
18 maintained solely for the purpose of complying with applicable workers' compensation laws or un-  
19 employment compensation laws.

20 (8) "Inactive member" means a member of the pension program or the individual account pro-  
21 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who  
22 is not a retired member and who is separated from all service with participating public employers  
23 and with employers who are treated as part of a participating public employer's controlled group  
24 under the federal laws and rules governing the status of the system and the fund as a qualified  
25 governmental retirement plan and trust.

26 (9) "Individual account program" means the defined contribution individual account program of  
27 the Oregon Public Service Retirement Plan established under ORS 238A.025.

28 (10) "Member" means an eligible employee who has established membership in the pension pro-  
29 gram or the individual account program of the Oregon Public Service Retirement Plan and whose  
30 membership has not been terminated under ORS 238A.110 or 238A.310.

31 (11) "Participating public employer" means a public employer as defined in ORS 238.005 that  
32 provides retirement benefits for employees of the public employer under the system.

33 (12) "Pension program" means the defined benefit pension program of the Oregon Public Service  
34 Retirement Plan established under ORS 238A.025.

35 (13) "Police officer" means a police officer as described in ORS 238.005.

36 (14) "Qualifying position" means one or more jobs with one or more participating public em-  
37 ployers in which an eligible employee performs 600 or more hours of service in a calendar year,  
38 excluding any service in a job for which benefits are not provided under the Oregon Public Service  
39 Retirement Plan pursuant to ORS 238A.070 (2).

40 (15) "Retired member" means a pension program member who is receiving a pension as provided  
41 in ORS 238A.180 to 238A.195.

42 (16)(a) "Salary" means the remuneration paid to an active member in return for services to the  
43 participating public employer, including remuneration in the form of living quarters, board or other  
44 items of value, to the extent the remuneration is includable in the employee's taxable income under  
45 Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection,

1 but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether  
2 those amounts are includable in taxable income.

3 (b) "Salary" includes the following amounts:

4 (A) Payments of employee and employer money into a deferred compensation plan that are made  
5 at the election of the employee.

6 (B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the  
7 employee.

8 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit  
9 plan by the employer at the election of the employee and that is not includable in the taxable in-  
10 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on August 29, 2003.

11 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the  
12 election of the employee and that is not included in the taxable income of the employee by reason  
13 of 26 U.S.C. 402(e)(3), as in effect on August 29, 2003.

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

19 (F) The amount of an employee contribution to the individual account program that is paid by  
20 the employer and deducted from the compensation of the employee, as provided under ORS 238A.335  
21 (1) and (2)(a).

22 (G) The amount of an employee contribution to the individual account program that is not paid  
23 by the employer under ORS 238A.335.

24 **(H) Wages of a deceased member paid to a surviving spouse or dependent children under**  
25 **ORS 652.190.**

26 (c) "Salary" does not include the following amounts:

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

29 (B) Payments made on account of an employee's death.

30 (C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid  
31 leave.

32 (D) Any severance payment, accelerated payment of an employment contract for a future period  
33 or advance against future wages.

34 (E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

35 (F) Payment for a leave of absence after the date the employer and employee have agreed that  
36 no future services in a qualifying position will be performed.

37 (G) Payments for instructional services rendered to institutions of the Department of Higher  
38 Education or the Oregon Health and Science University when those services are in excess of full-  
39 time employment subject to this chapter. A person employed under a contract for less than 12  
40 months is subject to this subparagraph only for the months covered by the contract.

41 (H) The amount of an employee contribution to the individual account program that is paid by  
42 the employer and is not deducted from the compensation of the employee, as provided under ORS  
43 238A.335 (1) and (2)(b).

44 (I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is  
45 determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a

1 fraction, the numerator of which is the number of months in the determination period and the de-  
2 nominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate  
3 cost-of-living adjustments authorized by the Internal Revenue Service.

4 (17) "System" means the Public Employees Retirement System.

5 **SECTION 3. The amendments to ORS 238.005 and 238A.005 by sections 1 and 2 of this 2005**  
6 **Act apply only to members of the Public Employees Retirement System who die on or after**  
7 **the effective date of this 2005 Act.**

8  
9 **HOURS OF SERVICE FOR OREGON HEALTH**  
10 **AND SCIENCE UNIVERSITY EMPLOYEES**

11  
12 **SECTION 4.** ORS 238A.140 is amended to read:

13 238A.140. (1) A pension program member shall accrue no retirement credit for any calendar year  
14 in which the member has fewer than 600 hours of service. A member may not accrue more than one  
15 full year of retirement credit in any calendar year.

16 (2) When an eligible employee becomes a member under ORS 238A.100, the board shall credit  
17 the eligible employee with retirement credit for the period of employment required of the employee  
18 under ORS 238A.100.

19 (3) Except as provided in subsection (5) of this section, a pension program member shall accrue  
20 one full year of retirement credit for each calendar year in which the member has 2,000 hours of  
21 service or more.

22 (4) Except as provided in subsection (5) of this section, a pension program member shall accrue  
23 a prorated year of retirement credit for each calendar year in which the member has 600 hours of  
24 service or more but fewer than 2,000 hours of service. The prorated retirement credit shall be cal-  
25 culated by dividing the number of hours of service by 2,000.

26 (5) If an active member of the pension program works as a school employee for one or more  
27 participating public employers during a calendar year, and the number of hours of service required  
28 for a full-time school employee employed by the participating public employer or employers is less  
29 than 2,000, the member accrues retirement credit for the calendar year as follows:

30 (a) The member accrues one full year of retirement credit for the calendar year if the member's  
31 hours of service as a school employee are equal to or greater than the number of hours of service  
32 required of a full-time school employee employed in the same position or a comparable position by  
33 the participating public employer or employers during the calendar year.

34 (b) The member accrues a prorated year of retirement credit for each calendar year in which  
35 the member has at least 600 hours of service but less than the number of hours of service required  
36 of a full-time school employee employed in the same position or a comparable position by the par-  
37 ticipating public employer or employers during the calendar year. The prorated retirement credit  
38 shall be calculated by dividing the number of the member's hours of service as a school employee  
39 by the number of hours of service required of a full-time school employee in the same position or a  
40 comparable position.

41 (c) The Public Employees Retirement Board shall adopt rules governing the accrual of retire-  
42 ment credit on a prorated basis by an active member who works in both a school employee position  
43 and another qualifying position during the same calendar year, or who works as a school employee  
44 for more than one participating public employer during the same calendar year.

45 (6) For purposes of this section, "school employee" means:

1 (a) A person who is employed by a common school district, a union high school district or an  
2 education service district;

3 (b) An employee of the State Board of Higher Education **or the Oregon Health and Science**  
4 **University who is** engaged in teaching or other school activity at an institution of higher educa-  
5 tion;

6 (c) An employee of the Department of Human Services, the Oregon Youth Authority, the De-  
7 partment of Corrections or the State Board of Education who is engaged in teaching or other school  
8 activity at an institution supervised by the authority, board or department; and

9 (d) An employee of a community college district who is engaged in teaching or other school  
10 activity.

11 **SECTION 5. The amendments to ORS 238A.140 by section 4 of this 2005 Act apply to**  
12 **service by an employee of the Oregon Health and Science University on or after August 29,**  
13 **2003.**

14  
15 **BREAK IN SERVICE**  
16 **(Injured Employees; Seasonal Employees)**  
17

18 **SECTION 6.** ORS 238A.025 is amended to read:

19 238A.025. (1) The Oregon Public Service Retirement Plan is established. The purpose of the  
20 Oregon Public Service Retirement Plan is to provide career public employees with a secure and fair  
21 retirement income at an affordable, stable and predictable cost to the taxpayers. The Oregon Public  
22 Service Retirement Plan shall be composed of a pension program, established and maintained with  
23 the Public Employees Retirement System as a tax-qualified governmental defined benefit plan, and  
24 an individual account program, established and maintained as a tax-qualified governmental defined  
25 contribution plan. The pension program and the individual account program are separate plans for  
26 purposes of federal income tax qualification, and the assets of each program must be held in a sep-  
27 arate trust for the exclusive benefit of the participants and beneficiaries in each program. The  
28 Public Employees Retirement Board may create separate accounts within the Public Employees Re-  
29 tirement Fund for the assets of the pension program and of the individual account program.

30 (2) Notwithstanding any provision of ORS chapter 238, any person who is employed by a par-  
31 ticipating public employer on or after August 29, 2003, and who has not established membership in  
32 the Public Employees Retirement System before August 29, 2003, is entitled to receive only the  
33 benefits provided under the Oregon Public Service Retirement Plan for periods of service with par-  
34 ticipating public employers on and after August 29, 2003, and has no right or claim to any benefit  
35 under ORS chapter 238 except as specifically provided by this chapter.

36 (3)(a) Any person who is an active member of the Public Employees Retirement System on Au-  
37 gust 28, 2003, is entitled to receive the benefits provided by ORS chapter 238 for all service per-  
38 formed before, on and after August 29, 2003, unless the person has a break in service on or after  
39 August 29, 2003. If the person has a break in service on or after August 29, 2003, the person is en-  
40 titled to receive the benefits provided by ORS chapter 238 for all creditable service performed before  
41 the break in service, and the benefits provided under the Oregon Public Service Retirement Plan for  
42 periods of service with participating public employers after the break in service.

43 (b) Except as provided in [*paragraphs (c), (d) and (e) of*] this subsection, a person has a break  
44 in service for the purposes of this subsection if the person performs no service with a participating  
45 public employer in a qualifying position for a period of six consecutive months.

1 (c) If a person leaves employment with a participating public employer for purposes that would  
2 qualify the person for family leave under ORS 659A.150 to 659A.186, the person has a break in ser-  
3 vice for the purposes of this subsection only if the person performs no service with a participating  
4 public employer in a qualifying position for a period of 12 consecutive months after leaving em-  
5 ployment with the participating public employer.

6 (d) If a person leaves employment with a participating public employer for career development  
7 purposes pursuant to written authorization of the participating public employer under a written  
8 policy of the employer that applies generally to the class of employees to which the member belongs,  
9 the person has a break in service for the purposes of this subsection only if the person performs no  
10 service with a participating public employer in a qualifying position for a period of 12 consecutive  
11 months after leaving employment with the participating public employer.

12 (e) A person does not have a break in service for the purposes of this subsection by reason of  
13 any period of time during which the person leaves employment with a participating public employer  
14 for the purpose of serving as a member of the Legislative Assembly during a legislative session.

15 **(f) A person does not have a break in service for the purposes of this subsection by rea-  
16 son of any period of time during which the person is absent from employment with a par-  
17 ticipating public employer and receives a disability retirement allowance under ORS 238.320.**

18 **(g) A person does not have a break in service for the purposes of this subsection by  
19 reason of any period of time during which the person leaves employment with a participating  
20 public employer based on the seasonal nature of the person's employment as long as the  
21 person returns to employment with the public employer before the expiration of 12 full cal-  
22 endar months.**

23 (4) A person establishes membership in the system before August 29, 2003, for the purposes of  
24 this section if:

25 (a) The person is a member of the system, or a judge member of the system, on August 28, 2003;  
26 or

27 (b) The person performed any period of service for a participating public employer before August  
28 29, 2003, that is credited to the six-month period of employment required of an employee under ORS  
29 238.015 before an employee may become a member of the system.

30 (5) Except as provided in this chapter, ORS chapter 238 does not apply to the Oregon Public  
31 Service Retirement Plan.

32 (6) The provisions of this section do not apply to a person elected or appointed as a judge as  
33 defined in ORS 238.500.

34 **SECTION 7. (1) ORS 238A.025 (3)(f) applies to any period of time before, on or after Au-  
35 gust 29, 2003, during which an employee is entitled to receive a disability retirement allow-  
36 ance under ORS 238.320.**

37 **(2) ORS 238A.025 (3)(g) applies to any period of time on or after August 29, 2003, during  
38 which an employee leaves employment with a participating public employer based on the  
39 seasonal nature of the employment.**

40  
41 **(Inactive Members on August 29, 2003)**

42  
43 **SECTION 8.** Section 2a, chapter 733, Oregon Laws 2003, provides:

44 **Sec. 2a.** (1) Any person who is an inactive member of the Public Employees Retirement System  
45 on [the day immediately preceding the effective date of this 2003 Act] **August 28, 2003**, is entitled to

1 receive the benefits provided by ORS chapter 238 for all service performed before [*the effective date*  
2 *of this 2003 Act*] **August 29, 2003. Except as provided in subsection (2) of this section**, the person  
3 is eligible only to receive the benefits provided under the Oregon Public Service Retirement Plan  
4 for periods of service with participating public employers on and after [*the effective date of this 2003*  
5 *Act*] **August 29, 2003**, unless the person returns to a qualifying position without a break in service  
6 as described in [*section 2 (3) of this 2003 Act*] **ORS 238A.025 (3)**. If the person returns to a qualifying  
7 position without a break in service as described in [*section 2 (3) of this 2003 Act*] **ORS 238A.025**  
8 **(3)**, the person shall be treated in the same manner as provided by [*section 2 (3) of this 2003 Act*]  
9 **ORS 238A.025 (3)** for persons who are active members of the system on [*the day immediately pre-*  
10 *ceding the effective date of this 2003 Act*] **August 28, 2003**. If the person has a break in service as  
11 described in [*section 2 (3) of this 2003 Act*] **ORS 238A.025 (3)**, but returns to a qualifying position  
12 before January 1, 2004, the person is entitled to receive the benefits provided by ORS chapter 238  
13 for all creditable service performed before January 1, 2004, and the benefits provided under the  
14 Oregon Public Service Retirement Plan for periods of service with participating public employers  
15 on and after January 1, 2004.

16 **(2) A person who is an inactive member of the Public Employees Retirement System on**  
17 **August 28, 2003, does not have a break in service as described in ORS 238A.025 (3) if:**

18 **(a) The person is vested, as defined in ORS 238.005, on August 28, 2003; and**

19 **(b) The person returns to qualifying employment before January 1, 2006, with the same**  
20 **participating public employer that employed the person immediately before the person be-**  
21 **came an inactive member.**

22 [(2)] (3) The provisions of this section do not apply to a person elected or appointed as a judge  
23 as defined in ORS 238.500.

24  
25 **(Credit under ORS Chapters 238 and 238A after Break in Service)**

26  
27 **SECTION 9. Section 10 of this 2005 Act is added to and made a part of ORS chapter 238.**

28 **SECTION 10. If a member is eligible to receive retirement benefits under both this**  
29 **chapter and ORS chapter 238A by reason of a break in service under ORS 238A.025, the**  
30 **Public Employees Retirement Board shall treat all service for which retirement credit is**  
31 **granted under ORS chapter 238A as though it were creditable service under this chapter for**  
32 **the purpose of any statute in this chapter that requires that a member complete a specified**  
33 **period of creditable service as a condition of retiring or receiving any other benefit under**  
34 **this chapter.**

35 **SECTION 11. Section 12 of this 2005 Act is added to and made a part of ORS chapter**  
36 **238A.**

37 **SECTION 12. If a member is eligible to receive retirement benefits under both this**  
38 **chapter and ORS chapter 238 by reason of a break in service under ORS 238A.025, the Public**  
39 **Employees Retirement Board shall treat all service for which retirement credit is granted**  
40 **under ORS chapter 238 as though it were retirement credit under this chapter for the pur-**  
41 **pose of any statute in this chapter that requires that a member have a specified amount of**  
42 **retirement credit as a condition of retiring or receiving any other benefit under this chapter.**

43  
44 **(Earliest Retirement Age after Break in Service)**  
45



1 **day of the month following the date on which one of the events specified in subsection (2)**  
2 **of this section occurs.**

3 [(2)] (4) If a member of the pension program is married on the effective date of retirement, or  
4 there exists any other person on the effective date of retirement who is constitutionally required to  
5 be treated in the same manner as a spouse for the purpose of retirement benefits, the pension pay-  
6 able to the member shall be as provided in subsection [(1)(b)] (1)(c) of this section with the spouse  
7 or other person as beneficiary, unless:

8 (a) The member has selected [*the*] **a different** pension provided for in subsection [(1)(a)] (1) of  
9 this section with the spouse or other person as beneficiary; or

10 (b) The member submits to the board a document signed by the spouse or other person, ac-  
11 knowledged by a notary public, consenting to a different option or a different beneficiary.

12 [(3)] (5) Subsection [(2)] (4) of this section does not apply to a pension benefit that is paid in a  
13 lump sum under ORS 238A.195.

14 **SECTION 15.** ORS 238A.230 is amended to read:

15 238A.230. (1) If a member of the pension program who is vested dies before the member's effec-  
16 tive date of retirement, the Public Employees Retirement Board shall pay the death benefit provided  
17 for in this section to the spouse of the member or to any other person who is constitutionally re-  
18 quired to be treated in the same manner as a spouse for the purpose of retirement benefits.

19 (2)(a) The death benefit to be paid under this section shall be for the life of the spouse or other  
20 person who is constitutionally required to be treated in the same manner as a spouse, and shall be  
21 the actuarial equivalent of 50 percent of the pension that would otherwise have been paid to the  
22 deceased member.

23 (b) For the purpose of paragraph (a) of this subsection, the amount of the pension that would  
24 otherwise have been paid to the deceased member shall be calculated:

25 (A) As of the date of death if the member dies after the earliest retirement date for the member  
26 under ORS 238A.165; or

27 (B) As if the member became an inactive member on the date of death and thereafter retired  
28 at the earliest retirement date if the member dies before the earliest retirement date for the member  
29 under ORS 238A.165.

30 [*(3) The board may commence payment of the death benefit provided by this section:]*

31 [*(a) As of the date of death if the member dies after the earliest retirement date for the member*  
32 *under ORS 238A.165;]*

33 [*(b) As of the date the member would have attained 55 years of age if the member is not a police*  
34 *officer or firefighter at the time of death and the member dies before the earliest retirement date for the*  
35 *member under ORS 238A.165; or]*

36 [*(c) As of the date the member would have attained 50 years of age if the member is a police officer*  
37 *or firefighter at the time of death and the member dies before the earliest retirement date for the*  
38 *member under ORS 238A.165.]*

39 [(4)(a) *Except as provided in paragraph (b) of this subsection, a spouse or other person who is*  
40 *constitutionally required to be treated in the same manner as a spouse must begin receiving the death*  
41 *benefit provided for in this section before December 31 of the calendar year after the calendar year in*  
42 *which the member died.]*

43 [(b) *A surviving spouse or other person may elect to delay payment of the death benefit, but pay-*  
44 *ment must commence no later than December 31 of the calendar year in which the member would have*  
45 *reached age 70-1/2 years.]*



1 the definition of “salary” provided by ORS 238.005. If a person who is subject to this sub-  
2 section has a break in service as described in ORS 238A.025, the board shall use the definition  
3 of “salary” provided by ORS 238A.005 for the purpose of determining the amount of the em-  
4 ployee contribution to the individual account program for all service by the member after  
5 the break in service.

6 **SECTION 18.** The amendments to ORS 238A.305 by section 17 of this 2005 Act apply to  
7 all employee contributions made under ORS 238A.305 on or after January 1, 2004.

8  
9 **ACADEMIC EMPLOYEES OF COMMUNITY COLLEGES**

10  
11 **SECTION 19.** Section 20 of this 2005 Act is added to and made a part of ORS 238A.100 to  
12 238A.245.

13 **SECTION 20.** (1) Subject to ORS 238A.140 (6), an academic employee of a community  
14 college who during a calendar year is employed 0.375 full-time equivalent on a 12-month basis,  
15 or is employed 0.50 full-time equivalent on a nine-month basis, is considered to have per-  
16 formed 600 hours of service in the calendar year for all purposes under this chapter.

17 (2) Subject to ORS 238A.140 (6), an academic employee of a community college who during  
18 a calendar year is employed 1.0 full-time equivalent on a nine-month or 12-month basis is  
19 considered to have performed 1,200 hours of service in the calendar year for all purposes  
20 under this chapter.

21 (3) The governing body of a community college shall determine the duties of an academic  
22 employee of the community college that constitute a full-time equivalent in any discipline  
23 or academic activity for the purposes of this section.

24 **SECTION 21.** ORS 238A.140, as amended by section 4 of this 2005 Act, is amended to read:

25 238A.140. (1) A pension program member shall accrue no retirement credit for any calendar year  
26 in which the member has fewer than 600 hours of service. A member may not accrue more than one  
27 full year of retirement credit in any calendar year.

28 (2) When an eligible employee becomes a member under ORS 238A.100, the board shall credit  
29 the eligible employee with retirement credit for the period of employment required of the employee  
30 under ORS 238A.100.

31 (3) Except as provided in [subsection (5) of] this section, a pension program member shall accrue  
32 one full year of retirement credit for each calendar year in which the member has 2,000 hours of  
33 service or more.

34 (4) Except as provided in [subsection (5) of] this section, a pension program member shall accrue  
35 a prorated year of retirement credit for each calendar year in which the member has 600 hours of  
36 service or more but fewer than 2,000 hours of service. The prorated retirement credit shall be cal-  
37 culated by dividing the number of hours of service by 2,000.

38 (5) If an active member of the pension program works as a school employee for one or more  
39 participating public employers during a calendar year, and the number of hours of service required  
40 for a full-time school employee employed by the participating public employer or employers is less  
41 than 2,000, the member accrues retirement credit for the calendar year as follows:

42 (a) The member accrues one full year of retirement credit for the calendar year if the member’s  
43 hours of service as a school employee are equal to or greater than the number of hours of service  
44 required of a full-time school employee employed in the same position or a comparable position by  
45 the participating public employer or employers during the calendar year.

1 (b) The member accrues a prorated year of retirement credit for each calendar year in which  
2 the member has at least 600 hours of service but less than the number of hours of service required  
3 of a full-time school employee employed in the same position or a comparable position by the par-  
4 ticipating public employer or employers during the calendar year. The prorated retirement credit  
5 shall be calculated by dividing the number of the member's hours of service as a school employee  
6 by the number of hours of service required of a full-time school employee in the same position or a  
7 comparable position.

8 (c) The Public Employees Retirement Board shall adopt rules governing the accrual of retire-  
9 ment credit on a prorated basis by an active member who works in both a school employee position  
10 and another qualifying position during the same calendar year, or who works as a school employee  
11 for more than one participating public employer during the same calendar year.

12 **(6) An active member of the pension program who works as an academic employee of a**  
13 **community college during a calendar year:**

14 (a) **Accrues one full year of retirement credit for the calendar year if the member is**  
15 **employed 1.0 full-time equivalent on a nine-month or 12-month basis.**

16 (b) **Accrues a prorated year of retirement credit for each calendar year in which the**  
17 **member performs the services of less than 1.0 full-time equivalent. The member is entitled**  
18 **to prorated retirement credit under this paragraph in an amount determined by dividing by**  
19 **1,200 the number of hours calculated to be the equivalent of the percentage in excess of 0.375**  
20 **full-time equivalent for a member employed on a 12-month basis, or in excess of 0.50 full-time**  
21 **equivalent for a member employed on a nine-month basis.**

22 [(6)] (7) For purposes of this section, "school employee" means:

23 (a) A person who is employed by a common school district, a union high school district or an  
24 education service district;

25 (b) An employee of the State Board of Higher Education or the Oregon Health and Science  
26 University who is engaged in teaching or other school activity at an institution of higher education;

27 (c) An employee of the Department of Human Services, the Oregon Youth Authority, the De-  
28 partment of Corrections or the State Board of Education who is engaged in teaching or other school  
29 activity at an institution supervised by the authority, board or department; and

30 (d) An employee of a community college district [*who is engaged in teaching or other school ac-*  
31 *tivity*] **other than an academic employee.**

32 **SECTION 22. Section 20 of this 2005 Act and the amendments to ORS 238A.140 by section**  
33 **21 of this 2005 Act apply to all service performed by an academic employee of a community**  
34 **college on or after August 29, 2003.**

35  
36 **CAPTIONS**

37  
38 **SECTION 23. The unit captions used in this 2005 Act are provided only for the conven-**  
39 **ience of the reader and do not become part of the statutory law of this state or express any**  
40 **legislative intent in the enactment of this 2005 Act.**

41  
42 **EMERGENCY CLAUSE**

43  
44 **SECTION 24. This 2005 Act being necessary for the immediate preservation of the public**  
45 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**

1 **on its passage.**

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