

**Enrolled**  
**House Bill 2189**

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)

CHAPTER .....

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Normal retirement age" means:

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

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

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

(16) "Police officer" includes:

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

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

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

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

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

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

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

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

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

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

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

(L) Corrections officers as defined in ORS 181.610.

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

(n) The Director of the Department of Corrections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Persons engaged as independent contractors;

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

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

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

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

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

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

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

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

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

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

(L) Judges.

(5) "Firefighter" means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16)(a) "Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection, but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in taxable income.

(b) "Salary" includes the following amounts:

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

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

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

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

(E) Retroactive payments made to an employee to correct a clerical error, pursuant to an award by a court or by order of or pursuant to a conciliation agreement with an administration agency charged with enforcing federal or state law protecting the employee's rights to employment or

wages, which shall be allocated to and deemed paid in the periods in which the work was done or in which the work would have been done.

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

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

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

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

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

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

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

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

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

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

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

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

(I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

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

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

### **HOURS OF SERVICE FOR OREGON HEALTH AND SCIENCE UNIVERSITY EMPLOYEES**

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

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

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

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

(4) Except as provided in subsection (5) of this section, a pension program member shall accrue a prorated year of retirement credit for each calendar year in which the member has 600 hours of

service or more but fewer than 2,000 hours of service. The prorated retirement credit shall be calculated by dividing the number of hours of service by 2,000.

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

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

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

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

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

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

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

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

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

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

#### **BREAK IN SERVICE (Injured Employees; Seasonal Employees)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 7.** (1) ORS 238A.025 (3)(f) applies to any period of time before, on or after August 29, 2003, during which an employee is entitled to receive a disability retirement allowance under ORS 238.320.

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

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

**SECTION 8.** Section 2a, chapter 733, Oregon Laws 2003, is amended to read:

**Sec. 2a.** (1) Any person who is an inactive member of the Public Employees Retirement System on [the day immediately preceding the effective date of this 2003 Act] **August 28, 2003**, is entitled to receive the benefits provided by ORS chapter 238 for all service performed before [the effective date of this 2003 Act] **August 29, 2003**. **Except as provided in subsection (2) of this section**, the person is eligible only to receive the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers on and after [the effective date of this 2003 Act] **August 29, 2003**, unless the person returns to a qualifying position without a break in service as described in [section 2 (3) of this 2003 Act] **ORS 238A.025 (3)**. If the person returns to a qualifying position without a break in service as described in [section 2 (3) of this 2003 Act] **ORS 238A.025 (3)**, the person shall be treated in the same manner as provided by [section 2 (3) of this 2003 Act] **ORS 238A.025 (3)** for persons who are active members of the system on [the day immediately preceding the effective date of this 2003 Act] **August 28, 2003**. If the person has a break in service as described in [section 2 (3) of this 2003 Act] **ORS 238A.025 (3)**, but returns to a qualifying position before January 1, 2004, the person is entitled to receive the benefits provided by ORS chapter 238 for all creditable service performed before January 1, 2004, and the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers on and after January 1, 2004.

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

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

(b) The person returns to qualifying employment before January 1, 2006, with the same participating public employer that employed the person immediately before the person became an inactive member.

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

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

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

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

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

**SECTION 12.** If a member is eligible to receive retirement benefits under both this chapter and ORS chapter 238 by reason of a break in service under ORS 238A.025, the Public Employees Retirement Board shall treat all service for which retirement credit is granted under ORS chapter 238 as though it were retirement credit under this chapter for the pur-

pose of any statute in this chapter that requires that a member have a specified amount of retirement credit as a condition of retiring or receiving any other benefit under this chapter.

**(Earliest Retirement Age after Break in Service)**

**SECTION 13.** ORS 238A.165 is amended to read:

238A.165. (1) Except as provided in [subsection (2) of] this section, earliest retirement age for a member of the pension program is 55 years of age.

(2) Earliest retirement age for a member of the pension program who retires from service as a police officer or firefighter is 50 years of age if the member has held a position as a police officer or firefighter continuously for a period of not less than five years immediately before the effective date of retirement. Earliest retirement date for a member described in this subsection is not later than the date the member reaches 55 years of age.

**(3) If a member has a break in service under ORS 238A.025 and is entitled to receive a retirement allowance under ORS chapter 238 in addition to a pension under this chapter, earliest retirement age under this chapter is the age attained by a member when the member could first make application for retirement under the provisions of ORS 238.280.**

[(3)] (4) A member of the pension program who has reached earliest retirement age may retire on an early retirement date that is the first day of any month on or after the member has reached [the] earliest retirement age.

**DEATH BENEFITS**

**SECTION 14.** ORS 238A.190 is amended to read:

238A.190. (1) Before the effective date of retirement of a member of the pension program, the member may elect to convert the pension calculated under ORS 238A.180 or 238A.185 into the actuarial equivalent pension as follows:

(a) A pension payable monthly during the member's life and, after the death of the member, continuing at the same monthly amount for the life of a beneficiary named by the member in a written designation filed with the Public Employees Retirement Board at the time of election.

**(b) A pension payable monthly during the member's life and, subject to modification under subsection (2) of this section, after the death of the member, continuing at the same monthly amount for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.**

[(b)] (c) A pension payable monthly during the member's life and, after the death of the member, continuing at one-half of the monthly amount paid to the member for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.

**(d) A pension payable monthly during the member's life and, subject to modification under subsection (2) of this section, after the death of the member, continuing at one-half of the monthly amount paid to the member for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.**

(2) A retired member who elects to receive a pension under subsection (1)(b) or (d) of this section shall receive the pension that the member would have received on the effective date of retirement under ORS 238A.180 or 238A.185 adjusted by the actual amount of any cost-of-living or other post-retirement adjustments made to the original allowance since the effective date of retirement, if:

(a) The spouse or other beneficiary dies after the member retires; or

(b) The marriage relationship or other relationship with the beneficiary is terminated after the member retires.

(3) An increased benefit under subsection (2) of this section is first effective on the first day of the month following the date on which one of the events specified in subsection (2) of this section occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(3) The death benefit provided under this section is first effective on the first day of the month following the date of death of the member. The surviving spouse or other person entitled to the death benefit may elect to delay payment of the death benefit, but payment must commence no later than December 31 of the calendar year in which the member would have reached 70-1/2 years of age.**

[(5)] (4) Notwithstanding any other provision of ORS 238A.100 to 238A.245, distributions of death benefits under the pension program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on August 29, 2003. The board shall adopt rules implementing those minimum distribution requirements.

## DETERMINATION OF SALARY

**SECTION 16.** ORS 238A.130 is amended to read:

238A.130. (1) For purposes of the computation of pension program benefits under ORS 238A.125, "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year earned by an active member in the three consecutive calendar years of membership that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is three or less, the final average salary for the member is the average salary per calendar year earned by the member in all of those years, without regard to whether the member was employed for full calendar years.

(b) One-third of the total salary earned by an active member in the last 36 calendar months of membership before the effective date of retirement of the member.

(2) For purposes of calculating the final average salary for a member during any period in which the member worked in a qualifying position that requires fewer than 2,000 hours of service in a calendar year, the salary of the member for that period is the salary that would have been paid if the member had worked in the same position on a full-time basis.

(3) For the purposes of calculating the final average salary of a member under this section, the salary of the member does not include any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same class of employees as established by rule of the Public Employees Retirement Board. **The Oregon Department of Administrative Services shall establish by rule more than one overtime average for a class of state employees based on the geographic placement of the employees.**

**SECTION 17.** ORS 238A.305 is amended to read:

238A.305. (1) Except as provided in subsection (2) of this section, all members of the Public Employees Retirement System who established membership in the Public Employees Retirement System before August 29, 2003, as described in ORS 238A.025 become members of the individual account program on January 1, 2004.

(2) A member of the Public Employees Retirement System may not be a member of the individual account program during any period of time during which the member is required to make contributions to the system under ORS 238.200.

(3) **Solely for the purpose of determining the amount of the employee contribution for persons who become members of the individual account program under this section, whether paid by the employee or by the employer, the Public Employees Retirement Board shall use the definition of "salary" provided by ORS 238.005. If a person who is subject to this subsection has a break in service as described in ORS 238A.025, the board shall use the definition of "salary" provided by ORS 238A.005 for the purpose of determining the amount of the employee contribution to the individual account program for all service by the member after the break in service.**

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

## ACADEMIC EMPLOYEES OF COMMUNITY COLLEGES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CAPTIONS**

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

**EMERGENCY CLAUSE**

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

**Passed by House April 11, 2005**

**Received by Governor:**

**Repassed by House June 16, 2005**

.....M.,....., 2005

**Approved:**

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Chief Clerk of House

.....M.,....., 2005

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Speaker of House

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Governor

**Passed by Senate June 13, 2005**

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

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President of Senate

.....M.,....., 2005

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Secretary of State