

# Enrolled Senate Bill 108

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CHAPTER .....

AN ACT

Relating to public employee retirement; creating new provisions; and amending ORS 238.005, 238.015, 238.088, 238.095, 238.156, 238.580, 238A.005, 238A.120, 238A.375 and 238A.400.

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

### INACTIVE MEMBERS

**SECTION 1.** 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]* **not employed in a qualifying position.**

(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.

(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 2.** ORS 238A.120 is amended to read:

238A.120. (1) A vested inactive member may withdraw from the pension program if:

(a) The actuarial equivalent of the member's benefit under the pension program at the time of withdrawal is \$5,000 or less; **and**

**(b) The inactive member has 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.**

(2) Upon withdrawal **under this section**, the Public Employees Retirement Board shall pay the withdrawing member the actuarial equivalent of the member's benefit in a lump sum. *[For the purposes of this subsection, the actuarial equivalent of the member's benefit does not include any value attributable to adjustments to the benefit under ORS 238A.210.]*

~~[(2)]~~ (3) If a vested inactive member withdraws from the pension program under *[subsection (1) of]* this section and is thereafter reemployed by a participating public employer:

(a) The person may reestablish membership in the pension program only for the purpose of service performed after the person is reemployed; and

(b) Any service performed before the withdrawal may not be credited toward the period of service required by ORS 238A.100 or 238A.115 or toward the accrual of retirement credit under ORS 238A.140, 238A.150 or 238A.155.

**(4) For the purposes of this section, the actuarial equivalent of a member's benefit does not include any value attributable to adjustments to the benefit under ORS 238A.210.**

**SECTION 3.** ORS 238A.375 is amended to read:

238A.375. (1) An inactive member of the individual account program may elect *[at any time]* to receive a distribution of the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320 **if the inactive member has 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.**

(2) If an inactive member of the individual account program who is not vested in the employer account receives a distribution under subsection (1) of this section, the employer account of the member is permanently forfeited as of the date of the distribution.

(3) If an inactive member receives a distribution under subsection (1) of this section and is subsequently reemployed by a participating public employer, any service performed before the date the member became an inactive member may not be used toward the period of service required for vesting in the employer account under ORS 238A.320.

**SECTION 4.** ORS 238.095 is amended to read:

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

(2) Except as provided in subsection (3) of this section, an *[employee shall cease]* **inactive member ceases** to be a member of the system if the *[employee is absent from the service of all employers participating in the system for a total of more than five consecutive years after the employee becomes a member of the system]* **member is not vested and is inactive for a period of five consecutive years.**

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

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

(b) The member either *[returns to school employment]* **is reemployed by a school district in a qualifying position** at the beginning of the sixth school year, or reaches earliest service retirement age before the beginning of the sixth school year.

(4) Interest shall not accrue on the amount in the member account of the former member from the date that membership is terminated under subsection (2) of this section. Upon request by the former member, the Public Employees Retirement Board shall pay the amount in a member account to a former member upon the termination of the membership of the former member under subsection

(2) of this section if the former member is separated from all service with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust. The board may deduct, from the amount paid to a former member under this subsection, all reasonable costs incurred by the system in locating the member.

## **QUALIFYING POSITION**

**SECTION 5.** 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 **qualifying** 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*] **not employed in a qualifying position**, 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) **"Qualifying position" means one or more jobs with one or more participating public employers in which an employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which a participating public employer does not provide benefits under ORS chapter 238 pursuant to an application made under ORS 238.035.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(22)] (23) "System" means the Public Employees Retirement System.

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

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

**SECTION 6.** ORS 238.015 is amended to read:

238.015. (1) No person may become a member of the system unless that person is in the service of a public employer and has completed six months' service uninterrupted by more than 30 consecutive working days during the six months' period. Every employee of a participating employer shall become a member of the system at the beginning of the first full pay period of the employee fol-



lowing the six months' period. Contributions for new members shall first be made for those wages that are attributable to services performed by the employee during the first full pay period following the six months' period, without regard to when those wages are considered earned for other purposes under this chapter. All public employers participating in the Public Employees Retirement System established by chapter 401, Oregon Laws 1945, as amended, at the time of repeal of that chapter, and all school districts of the state, shall participate in, and their employees shall be members of, the system, except as otherwise specifically provided by law.

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

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

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

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

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

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

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

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

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

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

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

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

[10] (9) Employees, including managers, of foreign trade offices of the Economic and Community Development Department who live and perform services in foreign countries under the provisions of ORS 285A.090 (13) shall not be members of the system. However, any person who is an

active member of the system immediately before becoming an employee of a foreign trade office shall continue to be a member of the system during the period of time the person serves as an employee of the foreign trade office.

[(11)] (10) An employee who is an employee of the Oregon Health and Science University may not be an active member of the Public Employees Retirement System if that employee is participating in an alternative retirement program established by the university pursuant to ORS 353.250.

**SECTION 7.** ORS 238.088 is amended to read:

238.088. (1) Except as provided in subsection (2) of this section, a person who is elected to a full-time salaried office of the state or one of the participating political subdivisions thereof, or who is appointed to a full-time salaried office having a term fixed by statute or charter, whether or not the person has been retired, does not forfeit any rights accrued or accruing to the person under this chapter. However, for the period that such person holds such office the person is not entitled to any pension or annuity provided by this chapter. Upon ceasing to hold such office, benefits shall be computed or recomputed by the Public Employees Retirement Board on the basis of age then attained.

(2) If a person is elected or appointed to the office of sheriff or county judge or commissioner in a county with a population of fewer than 75,000 inhabitants, according to the latest federal decennial census, and the person does not elect to become an active member of the system under ORS 238.015 [(6)] (5), the person shall continue to be a retired member and to receive retirement benefits for as long as the person holds the office.

(3) Subsection (2) of this section does not apply to any member who retires under the provisions of ORS 238.280 (1).

**SECTION 8.** ORS 238.156 is amended to read:

238.156. (1) Notwithstanding any other provision of this chapter, but subject to subsection (4) of this section, an employee who leaves a **qualifying** position [*that meets the requirements of ORS 238.015 (4)*] for the purpose of performing service in the uniformed services is entitled to receive contributions, benefits and service credit for the period under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing contributions, benefits and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to contributions, benefits and service credit for any period of service in the uniformed services. Contributions, benefits and service credit under rules adopted by the board pursuant to this subsection may not exceed contributions, benefits and service credit required under federal law for periods of service in the uniformed services.

(3) Subject to subsection (4) of this section, an employee who leaves a **qualifying** position [*that meets the requirements of ORS 238.015 (4)*] for the purpose of entering or reentering active service in the Armed Forces shall acquire retirement credit for the period during which the employee served in the Armed Forces if:

(a) The employee returns to the service of the employer who employed the employee immediately before commencing service in the Armed Forces in a **qualifying** position [*that meets the requirements of ORS 238.015 (4)*];

(b) The employee returns to that employment within one year after being otherwise than dishonorably discharged from the Armed Forces and within five years after the date that the employee entered or reentered active service in the Armed Forces; and

(c) After returning to employment and before retirement, the employee pays to the Public Employees Retirement Board in a lump sum six percent of the salary that would have been paid to the member during the period of military service in the Armed Forces based on the employee's salary rate at the time the employee entered or reentered the Armed Forces, as though the employee had remained in the employment of the employer. Any lump sum contribution made under this paragraph shall be added to the employee's regular account and in all respects shall be considered as though made by payroll deduction.

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

(5) For the purposes of this section, "Armed Forces" means the Army, Navy, Air Force, Marine Corps and Coast Guard.

**SECTION 9.** ORS 238.580 is amended to read:

238.580. (1) ORS 238.005 (3) and [(20)] **(21)**, 238.025, 238.078, 238.082, 238.092, 238.115 (1), 238.250, 238.255, 238.260, 238.350, 238.380, 238.410, 238.415, 238.420, 238.445, 238.458, 238.460, 238.465, 238.475, 238.600, 238.605, 238.610, 238.618, 238.630, 238.635, 238.645, 238.650, 238.655, 238.660, 238.665, 238.670 and 238.705 and the increases provided by ORS 238.385 for members of the system who are serving as other than police officers or firefighters apply in respect to service as a judge member.

(2) This chapter applies in respect to persons described in ORS 238.505 (1) and in respect to service as a judge member only as specifically provided in ORS 238.500 to 238.585.

## INDIVIDUAL ACCOUNT PROGRAM

**SECTION 10.** ORS 238A.400 is amended to read:

238A.400. (1) Upon retirement on or after the earliest retirement date, as described in ORS 238A.165, a member of the individual account program shall receive in a lump sum the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320.

(2) In lieu of a lump sum payment under subsection (1) of this section, a member of the individual account program may elect to receive the amounts in the member's employee account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, in substantially equal installments paid over a period of 5, 10, 15 or 20 years. Installments may be made on a monthly, quarterly or annual basis. In no event may the period selected by the member exceed the time allowed by the minimum distribution requirements described in subsection (4) of this section. The Public Employees Retirement Board shall by rule establish the manner in which installments will be adjusted to reflect investment gains and losses on the unpaid balance during the payout period elected by the member under this subsection. **The board by rule may establish minimum monthly amounts payable under this subsection. The board may require that a lump sum payment, or an installment schedule different than the schedules provided for in this subsection, be used to pay the vested amounts in the member's accounts if those amounts are not adequate to generate the minimum monthly amounts specified by the rule.**

(3) A member of the individual account program electing to receive installments under subsection (2) of this section must designate a beneficiary or beneficiaries. In the event the member dies before all amounts in the employee and vested employer accounts are paid, all remaining installment payments shall be made to the beneficiary or beneficiaries designated by the member. A beneficiary may elect to receive a lump sum distribution of the remaining amounts.

**(4) A member who is entitled to receive retirement benefits under ORS chapter 238 may receive vested amounts in the member's employee account, rollover account and employer account in the manner provided by this section when the member retires for service under the provisions of ORS chapter 238.**

[(4)] (5) Notwithstanding any other provision of ORS 238A.300 to 238A.415, the entire interest of a member of the individual account program must be distributed over a time period commencing no later than the latest retirement date set forth in ORS 238A.170, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on August 29, 2003. The board shall adopt rules implementing those minimum distribution requirements.

## UNIT CAPTIONS

**SECTION 11.** 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.

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**Passed by Senate March 9, 2005**

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Secretary of Senate

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President of Senate

**Passed by House May 24, 2005**

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Speaker of House

**Received by Governor:**

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

**Approved:**

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

.....  
Governor

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

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

.....  
Secretary of State