

**PROPOSED AMENDMENTS TO
HOUSE BILL 2003**

1 On page 1 of the printed bill, line 3, delete "238.072," and delete "238.105,
2 238.115,".

3 In line 4, delete "238.395,".

4 In line 5, delete "238.580, 238.630, 238.640, 238.670,".

5 Delete lines 7 through 29 and insert:

6 "Whereas it is the policy of the State of Oregon to provide career public
7 employees adequate and secure retirement benefits at a reasonable, afford-
8 able and stable cost to taxpayers; and

9 "Whereas since 1995 the cost to taxpayers of funding the Public Employ-
10 ees Retirement System (PERS) has increased dramatically, with the cost of
11 PERS increasing when PERS investment income was good and the cost of
12 PERS continuing to increase when PERS investment income was poor; and

13 "Whereas PERS now has an unfunded actuarial liability of \$16.41 billion,
14 and the burden of eliminating that deficit will fall on the taxpayers unless
15 the causes of that unfunded liability are remedied; and

16 "Whereas as a result of errors by the Public Employees Retirement Board,
17 some retirees are receiving benefits that exceed the benefits provided by law,
18 and the cost of paying for those benefits continues to increase; and

19 "Whereas unless steps are taken to reform and stabilize PERS, the costs
20 of paying for retirement benefits will continue to grow; and

21 "Whereas escalating costs threaten the stability of the Public Employees
22 Retirement Fund and the security of benefits intended for members who have
23 not yet retired; and

24 "Whereas in the City of Eugene et al. v. State of Oregon, Case Nos.

1 99C-12794, 00C-16173, 99C-12838 and 99C-20235, the Marion County Circuit
2 Court found that the Public Employees Retirement Board paid benefits in
3 excess of those authorized by law by: (a) Unlawfully using outdated mortality
4 tables to calculate retirees' monthly benefits; (b) Unlawfully requiring em-
5 ployers to match earnings in the employees' variable accounts when those
6 employees' pensions are calculated under the 'money match formula'; and (c)
7 Unlawfully abusing its discretion in failing to set aside adequate statutorily
8 mandated reserves out of investment income while crediting imprudently
9 large amounts of investment income to member accounts; and

10 Whereas the Public Employees Retirement Board calculated benefits,
11 credited earnings and failed to fund reserve accounts for many years prior
12 to 1998 using substantially the same methods as those found to be improper
13 by the circuit court in City of Eugene et al. v. State of Oregon, and the ef-
14 fects of those actions have been magnified by the board's allocation of
15 earnings in subsequent years, but the jurisdiction of the court in City of
16 Eugene et al. v. State of Oregon was limited to board actions beginning in
17 1998; and

18 "Whereas the intent of the Legislative Assembly in providing that mem-
19 ber accounts would receive earnings at the assumed interest rate was to en-
20 sure that at the time of retirement, member accounts would be credited with
21 no less than cumulative earnings at the assumed interest rate for each year
22 that the member account existed; and

23 "Whereas unless immediate steps are taken to reform and stabilize PERS,
24 escalating pension costs will undermine the financial security of PERS, force
25 massive cutbacks in essential government services, eliminate the jobs of
26 many public employees and destroy the public's confidence and trust in the
27 governmental institutions of the state; and

28 "Whereas this 2003 Act is intended to reform and stabilize PERS, remedy
29 the effects of prior actions, ensure that future PERS benefits will be con-
30 sistent with the goals and intent of the Legislative Assembly and protect the

1 accrued benefits earned by current PERS members; and

2 "Whereas unless the statutes governing PERS are amended, it will not
3 be possible to make the system conform to the original intentions of the
4 Legislative Assembly; and

5 "Whereas the amendments to ORS chapter 238 are intended to make only
6 those changes necessary to restore PERS to a more stable, sustainable con-
7 dition, without reducing any current member's benefit to a level below the
8 level intended by the Legislative Assembly; and

9 "Whereas this 2003 Act shall be known as the PERS Reform and Stabili-
10 zation Act of 2003; now, therefore,"

11 On page 2, delete lines 1 through 16.

12 Delete lines 18 through 45 and delete pages 3 through 15 and insert:

13

14 **"ELIMINATION OF EMPLOYEE CONTRIBUTIONS**

15

16 **"SECTION 1.** ORS 238.200 is amended to read:

17 **"238.200. (1)(a)** An active member of the **Public Employees Retirement**
18 **System shall contribute to the Public Employees Retirement Fund and**
19 **there shall be withheld from salary of the member six percent of that salary**
20 **as an employee contribution.**

21 **"(b)** Notwithstanding paragraph (a) of this subsection, an employee who
22 is an active member of the system on August 21, 1981, shall contribute to the
23 fund and there shall be withheld from salary of the member, as long as the
24 employee continues to be an active member of the system, four percent of
25 that salary if the salary for a month is less than \$500, or five percent of that
26 salary if the salary for a month is \$500 or more and less than \$1,000. Not-
27 withstanding subsection (2) of this section, for the purpose of computing the
28 percentage of salary to be withheld under this paragraph from a member who
29 is an employee of a school district or of the State Board of Higher Education
30 whose salary is based on an annual agreement, the agreed annual salary of

1 the member shall be divided into 12 equal installments, and each installment
2 shall be considered as earned and paid in separate, consecutive months,
3 commencing with the first month that payment is actually made under the
4 terms of the salary agreement.

5 “(2) The contributions of each member as provided in subsection (1) of
6 this section shall be deducted by the employer from each payroll and trans-
7 mitted by the employer to the **Public Employees Retirement Board**, which
8 shall cause them to be credited to the member account of the member. Salary
9 shall be considered earned in the month in which it is paid. The date in-
10 scribed on the paycheck or warrant shall be considered as the pay date, re-
11 gardless of when the salary is actually delivered to the member.

12 “(3) An active member who is concurrently employed by more than one
13 participating public employer, and who is a member of or entitled to mem-
14 bership in the system, shall make contributions to the fund on the basis of
15 salary paid by each employer.

16 “(4) **Notwithstanding subsections (1) to (3) of this section, a member**
17 **of the system, or a participating employer acting on behalf of the**
18 **member pursuant to ORS 238.205, is not permitted or required to make**
19 **employee contributions to the fund on or after July 1, 2003.**

20 “**SECTION 2.** ORS 238.205 is amended to read:

21 “238.205. Notwithstanding any other provision of this chapter, and subject
22 to the provisions of this section, a public employer participating in the sys-
23 tem may agree, by a written employment policy or agreement in effect on
24 or after July 1, 1979, to ‘pick-up,’ assume or pay the full amount of **employee**
25 **contributions [to the fund required of] required or permitted by ORS**
26 **238.200 for all or less than all active members of the system employed by the**
27 **employer to the extent employee contributions are required or permit-**
28 **ted by ORS 238.200.** If a public employer so agrees:

29 “(1) The rate of contribution of each active member of the system em-
30 ployed by the employer who is covered by such policy or agreement shall

1 uniformly be six percent of salary regardless of the amount of monthly sal-
2 ary.

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

9 “(3) The full amount of required employee contributions ‘picked-up’ by the
10 employer on behalf of its employees shall be considered ‘salary,’ as defined
11 in ORS 238.005, for the purpose of calculating the amount of the contribu-
12 tion, for the purpose of computing a member’s ‘final average salary,’ as de-
13 fined in ORS 238.005, and for all other purposes.

14 “(4) The full amount of required employee contributions ‘picked-up,’ as-
15 sumed or paid by the employer on behalf of its employees shall be added to
16 the member accounts of the members for their annuities and shall be con-
17 sidered employee contributions for all other purposes of this chapter.

18 “(5) For the purposes of this section:

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

23 “(b) Employee contributions are ‘assumed or paid’ by an employer if the
24 written employment policy or agreement described in subsection (1) of this
25 section provides that additional amounts shall be paid by the employer for
26 the purpose of making the employee contributions, and employee compen-
27 sation will not be reduced for the purpose of generating the funds needed to
28 make the employee contributions.

29 “(6) A participating public employer must give written notice to the
30 Public Employees Retirement Board at the time that a written employment

1 policy or agreement described in subsection (1) of this section is adopted or
2 changed. The notice must indicate whether the employer will 'pick-up' or
3 'assume or pay' the employee contributions as described in subsection (5) of
4 this section. Any change in the manner in which employee contributions are
5 to be paid applies only to employee contributions made on and after the date
6 the notice is received by the board.

7 **"SECTION 3. ORS 238.260 is amended to read:**

8 "238.260. (1) The purpose of this section is to establish a well balanced,
9 broadly diversified investment program for certain contributions and
10 portions of the member accounts so as to provide retirement benefits for
11 members of the system that will fluctuate as the value and earnings of the
12 investments vary in relation to changes in the general economy. It is antic-
13 ipated that investment of those contributions and portions of the member
14 accounts in equities will result in the accumulation of larger deposit reserves
15 for those members during their working years, tend to preserve the pur-
16 chasing power of those reserves and the retirement benefits provided thereby
17 and afford better protection in periods of economic inflation.

18 "(2) There is established in the Public Employees Retirement Fund an
19 account, separate and distinct from the General Fund, to be known as the
20 Variable Annuity Account. Interest earned by the account shall be credited
21 to the account.

22 "(3)(a) A member who is making contributions to the fund may elect
23 at any time to have 25, 50 or 75 percent of contributions by the member to
24 the fund on and after the effective date of the election paid into the Variable
25 Annuity Account, credited to a variable account, and reserved for the pur-
26 chase of a variable annuity. A member who has elected to have a percentage
27 of contributions so paid, credited and reserved may elect at any time there-
28 after to have an additional 25 or 50 percent of contributions by the member,
29 but not to exceed a maximum of 75 percent, so paid, credited and reserved.
30 An election shall be in writing on a form furnished by the board and be filed

1 with the board. An election shall be effective on January 1 following the
2 filing thereof.

3 **“(b) Notwithstanding any other provision of this section, a member**
4 **may not contribute to the Variable Annuity Account after June 30,**
5 **2003.**

6 “(4) A member who has elected to have contributions paid into the Vari-
7 able Annuity Account under subsection (3) of this section may thereafter
8 cause the contributions to cease being paid into the member’s variable ac-
9 count by filing a request in writing on a form furnished by the board and
10 filed with the board. The contributions shall cease being paid into the
11 member’s variable account after December 31 following the filing of the re-
12 quest. Contributions paid into the member’s variable account before the ef-
13 fective date of the request for cessation shall remain in the member’s
14 variable account.

15 “(5)(a) An employee who is a member of the system on January 1, 1968,
16 and who thereafter [*files an election under subsection (3) of this section*] **made**
17 **contributions to the Variable Annuity Account**, may elect at any time
18 to have an amount equal to 10 percent per year, for not more than five years,
19 of the balance of the regular account of the member in the fund on the ef-
20 fective date of an election filed under subsection (3) of this section, trans-
21 ferred from the regular account of the member to the Variable Annuity
22 Account, credited to the member’s variable account, and reserved for the
23 purchase of a variable annuity. An election shall be in writing on a form
24 furnished by the board and be filed with the board. An election is final and
25 irrevocable upon the filing thereof. The first transfer pursuant to an election
26 shall be made on July 1 following the filing of the election, but may be made,
27 in the discretion of the board, on an earlier date.

28 “(b) If the transfers elected by a member under this subsection have not
29 been completed at the time of retirement, a transfer equal to one annual
30 transfer shall be made pursuant to an election by the member made and filed

1 as provided in this subsection.

2 “(c) No transfer shall be made under this subsection after the first pay-
3 ment of the service retirement allowance of the member becomes normally
4 due.

5 “(d) Notwithstanding paragraphs (a) to (c) of this subsection, a
6 member may not elect to transfer funds under this subsection after
7 June 30, 2003.

8 “(6) Moneys in the Variable Annuity Account may be invested in invest-
9 ments authorized by law for investment of moneys in the Public Employees
10 Retirement Fund; but, notwithstanding any other general or specific law,
11 moneys in the account shall be invested primarily in equities, including
12 common stock, securities convertible into common stock, real property and
13 other recognized forms of equities, whether or not subject to indebtedness.
14 Not more than five percent of the amortized value of all the investments of
15 the Variable Annuity Account and of moneys in the account immediately
16 available for investment may be invested in the obligations of or equities in
17 a single, primary obligor or issuer. A pro rata share of the administrative
18 expenses of the system shall be paid from interest earned by the Variable
19 Annuity Account.

20 “(7)(a) Except as provided in subsection (8) of this section, the policy-
21 making investment authority for the Public Employees Retirement Fund
22 shall enter into contracts with one or more persons whom the authority de-
23 termines to be qualified, whereby the persons undertake to invest and rein-
24 vest moneys in the Variable Annuity Account available for investment and
25 acquire, retain, manage and dispose of investments of the account in ac-
26 cordance with subsections (1) and (6) of this section and to the extent pro-
27 vided in the contracts.

28 “(b) Performance of functions under contracts so entered into shall be
29 paid for out of the gross interest or other income of the investments with
30 respect to which the functions are performed, and the net interest or other

1 income of the investments after that payment shall be considered income of
2 the Variable Annuity Account.

3 “(c) The policy-making investment authority may require a person con-
4 tracted with to give to the state a fidelity bond in a penal sum as may be
5 fixed by law or, if not so fixed, as may be fixed by the authority, with cor-
6 porate surety authorized to do business in this state.

7 “(d) Contracts so entered into and functions performed thereunder are not
8 subject to the State Personnel Relations Law or ORS 279.545 to 279.746.

9 “(e) A person contracted with shall report to the policy-making invest-
10 ment authority as often as the authority may require, but at least annually,
11 the earnings of the moneys invested during the period covered by the report,
12 the capital gains and losses of the Variable Annuity Account during the pe-
13 riod, the changes in the market value of the investments of the account
14 during the period and such other information as the authority may require.

15 “(8) The policy-making investment authority for the Public Employees
16 Retirement Fund, for and on behalf of the Public Employees Retirement
17 System and Public Employees Retirement Board, may enter into group an-
18 nuity contracts with one or more insurance companies authorized to do
19 business in this state. In lieu of any investment of moneys in the Variable
20 Annuity Account as provided in subsections (6) and (7) of this section, the
21 authority may pay, from time to time under contracts so entered into, any
22 moneys in that account available for investment purposes. Contracts so en-
23 tered into:

24 “(a) May provide that annuities purchased thereunder be payable in var-
25 iable dollar amounts, but if that provision is made, provision also shall be
26 made that a member of the system who has a variable account, upon retiring
27 from service and before the first payment of retirement allowance becomes
28 normally due, may elect an option to have the annuities payable to the
29 member or the beneficiary of the member in fixed or variable dollar amounts
30 or both.

1 “(b) May provide that payment of annuities purchased thereunder may be
2 made by the insurance company directly to persons entitled thereto or to the
3 Variable Annuity Account for payment therefrom to those persons.

4 “(c) Are not subject to ORS 279.545 to 279.746.

5 “(9) Upon retiring from service but within 60 days after the date of the
6 first benefit payment, a member of the system who has a variable account
7 may elect to transfer the balance in the variable account to the regular ac-
8 count of the member, and by that transfer the annuity shall be based on the
9 amount in the regular account of the member as otherwise provided in this
10 chapter and the member shall not receive a variable annuity as provided in
11 this section.

12 “(10) When an annuity is payable under this chapter to a member of the
13 system who has a variable account, or is payable to a beneficiary of that
14 person, the portion of the annuity payable from the Variable Annuity Ac-
15 count shall be proportionately increased or decreased for a calendar year
16 when, as of October 31 of the preceding calendar year, the balance of the
17 member’s variable account exceeds or is less than the current value of the
18 annuity, determined in accordance with the rate of interest and approved
19 actuarial tables then in effect.

20 “(11) Notwithstanding subsection (10) of this section, the board, in the
21 event of extraordinary fluctuation in the market value of investments of the
22 Variable Annuity Account and in order to avoid substantial inequities, may
23 increase or decrease the portions of annuities paid from the account for pe-
24 riods less than a calendar year and determined as of dates other than Octo-
25 ber 31.

26 “(12) Notwithstanding any other provision of this chapter, the retirement
27 allowance to which a member of the system who has a variable account or
28 who made contributions on salary in excess of \$4,800 per year during the
29 period January 1, 1956, through December 31, 1967, and whose effective date
30 of retirement is January 1, 1982, or later, is otherwise entitled under this

1 chapter shall be subject to the following adjustment:

2 “(a) The board shall determine the difference between the member account
3 of the member and what the member account of the member would have been
4 had the member not participated in the variable annuity program on or after
5 January 1, 1982, plus the contributions made on salary in excess of \$4,800
6 per year during the period January 1, 1956, through December 31, 1967.

7 “(b) If the member account of the member due to participation in the
8 variable annuity program or due to the contributions made on salary in ex-
9 cess of \$4,800 per year is greater, the monthly retirement allowance of the
10 member shall be increased by the value of the difference, using the annuity
11 tables applicable to the plan selected by the member.

12 “(c) If the member account of the member due to participation in the
13 variable annuity program or due to the contributions made on salary in ex-
14 cess of \$4,800 per year is lesser, the monthly retirement allowance of the
15 member shall be decreased by the value of the difference, using the annuity
16 tables applicable to the plan selected by the member.

17 “(13) Except as otherwise specifically provided in this section, the rights
18 and benefits under this chapter of an active or retired member of the system
19 or of a beneficiary of the member are not affected by this section and the
20 provisions of this chapter applicable to regular accounts of active and retired
21 members of the system in the fund are also applicable to variable accounts.

22 “(14)(a) In addition to the transfer provided for in subsection (9) of this
23 section, a member of the system who has a variable account may at any time
24 prior to retirement elect to transfer the balance in that account to the reg-
25 ular account of the member in the fund if:

26 “(A) The member is other than a police officer or firefighter and has at-
27 tained the age of 50;

28 “(B) The member is a police officer or firefighter and has attained the age
29 of 45; or

30 “(C) The member has a combined total of 25 years or more of creditable

1 service in the system and prior service credit.

2 “(b) An election under paragraph (a) of this subsection is irrevocable, and
3 a member who has so elected may not thereafter elect to make contributions
4 to the Variable Annuity Account under subsection (3) of this section.

5 “(c) An election under paragraph (a) of this subsection shall be in writing
6 and shall be filed with the board. The board by rule shall prescribe a form
7 for the purposes of application. An election so made shall be effective on
8 January 1 of the year following the year in which the election is made, ex-
9 cept that an election shall have no effect whatsoever unless the member ac-
10 count of the member as of the effective date of the election is greater than
11 what the member account of the member would have been had the member
12 not participated in the variable annuity program on or after January 1, 1982,
13 not including the contributions made on salary in excess of \$4,800 per year
14 during the period January 1, 1956, through December 31, 1967.

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

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

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

23 “(e) The annuity of a member who makes an effective transfer under this
24 subsection shall be based on the amount in the regular account of the
25 member in the fund as otherwise provided in this chapter, and the member
26 shall not receive a variable annuity as provided in this section.

27 “**SECTION 4.** ORS 238.300 is amended to read:

28 “238.300. Upon retiring from service at normal retirement age or there-
29 after, a member of the system shall receive a service retirement allowance
30 which shall consist of the following annuity and pensions:

1 “(1) A refund annuity which shall be the actuarial equivalent of accu-
2 mulated contributions, if any, by the member and interest thereon credited
3 at the time of retirement, which annuity shall provide an allowance payable
4 during the life of the member and at death a lump sum equal in amount to
5 the difference between accumulated contributions at the time of retirement
6 and the sum of the annuity payments actually made to the member during
7 life shall be paid to such person, if any, as the member nominates by written
8 designation duly acknowledged and filed with the board or shall otherwise
9 be paid according to the provisions of this chapter for disposal of an amount
10 credited to the member account of a member at the time of death in the event
11 the member designates no beneficiary to receive the amount or no such
12 beneficiary is able to receive the amount. If death of the member occurs be-
13 fore the first payment is due, the member account of the member shall be
14 treated as though death had occurred before retirement.

15 “(2)(a) A life pension (nonrefund) for current service provided by the
16 contributions of employers, which pension, subject to paragraph (b) of this
17 subsection, shall be an amount which, when added to the sum of the
18 annuity, if any, under subsection (1) of this section and the annuity, if any,
19 provided on the same basis and payable from the Variable Annuity Account,
20 both annuities considered on a refund basis, results in a total of:

21 “(A) For service as a police officer or firefighter, two percent of final
22 average salary multiplied by the number of years of membership in the sys-
23 tem as a police officer or firefighter before the effective date of retirement.

24 “(B) For service as a member of the Legislative Assembly, two percent
25 of final average salary multiplied by the number of years of membership in
26 the system as a member of the Legislative Assembly before the effective date
27 of retirement.

28 “(C) For service as other than a police officer, firefighter or member of
29 the Legislative Assembly, 1.67 percent of final average salary multiplied by
30 the number of years of membership in the system as other than a police of-

1 ficer, firefighter or member of the Legislative Assembly before the effective
2 date of retirement.

3 “(b) A pension under this subsection shall be at least:

4 “(A) For a member who first establishes membership in the system
5 before the effective date of this 2003 Act, the actuarial equivalent of the
6 annuity provided by the accumulated contributions of the member. A person
7 establishes membership in the system before the effective date of this
8 2003 Act for the purposes of this subparagraph if:

9 “(i) The person is a member of the system, or a judge member of
10 the system, on the day immediately before the effective date of this
11 2003 Act; or

12 “(ii) The person performed any period of service for a participating
13 public employer before the effective date of this 2003 Act that is cred-
14 ited to the six-month period of employment required of an employee
15 under ORS 238.015 before an employee may become a member of the
16 system.

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

20 “(c) As used in this subsection, ‘number of years of membership’ means
21 the number of full years plus any remaining fraction of a year for which
22 salary was paid and contributions to the Public Employees Retirement Sys-
23 tem made. Except as otherwise provided in this paragraph, in determining a
24 remaining fraction a full month shall be considered as one-twelfth of a year
25 and a major fraction of a month shall be considered as a full month. Mem-
26 bership of a school district employee, an employee of the State Board of
27 Higher Education engaged in teaching or other school activity at an insti-
28 tution of higher education or an employee of the Department of Human
29 Services, the Oregon Youth Authority, the Department of Corrections or the
30 State Board of Education engaged in teaching or other school activity at an

1 institution supervised by the authority, board or department, for all portions
2 of a school year in a calendar year in which the district school, institution
3 of higher education or school activity at an institution so supervised in
4 which the member is employed is normally in session shall be considered as
5 a full one-half year of membership. The number of years of membership of a
6 member who received a refund of contributions as provided in ORS 237.976
7 (2) is limited to the number of years after the day before the date on which
8 the refund was received. The number of years of membership of a member
9 who is separated, for any reason other than death or disability, from all
10 service entitling the member to membership in the system, who withdraws
11 the amount credited to the member account of the member in the fund during
12 absence from such service and who thereafter reenters the service of an em-
13 ployer participating in the system but does not repay the amount so with-
14 drawn as provided in this chapter, is limited to the number of years after the
15 day before the date of so reentering.

16 “(3) An additional life pension (nonrefund) for prior service credit, in-
17 cluding military service, credited to the member at the time of first becoming
18 a member of the system, as elsewhere provided in this chapter, which pension
19 shall be provided by the contributions of the employer.

20

21 “CREDITING OF TIER ONE ACCOUNTS

22

23 “**SECTION 5.** ORS 238.255, as amended by section 1, chapter 3, Oregon
24 Laws 2003 (Enrolled House Bill 2001), is amended to read:

25 “238.255. (1) The regular account for an active or inactive member of the
26 system, if any, shall be examined each year. If the regular account is cred-
27 ited with earnings for the previous year in an amount less than the earnings
28 that would have been credited pursuant to the assumed interest rate for that
29 year determined by the Public Employees Retirement Board, the amount of
30 the difference shall be credited to the regular account and charged to a re-

1 serve account in the fund established for the purpose. [A reserve account so
2 established may not be maintained on a deficit basis for a period of more than
3 five years.] Earnings in excess of the assumed interest rate for years follow-
4 ing the year for which a charge is made to the reserve account shall first
5 be applied to reduce or eliminate the amount of a deficit.

6 **"(2) Notwithstanding subsection (1) of this section, the board may**
7 **not credit any earnings to the regular accounts of members who es-**
8 **ablished membership in the system before January 1, 1996, as de-**
9 **scribed in ORS 238.430, in any year in which there is a deficit in the**
10 **reserve account established under subsection (1) of this section, or**
11 **credit any earnings to the regular accounts of those members that**
12 **would result in a deficit in that reserve account.**

13 **"[(2)] (3) The regular account for an active or inactive member who es-**
14 **tablished membership in the system before January 1, 1996, as described in**
15 **ORS 238.430, may not be credited with earnings in excess of the assumed**
16 **interest rate until:**

17 **"[(a)] (a) The reserve account established under subsection (1) of this section**
18 **no longer has a deficit;]**

19 **"[(b)] (a) The reserve account established under subsection (1) of this**
20 **section is fully funded with amounts determined by the board, after consul-**
21 **tation with the actuary employed by the board, to be necessary to ensure a**
22 **zero balance in the account when all members who established membership**
23 **in the system before January 1, 1996, as described in ORS 238.430, have re-**
24 **tired; and**

25 **"[(c)] (b) The reserve account established under subsection (1) of this**
26 **section has been fully funded as described in paragraph [(b)] (a) of this**
27 **subsection in each of the three immediately preceding calendar years.**

28 **"SECTION 6. The amendments to ORS 238.255 by section 5 of this**
29 **2003 Act apply only to the crediting of earnings under ORS 238.255 for**
30 **calendar years 2003 and thereafter.**

1 "MINIMUM ACCOUNT BALANCE

2
3 "SECTION 7. Section 8 of this 2003 Act is added to and made a part
4 of ORS chapter 238.

5 "SECTION 8. (1) Notwithstanding any other provision of this chap-
6 ter, the regular account balance of a member described in subsection
7 (3) of this section may not be less than the amount provided for under
8 subsection (2) of this section for the purpose of computing retirement
9 allowances, death benefits and amounts to be paid to a withdrawing
10 member under ORS 238.265 and for other computations under the
11 provisions of this chapter that are based on a member's regular ac-
12 count balance.

13 "(2) The minimum regular account balance for a member described
14 in subsection (3) of this section is the amount that the regular account
15 of a member would have contained if the regular account had been
16 credited with earnings at the assumed interest rate in every year in
17 which the regular account was in existence.

18 "(3) The provisions of this section apply only to a member who es-
19 tablishes membership in the system before January 1, 1996, as de-
20 scribed in ORS 238.430, and who retires on or after February 1, 2004.

21
22 "RETIRED MEMBERS

23
24 "SECTION 9. Section 10 of this 2003 Act is added to and made a part
25 of ORS chapter 238.

26 "SECTION 10. (1) Notwithstanding ORS 238.360, cost of living in-
27 creases for the service retirement allowances payable to or on account
28 of members described in subsection (5) of this section may be made
29 only as provided by this section.

30 "(2) The Public Employees Retirement Board shall calculate a re-

1 **vised service retirement allowance for members described in sub-**
2 **section (5) of this section. The revised service retirement allowance**
3 **shall be calculated as follows:**

4 **"(a) The board shall establish a member account balance for the**
5 **member as of the member's effective date of retirement, determined**
6 **as though the member account for the member had been credited with**
7 **11.33 percent earnings in calendar year 1999.**

Fill
contingency

8 **"(b) The board shall calculate a service retirement allowance for the**
9 **member under ORS 238.300 as of the member's effective date of re-**
10 **irement, using the member account balance established under para-**
11 **graph (a) of this subsection.**

Fill
CIL

12 **"(c) If the member elected an optional service retirement allowance**
13 **calculation under ORS 238.305, the board shall convert the service re-**
14 **irement allowance calculated under paragraph (b) of this subsection**
15 **to the optional calculation elected by the member.**

Not
in War

16 **"(d) The board shall adjust the revised service retirement allowance**
17 **calculated under paragraph (b) or (c) of this subsection for each cal-**
18 **endar year after the member's effective date of retirement based on**
19 **the cost of living adjustment provided for in ORS 238.360.**

Fill
BIP

20 **"(3) The Public Employees Retirement Board shall calculate a fixed**
21 **service retirement allowance for members described in subsection (5)**
22 **of this section. The fixed service retirement allowance shall be the**
23 **amount payable to or on account of the member on the effective date**
24 **of this 2003 Act. The fixed service retirement allowance may not be**
25 **adjusted under ORS 238.360.**

26 **"(4) The service retirement allowance payable to or on account of**
27 **members described in subsection (5) of this section shall be the greater**
28 **of the revised service retirement allowance calculated under sub-**
29 **section (2) of this section or the fixed service retirement allowance**
30 **calculated under subsection (3) of this section.**

Handwritten signature and date: 3/9/03, 11.23.03

- 1 “(5) The provisions of this section apply to members who:
2 “(a) Established membership in the Public Employees Retirement
3 System before January 1, 1996, as described in ORS 238.430;
4 “(b) Receive a service retirement allowance calculated under ORS
5 238.300 (2)(b)(A); and
6 “(c) Retire after February 1, 2000, and before February 1, 2004.

7

8

“INACTIVE VESTED MEMBERS

9

10 “SECTION 11. ORS 238.265 is amended to read:

11 “238.265. (1) Except as otherwise provided in this section, a member of the
12 Public Employees Retirement System may withdraw from the Public Em-
13 ployees Retirement Fund the amount credited to the member account, if any,
14 for the member if:

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

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

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

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

23 “(2) If a member wishes to withdraw the member account, if any, of the
24 member under this section, the member must transmit to the Public Em-
25 ployees Retirement Board a withdrawal request. The board shall deny the
26 withdrawal, or shall take all reasonable steps to recover withdrawn amounts,
27 if:

28 “(a) The board determines that the separation is not a bona fide sepa-
29 ration; or

30 “(b) The member fails to remain absent from the service of all employers

1 described in subsection (1) of this section for at least one calendar month
2 following the month in which the member separates from service.

3 “(3) If a member has contributed to the fund in each of five calendar years
4 and has separated from all service in the manner described in subsection (1)
5 of this section before reaching earliest service retirement age, the member
6 may elect to withdraw the member account of the member under this section
7 at any time before reaching earliest service retirement age. If the inactive
8 member does not make an election to withdraw under this section, the
9 member shall be paid the benefits or retirement allowances described in ORS
10 238.425.

11 “(4) Withdrawal of a member account under this section cancels all
12 membership rights in the system, including the right to claim credit for any
13 employment before withdrawal.

14 “**SECTION 12.** ORS 238.425 is amended to read:

15 “238.425. In the event that an employee who is a **vested** member of the
16 system[, *who has made contributions to the fund during each of five calendar*
17 *years as established by this chapter,*] and who has not attained earliest ser-
18 vice retirement age[,] is separated, for any reason other than death or disa-
19 bility, from all service entitling the employee to membership in the system,
20 the member account, **if any**, of the member shall remain to the member's
21 credit in the fund unless the member elects to withdraw it and there shall
22 be paid such death benefits as this chapter provides; or a disability retire-
23 ment allowance or, after attaining earliest service retirement age, a service
24 retirement allowance, either of which shall consist of **the allowance pro-**
25 **vided in ORS 238.300, but actuarially reduced and computed on the**
26 **member's then attained age.**[:]

27 “[*(1) An annuity which shall be the actuarial equivalent of the member's*
28 *accumulated contributions and interest thereon credited to the member;*]

29 “[*(2) A pension provided by the contributions of employers as provided in*
30 *ORS 238.300 (2), but actuarially reduced and computed on the member's then*

1 attained age; and]

2 “[(3) An additional life pension (nonrefund) for prior service credit, in-
3 cluding military service, credited to the member at the time the member first
4 becomes a member of the system, as elsewhere provided in this chapter, which
5 pension shall be provided by the contributions of the employer.]

6

7

“TRANSITION ACCOUNTS

8

9 **“SECTION 13. (1) An active member of the Public Employees Re-**
10 **irement System, as defined by ORS 238.005, shall make payments to**
11 **a transition account established for the member under the provisions**
12 **of this section. Payments must be in the amount of six percent of the**
13 **salary, as defined by ORS 238.005, of the employee.**

14 **“(2) A public employer, as defined by ORS 238.005, that participates**
15 **in the system may agree to make all or part of the transition pay-**
16 **ments on behalf of employees of the public employer who are active**
17 **members of the system. An agreement may be made by a collective**
18 **bargaining agreement or by policy of the employer.**

19 **“(3) A public employer, as defined by ORS 238.005, that participates**
20 **in the system and that is paying employee contributions on behalf of**
21 **employees of the public employer under the provisions of ORS 238.205**
22 **on June 30, 2003, whether by reason of having agreed to ‘pick-up’ or**
23 **by reason of having agreed to assume or pay those contributions, must**
24 **make the employee payments required by subsection (1) of this section**
25 **until June 30, 2005.**

26 **“(4) Payments to a transition account under this section may not**
27 **be considered employee contributions to the system for any purpose.**

28 **“(5) The Public Employees Retirement Board shall establish a**
29 **transition account program for payments made under this section.**
30 **Transition accounts must be kept separate from the Public Employees**

1 Retirement Fund and the General Fund. Except as provided in sub-
2 section (9) of this section, all earnings and losses on a transition ac-
3 count shall be credited by the board to the transition account. If the
4 membership of the employee in the system is terminated under the
5 provisions of ORS 238.095, the board shall cease investment of the
6 amounts in the transition account and, after the effective date of the
7 termination, shall no longer credit earnings and losses to the transi-
8 tion account.

9 “(6) Amounts held in a transition account under this section must
10 be distributed to the member within 90 days after the member’s ef-
11 fective date of retirement under ORS chapter 238, or within 90 days
12 after termination of the person’s membership in the system under
13 ORS 238.095.

14 “(7) Distribution from a member’s transition account shall be made
15 in a single lump sum payment.

16 “(8) The board shall adopt rules and establish procedures for tran-
17 sition payments and accounts.

18 “(9) The board shall by rule establish a maintenance fee for transi-
19 tion accounts established under this section. The fee may be collected
20 out of earnings on transition accounts or, if there are no earnings,
21 from the principal amounts paid into the transition accounts. The fee
22 shall be in an amount determined by the board to be adequate to pay
23 the full cost to the system of maintaining transition accounts under
24 this section.

25 “(10) The board shall take all actions necessary to seek qualification
26 of the transition account program as a tax-qualified governmental re-
27 tirement plan and trust under the Internal Revenue Code.

28 “(11) Nothing in this section creates a contract between members
29 of the Public Employees Retirement System and participating public
30 employers.

1 "BOARD COUNSEL

2
3 "SECTION 14. Section 14a of this 2003 Act is added to and made a
4 part of ORS chapter 238.

5 "SECTION 14a. The Attorney General shall consult with the Gov-
6 ernor on appointment of separate counsel pursuant to ORS 180.235 to
7 represent the Public Employees Retirement Board in any matter or in
8 any class of matters in which the benefits payable under the Public
9 Employees Retirement System are at issue, including but not limited
10 to defending the provisions of this 2003 Act in any proceeding com-
11 menced under section 37 of this 2003 Act.

12
13 "REMEDY IN CITY OF EUGENE V. STATE OF OREGON

14
15 "SECTION 14b. (1) If the Public Employees Retirement Board is
16 required to correct one or more of the erroneous benefit calculation
17 methods identified in City of Eugene et al. v. State of Oregon, Case
18 Nos. 99C-12794, 00C-16173, 99C-12838 and 99C-20235, the board shall re-
19 cover the cost of benefits erroneously paid to retired members as a
20 result of those erroneous benefit calculations by one or both of the
21 following methods:

22 "(a) The board may withhold cost of living increases under ORS
23 238.360 from a retired member whose benefit is greater than the cor-
24 rectly calculated benefit of the member until such time as the mem-
25 ber's benefit is equal to the correctly calculated benefit.

26 "(b) The board may treat all or part of the present value of the
27 benefits erroneously paid and payable to retired members as a result
28 of the erroneous benefit calculations as an administrative expense of
29 the Public Employees Retirement System, to be paid exclusively from
30 future income of the Public Employees Retirement Fund, and to be

1 amortized over an actuarially reasonable period not to exceed 15 years.
2 “(2) In no event may the cost of erroneous benefit calculation
3 methods identified in City of Eugene et al. v. State of Oregon be con-
4 sidered an employer liability or charged to employers through em-
5 ployer contributions.

6
7 “EMPLOYER CONTRIBUTION RATES
8

9 “SECTION 15. The Public Employees Retirement Board shall recal-
10 culate the contribution rates of all participating public employers,
11 pursuant to ORS 238.225, to reflect the provisions of this 2003 Act and
12 shall issue corrected contribution rate orders to participating public
13 employers within 90 days after the effective date of this 2003 Act. The
14 corrected rates are effective July 1, 2003.”

15 On page 16, delete lines 1 through 29.
16 Delete lines 35 through 37.
17 In line 38, delete “(2)” and restore “(1)”.
18 Delete lines 40 through 42.
19 In line 43, delete “(4)” and restore “(2)”.
20 In line 44, delete “(5)” and restore “(3)”.
21 On page 17, line 1, delete “(6)” and restore “(4)”.
22 In line 10, delete “(7)” and restore “(5)”.
23 In line 15, delete “(8)” and restore “(6)”.
24 In line 17, delete “(9)” and restore “(7)”.
25 In line 32, delete “(10)” and restore “(8)”.
26 In line 45, delete “(11)” and restore “(9)” and after “volunteer
27 firefighter” delete the rest of the line.
28 On page 18, line 1, delete “of this section”.
29 In line 6, delete “(12)” and restore “(10)”.
30 In line 8, delete “(13)” and restore “(11)”.

- 1 In line 9, delete "(14)(a)" and restore "(12)(a)".
- 2 In line 21, delete "(15)(a)" and restore "(13)(a)".
- 3 In line 26, delete "(16)" and restore "(14)".
- 4 In line 34, delete "(17)" and restore "(15)".
- 5 In line 36, delete "(18)" and restore "(16)".
- 6 On page 20, line 1, delete "(19)" and restore "(17)".
- 7 In line 7, delete "(20)" and restore "(18)".
- 8 In line 9, delete "(21)" and restore "(19)".
- 9 In line 11, delete "(22)(a)" and restore "(20)(a)".
- 10 In line 45, delete "(23)" and restore "(21)".
- 11 On page 21, line 1, delete "(24)" and restore "(22)".
- 12 In line 2, delete "(25)" and insert "(23)".
- 13 In line 3, delete "(26)" and insert "(24)".
- 14 On page 24, line 34, after the second "member" delete the rest of the line.
- 15 In line 35, delete the boldfaced material.
- 16 On page 25, delete lines 8 through 17 and insert:
- 17 "**NOTE:** Section 21 was deleted by amendment. Subsequent sections were
- 18 not renumbered."
- 19 On page 27, lines 6 and 7, delete the boldfaced material.
- 20 On page 28, delete lines 24 through 45 and delete page 29.
- 21 On page 30, delete lines 1 through 25 and insert:
- 22 "**NOTE:** Sections 26 through 28 were deleted by amendment. Subsequent
- 23 sections were not renumbered."
- 24 On page 32, lines 4 through 19, delete the boldfaced material.
- 25 On page 34, lines 22 through 37, delete the boldfaced material.
- 26 On page 36, delete lines 13 through 20 and insert:
- 27 "**NOTE:** Section 33 was deleted by amendment. Subsequent sections were
- 28 not renumbered."
- 29 On page 37, line 27, after "member" delete the rest of the line.
- 30 In lines 28 through 31, delete the boldfaced material.

1 On page 38, delete lines 17 through 25 and insert:

2

3

"SEVERABILITY

4

5 **"SECTION 36. It is the intent of the Legislative Assembly that all**
6 **parts of this 2003 Act are independent and that if any part of this 2003**
7 **Act be held unconstitutional, all remaining parts shall remain in**
8 **force."**

9 On page 39, line 12, delete "on its passage" and insert "July 1, 2003".

10