

## A BILL FOR AN ACT

Relating to public employees' retirement; creating new provisions; amending ORS 238.005, 238.015, 238.062, 238.092, 238.095, 238.105, 238.200, 238.205, 238.250, 238.255, 238.260, 238.265, 238.270, 238.300, 238.320, 238.390, 238.395, 238.425, 238.630, 238.640, and 238.670; adding Sections 25 to 29 and 31 to 32 of this Act to ORS chapter 238; repealing ORS 238.667; and declaring an emergency.

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

**SECTION 1. Legislative findings. The Legislative Assembly finds that:**

**(1) It is the policy of the State of Oregon to provide career public employees adequate and secure retirement benefits at a reasonable, affordable and stable cost to taxpayers.**

**(2) Since 1995, the cost to the taxpayers of funding the Public Employees Retirement System (PERS) has increased dramatically. The cost of PERS increased when PERS investment income was good, and the cost of PERS continued to increase when PERS investment income was poor.**

**(3) As the cost of PERS has increased, retirement benefits for PERS members have also increased. In 1990, the average career PERS member retired with a PERS benefit equal to 63 percent of the member's final average salary. By 2000, the average career PERS member's retirement benefit had increased to 106 percent of final average salary. Unless steps are taken to reform and stabilize PERS, retirement benefits will continue to grow and many PERS members will retire with pensions that far exceed their final average salaries.**

**(4) The Legislative Assembly neither intended nor promised to provide PERS members with retirement benefits in excess of the members' pre-retirement income. The goal of PERS is and has been to provide a pension that, when combined with Social Security benefits, will replace 75 to 85 percent of a member's pre-retirement income.**

**(5) The excessive benefits being paid to PERS members and the resultant increased cost to the taxpayers is due in substantial part to actions taken by the PERS Board in violation of the laws governing PERS. The PERS Board has:**

**(a) unlawfully used outdated mortality tables to calculate retirees' monthly benefits;**  
**(b) unlawfully required employers to match earnings in the employees' variable accounts when those employees' pensions are calculated under the "money match formula";**  
**and**

**(c) unlawfully abused its discretion in failing to set aside adequately statutorily mandated reserves out of investment income while crediting imprudently large amounts of investment income to member accounts.**

**(6) In *City of Eugene et al v. PERS*, Case No. 99C-12794, the Marion County Circuit Court found that the PERS Board has paid excessive and unlawful benefits and increased the costs of PERS by virtue of the unlawful actions described in subsection (5) of this section.**

**(7) Unless immediate steps are taken to reform and stabilize PERS by ending the unlawful practices of the PERS Board and correcting the past effects of those practices, escalating pension costs will undermine the financial security of PERS, force massive cutbacks in essential government services, eliminate the jobs of many public employees, and destroy the public's confidence and trust in the government institutions of the state.**

**(8) This 2003 Act is intended to reform and stabilize PERS, remedy the effects of past unlawful actions, ensure that future PERS benefits will be consistent with the goals and intent of the Legislative Assembly, and protect the accrued benefits earned by current PERS members.**

**SECTION 2.** ORS 238.005 is amended to read:

238.005. For purposes of this chapter:

**(1) Actuarial present value means the present value of a member's service retirement allowance as determined by the calculation provided in ORS 238.300 taking into account the relevant factors and laws that exist on the date of the determination.**

~~[(1)]~~**(2) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.**

**(3) Benefits-in-force reserve means the portion of the fund set aside for the payment of benefits to retired and disabled members, their beneficiaries, and the beneficiaries of deceased members.**

~~[(2)]~~**(4) "Board" means the Public Employees Retirement Board.**

~~[(3)]~~**(5) "Calendar year" means 12 calendar months commencing on January 1 and ending on December 31 following.**

~~[(4)]~~**(6) "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)](7) "Creditable service" means any period of time during which an active member is being paid a salary by a participating public employer and contributions are being made to the system either by or on behalf of the member. 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)](8) "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)](9) "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)](10) "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)]~~**(11)** "Firefighter" does not include a volunteer firefighter as defined in subsection ~~[(23)]~~**(25)** of this section, 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)]~~**(12)** "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 following.

~~[(11)]~~**(13)** "Fund" means the Public Employees Retirement Fund.

~~[(12)]~~**(14)**(a) "Member" means a person who has established membership in the system and whose membership has not been terminated as described in ORS 238.095. "Member" includes active, inactive and retired members.

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

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

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

~~[(13)]~~**(15)**(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)](16) "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)](17) "Pension" means annual payments for life derived from contributions by one or more public employers.

[(16)](18) "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 the MacLaren School, Hillcrest School of Oregon and other 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)](19) "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)](20) "Prior service credit" means credit provided under ORS 238.442 or under ORS 238.225 (2) to (6) (1999 Edition).

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

[(20)](22)(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)](23) "School year" means the period beginning July 1 and ending June 30 next following.

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

**(25) "Vested" means having the right to receive a service retirement allowance, upon meeting the eligibility requirements provided in ORS 238.280. A member becomes vested when the member reaches normal retirement age or has been an active member of the system in each of five calendar years.**



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

**SECTION 3.** 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 following the six months' period. [*Employee and employer contributions*] **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) 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) 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) 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)(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)(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) 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) 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 4.** ORS 238.062 is amended to read:

238.062. Any deputy district attorney receiving any compensation from the state or from a county participating in the Public Employees Retirement System shall establish membership in the system after service for six months without having been absent 30 working days. [*Contributions*] **Any contributions required to be paid** by any such deputy district attorney shall be [*due from*] **based on** salary paid by the state, by a county participating in the system or by both. The application of this chapter to any such deputy district attorney made prior to the effective date of this section by the Public Employees Retirement Board hereby is confirmed and ratified.

**SECTION 5.** ORS 238.092 is amended to read:

238.092. (1) Notwithstanding any other provision of this chapter:

(a) A retired member of the system who has retired as other than a member of the Legislative Assembly and who thereafter becomes a member of the Legislative Assembly and elects to become an active member of the system as a member of the Legislative Assembly may also elect, by giving the board written notice of desire to do so, to receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and be an active member of the system as a member of the Legislative Assembly for the period the member holds office as a member of the Legislative Assembly. The notice provided for in this paragraph shall be given within 30 days after the retired member takes office as a member of the Legislative Assembly.

(b) A member of the Legislative Assembly who is a member of the system as a member of the Legislative Assembly and who becomes eligible to retire by reason of service as other than a member of the Legislative Assembly, without regard to when that service was performed, may elect, by giving the board written notice of desire to do so, to retire and receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and to continue, for the period the member holds office as a member of the Legislative Assembly, as an active member of the system as a member of the Legislative Assembly.

(c) Upon receipt of the notice provided for in paragraphs (a) and (b) of this subsection, the

board shall determine that portion of the accumulated contributions, **if any**, of the member and interest thereon attributable to service as other than a member of the Legislative Assembly, which shall be used in determining the amount of the annuity the member shall receive for that service. The portion of the accumulated contributions, **if any**, of the member and interest thereon attributable to service as a member of the Legislative Assembly shall remain in the member account of the member and, together with **any** subsequent contributions and interest thereon, be used in determining the amount of the additional annuity the member shall receive for that service upon ceasing to hold office as a member of the Legislative Assembly. **If the member has no member account, the board shall determine the member's retirement allowance for non-legislative service based on the number of years of non-legislative service, and shall determine any additional benefit to be received after the member ceases to hold office as a member of the Legislative Assembly based on the number of years of service in the Legislative Assembly.**

(2) Notwithstanding any other provision of this chapter, a person who has reached the age of 65 years, whether or not previously employed by a public employer and whether or not a retired member of the system, may be employed by the Legislative Assembly, either house thereof or the Oregon State Police for all or any part of a regular or special session of the Legislative Assembly. A person employed under this subsection:

(a) Unless an active member of the system continuing in employment past the age of 65 years, *[shall not be permitted to make contributions to the retirement fund, nor shall the employer make contributions on behalf of the person]* **shall not accrue any retirement benefits; nor shall any contributions be required to be paid by the person or the person's employer.**

(b) If a retired member of the system, is entitled, during the period of such employment, to any pension or annuity provided by this chapter.

**SECTION 6.** ORS 238.095 is amended to read:

ORS 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 **or receives a lump sum payment equivalent to the actuarial present value of the member's retirement allowance**, in the manner provided by ORS 238.265.

(2) Except as provided in subsection (3) of this section, an employee shall cease 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.

(3) A school district employee shall 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 for the next following five school years; and

(b) The member either returns to school employment 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. 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 fund as a qualified governmental retirement plan and trust.

**SECTION 7.** ORS 238.105 is amended to read:

238.105. Whenever, within five years after the employee is separated from all service entitling the employee to membership in the system, an employee who has withdrawn the amount credited to the member account of the member **or has received a lump sum payment equivalent to the actuarial present value of the member's retirement allowance** reenters the service of an employer participating in the system, the employee's rights in the system that were forfeited by the withdrawal **or receipt of payment** shall be restored upon repaying to the board within one year after reentering the service of the employer, the full amount so withdrawn **or received** together with the interest that would have been accumulated on the sum had the amount not been withdrawn **or received**.

**SECTION 8.** ORS 238.200 is amended to read:

238.200. (1)(a) An active member of the system shall contribute to the fund and there shall be withheld from salary of the member six percent of that salary.

(b) Notwithstanding paragraph (a) of this subsection, an employee who is an active member of the system on August 21, 1981, shall contribute to the fund and there shall be withheld from salary of the member, as long as the employee continues to be an active member of the system, four percent of that salary if the salary for a month is less than \$500, or five percent of that salary if the salary for a month is \$500 or more and less than \$1,000. Notwithstanding subsection (2) of this section, for the purpose of computing the percentage of salary to be withheld under this paragraph from a member who is an employee of a school district or of the State Board of Higher Education whose salary is based on an annual agreement, the agreed annual salary of the member shall be divided into 12 equal installments, and each installment shall be considered as earned and paid in separate, consecutive months, commencing with the first month that payment is actually made under the terms of the salary agreement.

(2) The contributions of each member as provided in subsection (1) of this section shall be deducted by the employer from each payroll and transmitted by the employer to the board, which shall cause them to be credited to the member account of the member. Salary shall be considered earned in the month in which it is paid. The date inscribed on the paycheck or warrant shall be considered as the pay date, regardless of when the salary is actually delivered to the member.

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

**(4) Notwithstanding subsections (1) to (3) of this section, an active member of the system or a participating employer acting on behalf of such member pursuant to ORS 238.205:**

**(a) Shall not be required or permitted to contribute to the fund more than three percent of the member's salary earned after June 30, 2003, and before July 1, 2004; and**

**(b) Shall not be required or permitted to contribute to the fund any percentage of the member's salary earned after June 30, 2004.**

**(5) Notwithstanding subsections (1) to (4) of this section, a person who establishes membership in the Public Employees Retirement System on or after the effective date of this 2003 Act shall not be required or permitted to contribute to the fund; nor shall an employer of such member be required or permitted to make contributions to the fund on behalf of such member.**

**SECTION 9.** ORS 238.205 is amended to read:

238.205 Notwithstanding any other provision of this chapter, and subject to the provisions of this section, a public employer participating in the system may agree, by a written employment policy or agreement in effect on or after July 1, 1979, to "pick-up," assume or pay the full amount of contributions to the fund required of all or less than all active members of the system employed by the employer, **but only to the extent member contributions are required by ORS 238.200.** If a public employer so agrees:

(1) The rate of contribution of each active member of the system employed by the employer who is covered by such policy or agreement shall uniformly be six percent of salary regardless of the amount of monthly salary, **for salary earned before July 1, 2003. For salary earned after June 30, 2003, the rate of contribution shall be determined pursuant to ORS 238.200 (4) and (5).**

(2) The full amount of required employee contributions assumed or paid by the employer on behalf of its employees shall be considered "salary," as defined in ORS 238.005, only for the purpose of computing a member's "final average salary," as defined in ORS 238.005, and shall not constitute

additional "salary" or "other advantages," as defined in ORS 238.005, for any other purpose.

(3) The full amount of required employee contributions "picked-up" by the employer on behalf of its employees shall be considered "salary," as defined in ORS 238.005, for the purpose of calculating the amount of the contribution, for the purpose of computing a member's "final average salary," as defined in ORS 238.005, and for all other purposes.

(4) The full amount of required employee contributions "picked-up," assumed or paid by the employer on behalf of its employees shall be added to the member accounts of the members for their annuities and shall be considered employee contributions for all other purposes of this chapter.

(5) For the purposes of this section:

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

(b) Employee contributions are "assumed or paid" by an employer if the written employment policy or agreement described in subsection (1) of this section provides that additional amounts shall be paid by the employer for the purpose of making the employee contributions, and employee compensation will not be reduced for the purpose of generating the funds needed to make the employee contributions.

(6) A participating public employer must give written notice to the Public Employees Retirement Board at the time that a written employment policy or agreement described in subsection (1) of this section is adopted or changed. The notice must indicate whether the employer will "pick-up" or "assume or pay" the employee contributions as described in subsection (5) of this section. Any change in the manner in which employee contributions are to be paid applies only to employee contributions made on and after the date the notice is received by the board.

**SECTION 10.** ORS 238.250 is amended to read:

238.250. The board shall provide for a regular account for each active and inactive member of the system **who has made contributions to the fund**. The regular account **of such a member** shall show the amount of the member's contributions to the fund and the interest which they have earned. The board shall furnish a written statement thereof upon request by any member or beneficiary of the system.

**SECTION 11.** ORS 238.255 is amended to read:

238.255. The regular account, **if any**, for an active or inactive member of the system shall be examined each year. If [*the*] **such** regular account is credited with earnings for the previous year



in an amount less than the earnings that would have been credited pursuant to the assumed interest rate for that year determined by the board, the amount of the difference shall be credited to the regular account and charged to a reserve account in the fund established for the purpose. A reserve account so established may not be maintained on a deficit basis for a period of more than *[five]* ten years. Earnings in excess of the assumed interest rate for years following the year for which a charge is made to the reserve account shall first be applied to reduce or eliminate the amount of a deficit. The Public Employees Retirement Board shall attempt to ensure that the reserve account is funded with amounts adequate to leave a zero balance in the account when all members who established membership in the system before January 1, 1996, as described in ORS 238.430, have retired.

**SECTION 12.** ORS 238.260 is amended to read:

238.260. (1) The purpose of this section is to establish a well balanced, broadly diversified investment program for certain contributions and portions of the member accounts so as to provide retirement benefits for members of the system that will fluctuate as the value and earnings of the investments vary in relation to changes in the general economy. It is anticipated that investment of those contributions and portions of the member accounts in equities will result in the accumulation of larger deposit reserves for those members during their working years, tend to preserve the purchasing power of those reserves and the retirement benefits provided thereby and afford better protection in periods of economic inflation.

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

(3)(a) A member **who is making contributions to the fund** may elect at any time to have 25, 50 or 75 percent of contributions by the member to the fund on and after the effective date of the election paid into the Variable Annuity Account, credited to a variable account, and reserved for the purchase of a variable annuity. A member who has elected to have a percentage of contributions so paid, credited and reserved may elect at any time thereafter to have an additional 25 or 50 percent of contributions by the member, but not to exceed a maximum of 75 percent, so paid, credited and reserved. An election shall be in writing on a form furnished by the board and be filed with the board. An election shall be effective on January 1 following the filing thereof.

**(b) Notwithstanding any other provision of this section, a member shall not be permitted to contribute to the Variable Annuity Account after June 30, 2004.**

(4) A member who has elected to have contributions paid into the Variable Annuity Account under subsection (3) of this section may thereafter cause the contributions to cease being paid into the member's variable account by filing a request in writing on a form furnished by the board and filed with the board. The contributions shall cease being paid into the member's variable account after December 31 following the filing of the request. Contributions paid into the member's variable

account before the effective date of the request for cessation shall remain in the member's variable account.

(5)(a) An employee who is a member of the system on January 1, 1968, and who thereafter *[files an election under subsection (3) of this section]* **made contributions to the Variable Annuity Account**, may elect at any time to have an amount equal to 10 percent per year, for not more than five years, of the balance of the regular account of the member in the fund on the effective date of an election filed under subsection (3) of this section, transferred from the regular account of the member to the Variable Annuity Account, credited to the member's variable account, and reserved for the purchase of a variable annuity. An election shall be in writing on a form furnished by the board and be filed with the board. An election is final and irrevocable upon the filing thereof. The first transfer pursuant to an election shall be made on July 1 following the filing of the election, but may be made, in the discretion of the board, on an earlier date.

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

(c) No transfer shall be made under this subsection after the first payment of the service retirement allowance of the member becomes normally due.

**(d) Notwithstanding paragraphs (a) through (c) of this subsection, after December 31, 2010, a member may not elect to transfer funds under this subsection.**

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

(7)(a) Except as provided in subsection (8) of this section, the policy-making investment authority for the Public Employees Retirement Fund shall enter into contracts with one or more persons whom the authority determines to be qualified, whereby the persons undertake to invest and reinvest moneys in the Variable Annuity Account available for investment and acquire, retain, manage and dispose of investments of the account in accordance with subsections (1) and (6) of this section and to the extent provided in the contracts.

(b) Performance of functions under contracts so entered into shall be paid for out of the gross

interest or other income of the investments with respect to which the functions are performed, and the net interest or other income of the investments after that payment shall be considered income of the Variable Annuity Account.

(c) The policy-making investment authority may require a person contracted with to give to the state a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the authority, with corporate surety authorized to do business in this state.

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

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

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

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

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

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

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

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

(11) Notwithstanding subsection (10) of this section, the board, in the event of extraordinary fluctuation in the market value of investments of the Variable Annuity Account and in order to avoid substantial inequities, may increase or decrease the portions of annuities paid from the account for periods less than a calendar year and determined as of dates other than October 31.

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

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

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

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

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

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

(A) The member is other than a police officer or firefighter and has attained the age of 50;

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

(C) The member has a combined total of 25 years or more of creditable service in the system and prior service credit.

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

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

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

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

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

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

**SECTION 13.** ORS 238.265 is amended to read:

238.265. (1) Except as otherwise provided in this section, a member of the Public Employees Retirement System may withdraw from the Public Employees Retirement Fund the amount credited to the member account, **if any**, for the member if:

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

(b) The 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 fund as a qualified governmental retirement plan and trust;

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

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

(2) If a member wishes to withdraw the member account, **if any**, of the member under this section, the member must transmit to the Public Employees Retirement Board a withdrawal request. The board shall deny the withdrawal, or shall take all reasonable steps to recover withdrawn amounts, if:

(a) The board determines that the separation is not a bona fide separation; or

(b) The member fails to remain absent from the service of all employers described in subsection (1) of this section for at least one calendar month following the month in which the member separates from service.

(3) **(a) Subject to paragraph (b) of this subsection, a vested member of the system who** *[If a member has contributed to the fund in each of five calendar years and]* has separated from all service in the manner described in subsection (1) of this section before reaching earliest service retirement age, *[the member]* may elect to withdraw **from the system by receiving the greater of the balance in the member account of the member** *[under this section]* **or a lump sum payment equivalent to the actuarial present value of the member's retirement allowance at the time of separation** at any time before reaching earliest service retirement age. If the inactive member does not make an election to withdraw under this section, the member shall be paid the *[benefits or]* retirement **allowance** *[allowances]* described in ORS 238.425.

**(b) Notwithstanding paragraph (a) of this subsection, a vested member whose retirement allowance at the time of separation has an actuarial present value of \$10,000 or less, shall receive a lump sum payment upon separation from service.**

(4) Withdrawal of a member account **or receipt of a lump sum payment equivalent to the actuarial present value of the member's retirement allowance** under this section cancels all membership rights in the system, including the right to claim credit for any employment before withdrawal.

**SECTION 14.** ORS 238.270 is amended to read:

238.270. Whenever a person who is past the earliest service retirement age separates from the service of a public employer participating in the Public Employees Retirement System and who

thereafter, but before applying to the Public Employees Retirement Board for retirement benefits, is employed in a position that entitles the person to membership in another public employees retirement system, either within or without this state, the board, upon the written request of the person and if in conformance with the provisions of law governing the other public employees retirement system, may transfer the member account, **if any**, of the person in the fund to the other public employees retirement system. Such transfer shall cancel the right of the person to claim any future benefits under the Public Employees Retirement System for service rendered to a public employer in this state prior to the date of the transfer.

**SECTION 15.** ORS 238.300 is amended to read:

238.300. Upon retiring from service at normal retirement age or thereafter, a member of the system shall receive a service retirement allowance which shall consist of the following annuity and pensions:

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

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

(A) For service as a police officer or firefighter, two percent of final average salary multiplied by the number of years of membership in the system as a police officer or firefighter before the effective date of retirement.

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

(C) For service as other than a police officer, firefighter or member of the Legislative

Assembly, 1.67 percent of final average salary multiplied by the number of years of membership in the system as other than a police officer, firefighter or member of the Legislative Assembly before the effective date of retirement.

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

(A) **For a member who was employed by a participating employer before the effective date of this 2003 Act, the** [The] actuarial equivalent of the annuity provided by the accumulated contributions of the member.

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

(c) As used in this subsection, "number of years of membership" means the number of full years plus any remaining fraction of a year for which salary was paid and contributions to the Public Employees Retirement System made. Except as otherwise provided in this paragraph, in determining a remaining fraction a full month shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as a full month. Membership of a school district employee, an employee of the State Board of Higher Education engaged in teaching or other school activity at an institution of higher education or an employee of the Department of Human Services, the Oregon Youth Authority, the Department of Corrections or the State Board of Education engaged in teaching or other school activity at an institution supervised by the authority, board or department, for all portions of a school year in a calendar year in which the district school, institution of higher education or school activity at an institution so supervised in which the member is employed is normally in session shall be considered as a full one-half year of membership. The number of years of membership of a member who received a refund of contributions as provided in ORS 237.976 (2) is limited to the number of years after the day before the date on which the refund was received. The number of years of membership of a member who is separated, for any reason other than death or disability, from all service entitling the member to membership in the system, who withdraws the amount credited to the member account of the member in the fund during absence from such service and who thereafter reenters the service of an employer participating in the system but does not repay the amount so withdrawn as provided in this chapter, is limited to the number of years after the day before the date of so reentering.

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

**SECTION 16.** ORS 238.320 is amended to read:

238.320. (1) Whenever an employee who is a member of the system is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated



for an extended duration, as determined by medical examination, and thereby unable to perform any work for which qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, the member shall receive a disability retirement allowance consisting of:

(a) A disability retirement refund annuity based on the contributions, **if any**, credited to the member account of the member.

(b) A current service pension provided by the contributions of employers equal to:

(A) For a police officer or firefighter, the pension to which the member would have been entitled if the member had worked continuously until attaining the age of 55, or if the member has attained the age of 55, the pension which the member would receive were the member to retire for service, as provided in this chapter.

(B) For a member other than a police officer or firefighter, the pension to which the member would have been entitled if the member had worked continuously until attaining the age of 58, or if the member has attained the age of 58, the pension which the member would receive were the member to retire for service, as provided in this chapter.

(c) The same prior service pension the member would have received had the member worked until normal retirement age.

(2) As used in subsection (1) of this section, "injury" means bodily injury causing the disability directly and independently of all other causes and effected solely through accidental means.

(3) Whenever an employee who is a member of the system and who has been an employee for 10 years or more of an employer participating in the system is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which qualified, from cause other than injury or disease sustained while in actual performance of duty or intentionally self-inflicted, the member shall receive a disability retirement allowance as provided in subsection (1) of this section.

(4) Payments under a disability retirement allowance provided for in subsection (1) or (3) of this section for the first 90-day period of incapacity shall be withheld until such 90-day period has elapsed.

(5) An inactive member is not eligible for disability benefits referred to in subsection (1) or (3) of this section unless the member applies for such disability benefits within five calendar years after the date of separation from service with a participating public employer if the disability is continuous from such separation date or within six months after the date of such separation from service if disability occurs after such separation date.

(6) In computing years of employment for the purpose of subsection (3) of this section, the following schedule shall be used: For employment before the employee established membership in the Public Employees Retirement System, a member shall be considered to have been employed for one year for each year of prior service credit allowed, and for any minor fraction of a year of continuous service as certified by the employer for which no prior service credit was granted. After having established membership in the Public Employees Retirement System a member shall be considered to have been employed one year for each 12-month period or major fraction thereof during which time the member received compensation for employment which entitled the member to membership in the system, as evidenced by payroll records. For the purpose of determining a member's eligibility for disability benefits, no leave of absence after a member ceases to work for any participating employer shall be considered other than accumulated sick leave not in excess of 90 days. The effective date of the disability shall not in any event be determined by the board as prior to the last day for which the disabled member performed services for a participating employer. No benefits may be paid for any month in which the member received salary or sick leave benefits from the participating employer.

(7) For the purposes of subsections (1) and (3) of this section, a member of the system shall be considered to be mentally or physically incapacitated for an extended duration if the mental or physical incapacity can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 90 days.

**SECTION 17.** ORS 238.390 is amended to read:

238.390. (1) In the event that a member of the system dies before retiring, the amount of money, **if any**, credited at the time of death to the member account of the member in the fund shall be paid to the beneficiaries designated by the member. For this purpose a member may designate as a beneficiary any person or the executor or administrator of the estate of the member or a trustee named by the member to execute an express trust in regard to such amount. The withdrawal from the fund of the amount in the member account of a member pursuant to ORS 238.265 shall not invalidate a prior designation of beneficiary in the event a member returns to covered employment, regardless of whether the sum is repaid to the fund pursuant to ORS 238.105.

(2)(a) In the event that a member of the system dies before retiring and has not designated a beneficiary under subsection (1) of this section, the amount of money, **if any**, credited at the time of death to the member account of the member in the fund shall be paid to the deceased's estate if it is to be probated and, if not, then it shall be paid directly without probate to the surviving next of kin of the deceased or the guardian of the survivor's estate, share and share alike, payment to be made to survivors in the following groups in the order listed:

(A) Husband or wife.

(B) Children.

- (C) Father and mother.
- (D) Grandchildren.
- (E) Brothers and sisters.
- (F) Nieces and nephews.

(b) Payment shall not be made to persons included in any of the groups listed in paragraph (a) of this subsection should there be living at the date of payment persons in any of the groups preceding it as listed. Payment to the persons in any group, upon receipt from them of an affidavit upon a form supplied by the board, that there are no living individuals in a group preceding it, that the estate of the deceased will not be probated and that the amount of money, to the full extent thereof if necessary, will be used to pay the expenses of last illness and funeral of the deceased, shall completely discharge the board and system on account of the death.

(3) The beneficiary designated under subsection (1) of this section may elect to receive the amount payable in actuarially determined monthly payments for the life of such beneficiary as long as such monthly payments are at least \$30.

(4)(a) In the event that a member of the system dies before retiring, has not designated a beneficiary under subsection (1) of this section, has no surviving next of kin referred to in subsection (2) of this section and whose estate will not be probated, the amount of money, **if any**, credited at the time of death to the member account of the member in the fund shall be paid directly without probate for the following purposes in the order listed:

- (A) Expenses of the funeral of the deceased.
- (B) Medical expenses of the last illness of the deceased.
- (C) Hospital expenses of the last illness of the deceased.

(b) Claims for payment of expenses under this subsection shall be filed with the board within six months after the date of death of the deceased. If no claims are filed within the six-month period, the amount shall be credited to the fund as are employer contributions. If a balance of the amount remains after payment of valid claims filed within the six-month period, the balance shall be credited to the fund as are employer contributions. Payments under this subsection shall completely discharge the board and system on account of the death.

(5) Accrued benefits due a retired member at the time of death are payable to the designated beneficiary and, if none, to the administrator or executor of the estate of the member. If the estate will not be probated, they may be paid, upon receipt by the board of the affidavit referred to in

subsection (2)(b) of this section, to the next of kin in the order listed in subsection (2)(a) of this section. If the estate will not be probated and if there is no beneficiary or next of kin, accrued benefits or a balance due under a refund annuity option shall be paid or credited for the purposes and in the manner provided in subsection (4) of this section. For the purpose of determining accrued benefits due a retired member at the time of death, accrued benefits are considered to have ceased as of the last day of the month preceding the month in which the retired member dies; but if Option 2 or Option 3 under ORS 238.305 has been elected as provided in this chapter and the beneficiary survives the retired member, the benefits to the beneficiary shall commence as of the first day of the month in which the retired member dies, and payment of benefits under Option 2 or Option 3 shall cease with the payment for the month preceding the month in which the beneficiary dies.

(6) Interest upon the member account of the member shall accrue until the date that the amount in the member account is distributed. Any balance in the variable account of the deceased member is considered to be transferred to the regular account of the member as of the date of death. The board shall establish procedures for computing and crediting interest on the balance in the member account for the period between the date of death and date of distribution.

(7) Payments by the Public Employees Retirement Board of credits or accrued benefits pursuant to the beneficiary designation on file with the board or any affidavit referred to in subsection (2)(b) of this section shall completely discharge the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment.

**SECTION 18.** ORS 238.395 is amended to read:

238.395. (1) In addition to any other benefits under this chapter, a death benefit, provided by contributions of the public employer under ORS 238.225, shall be paid to the beneficiaries designated under ORS 238.390 (1) of a person who is an active or inactive member of the system and who dies as a result of injuries received while employed in the service of the public employer or within 120 days after termination from service with a participating public employer. A member who is on a leave of absence without pay from employment with a participating public employer has not terminated service with that participating public employer for the purposes of this section.

(2) The death benefit referred to in subsection (1) of this section shall be [*an amount equal to the amount in the member account of the deceased member at the time of death*] **a lump sum payment equal to the actuarial present value of the member's retirement allowance at the time of death, reduced by the amount of the death benefit paid pursuant to ORS 238.390.**

(3) In the event that a beneficiary has not been named as provided in subsection (1) of this section and ORS 238.390 (1), the death benefit referred to in subsection (1) of this section shall be paid to the same person or persons and in the same manner as provided for payment of money credited to the member account of the member in ORS 238.390 (2).

(4) In the event that a beneficiary has not been designated and the deceased member has no surviving next of kin referred to in ORS 238.390 (2)(a), the death benefit referred to in subsection (1) of this section shall be used for the same purpose and in the same manner as provided for the use of money credited to the member account of the member in ORS 238.390 (4)(a).

(5) The beneficiary designated under subsection (1) of this section and ORS 238.390 (1) may elect to receive the amount payable in actuarially determined monthly payments for the life of such beneficiary as long as such monthly payments, plus the monthly amount if elected under ORS 238.390 (3), are at least \$30.

(6) Interest upon the death benefit provided by this section shall accrue until the date that the benefit is distributed. The board shall establish procedures for computing interest to be credited on the benefit for the period between the date of death and date of distribution.

(7) Payments by the Public Employees Retirement Board of additional death benefits pursuant to the beneficiary designation on file with the board or any affidavit referred to in ORS 238.390 (2)(b) shall completely discharge the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment.

**SECTION 19.** ORS 238.425 is amended to read:

238.425. In the event that an employee who is a **vested** member of the system[, *who has made contributions to the fund during each of five calendar years as established by this chapter,*] and who has not attained earliest service retirement age, is separated, for any reason other than death or disability, from all service entitling the employee to membership in the system, the member account, **if any**, of the member shall remain to the member's credit in the fund unless the member elects to withdraw it and there shall be paid such death benefits as this chapter provides; or a disability retirement allowance or, after attaining earliest service retirement age, a service retirement allowance, either of which shall consist of **the allowance provided in ORS 238.300, but actuarially reduced and computed on the member's then attained age** [:

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

(2) *A pension provided by the contributions of employers as provided in ORS 238.300 (2), but actuarially reduced and computed on the member's then attained age; and*

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

**SECTION 20.** ORS 238.630 is amended to read:

238.630. (1) The governing authority of the system shall be a board known as the Public Employees Retirement Board and consisting of [12] **five** members appointed by the Governor

subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. **The Governor shall appoint one board member as chairperson, to serve at the pleasure of the Governor and for the length of that member's term, at which time the Governor shall appoint a successor.** Except as otherwise provided in ORS 238.640, the term of each member shall be three years.

(2) The board shall have:

(a) The powers and privileges of a corporation, including the right to sue and be sued in its own name as such board; and

(b) The power and duty, subject to the limitations of this chapter, of managing the system.

(3) The board:

*[(a) Shall, at its first meeting each year, designate one of its members to serve as chair of the board for the remainder of the year and until a successor is designated and takes that office;*

*[(b)](a)* Shall arrange for actuarial service for the system;

*[(c)](b)* Shall employ a director;

**(c) Notwithstanding ORS 180.060, 180.210 and 180.220, shall retain the services of independent legal counsel who will advise the board on its statutory and other legal obligations. Such legal counsel may not be an active or inactive member of the system.**

(d) Shall create such other positions as it deems necessary to sound and economical administration of the system, which positions the director shall fill by appointment;

(e) Shall, with the approval of the Director of the Oregon Department of Administrative Services, and as otherwise provided by law, fix the salaries of all persons employed for purposes of administering the system;

(f) Shall publish and distribute to all employer and employee members of the system an annual report including a summary of investments of moneys in the fund, investment earnings, significant legislative or administrative changes in the system and other pertinent information on the operation of the system for the preceding year;

(g) Shall determine the actuarial equivalency of optional forms of retirement allowances and **at the next board meeting following each actuarial report required by ORS 238.605, shall establish [from time to time] and thereafter apply** for that purpose the *[necessary]* actuarial factors **that accurately reflect the current experience of the members, which factors** shall constitute a

part of the system; [and]

**(h) Shall adopt an assumed interest rate for the system that reasonably reflects the expected average rate of return the fund will earn after deducting administrative expenses;**

**(i) Except as specifically required by statute, shall have no authority or duty to take actions that increase the level of benefits awarded to members of the system. The Legislative Assembly retains sole authority to set the appropriate level of benefits; and**

[(h)](j) Shall adopt rules and take all actions necessary to maintain qualification of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. Rules under this paragraph may impose limits on contributions to the system, limits on benefits payable from the system and other limitations or procedures required or imposed under federal law or regulation for the purpose of qualification of the Public Employees Retirement System and Public Employees Retirement Fund under the Internal Revenue Code as a governmental retirement plan and trust.

(4) The board established by this section shall succeed to all the duties and prerogatives of the Public Employees Retirement Board created by chapter 401, Oregon Laws 1945, in relation to the Public Employees Retirement Fund, and in addition shall perform all duties required of it by ORS 237.950 to 237.980, in regard to moneys payable to or from such fund.

(5) The board shall identify by rule those records that must be maintained by participating public employers for the purposes of subsection (3)(h) of this section. A participating public employer shall maintain records for all employees who are members of the system as required by board rules, and shall provide that information to the board upon request.

**SECTION 21.** ORS 238.640 is amended to read:

238.640. (1) Members of the Public Employees Retirement Board shall have the following qualifications:

(a) Each member shall be a citizen of the United States and a resident of this state for at least two years immediately preceding appointment to the board.

(b) [Six] **Three** members shall be public members who are not members of the Public Employees Retirement System. At least [three] **two** of the public members must have experience in investing, **financial management** or pension management.

(c) One member shall be an employee [of the state] in a management position **with a participating employer** at the time of appointment and throughout the term of appointment.

*[(d) At the time of appointment and throughout the term of the appointment, one member shall hold an elective office, by election or appointment, in the governing body of a participating public employer, other than the state.]*

*[(e)](d) [Four members] **One member** shall be a public employee[s], as defined in ORS 243.650, of a participating public employer and be in an appropriate bargaining unit, as defined in ORS 243.650, having an exclusive representative at the time of appointment and throughout the term of appointment; but membership on the board shall not itself affect the status of such a member as a public employee as defined in ORS 243.650. [At the time of appointment and throughout the term of appointment, one of those four members shall be engaged in teaching or other school activity, one shall be a police officer or firefighter, one shall be an employee of the state in a category other than teaching or other school activity or police officer or firefighter, and one shall be an employee of a political subdivision of the state in a category other than teaching or other school activity or police officer or firefighter].*

*[(f)](e) **Notwithstanding paragraphs (c) and (d), a board member appointed with the qualifications specified in paragraph (c) or (d) of this subsection and who subsequently retires from public employment shall not be disqualified from service but shall be permitted to serve the remainder of the term to which that board member was appointed.** [In lieu of one member appointed with the qualifications specified in paragraph (c), (d) or (e) of this subsection, one member shall be a retired member of the system at the time of appointment and throughout the term of the appointment.]*

*[(g)](f) The successor of a board member in any category shall have the qualifications prescribed for that category.*

(2) Any vacancy on the board shall be filled by appointment for the unexpired term of the member replaced.

(3) Except as provided in subsection (4) of this section, a member of the board is entitled to compensation and expenses as provided in ORS 292.495 from the Public Employees Retirement Fund.

(4) Any member of the board who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the board. The wages or salary of the member shall not be reduced during periods that the member is released from duty for the purpose of conducting the official business of the board. The board shall reimburse a public employer for the cost of continuing the wages or salary of the member while the member is released from duty under this subsection. A member who continues to receive wages or salary under the provisions of this subsection shall not receive compensation under ORS 292.495, but shall receive travel and other expenses provided for under ORS 292.495. The provisions of this subsection do not apply to any person who is a member of the board and who



holds another office that is subject to the provisions of section 10, Article II of the Oregon Constitution, prohibiting the holding of more than one lucrative office.

**SECTION 22. The amendments to ORS 238.640 by Section 20 of this 2003 Act do not affect the term of any member serving on the Public Employees Retirement Board on the effective date of this 2003 Act. When the first three vacancies occur after the effective date of this 2003 Act in the position of members who are serving on the board under ORS 238.640 (1)(b) (2001 Edition), whether the positions become vacant by reason of completion of the term or for any other reason, the Governor shall not fill those positions unless fewer than three members remain who meet the qualifications under Section 20 of this 2003 Act. When the position of the member serving on the board under ORS 238.640(1)(d) (2001 Edition) becomes vacant by reason or completion of the term or for any other reason, the Governor shall not fill that position. When the first three vacancies occur after the effective date of this 2003 Act in a position of a member serving on the board under ORS 238.640 (1)(e) (2001 Edition), whether the positions become vacant by reason of completion of the term or for any other reason, the Governor shall not fill those positions unless no members remain who meet the qualifications under Section 20 of this 2003 Act.**

**SECTION 23. ORS 238.670 is amended to read:**

238.670. (1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding *[seven and one-half]* **ten** percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer **due to the disability of one or more of its employees**. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

**(c) To credit the benefits-in-force reserve in a year in which interest and other income**

credited to the reserve pursuant to subsection (2) of this section is insufficient to meet the expected obligations of the reserve, as identified in periodic actuarial reports.

*[(c)]* (d) To pay any other obligation of the fund *[provide for]* due to any other contingency, as *[that]* the board may determine to be appropriate.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by *[law]* **ORS 238.260, 238.610 and 238.670 (1) and any amount required by law to be applied to reduce or eliminate a deficit created pursuant to ORS 238.255**, and to the extent that such income is available, **the earnings necessary to credit the benefits-in-force reserve with an amount** *[a]* sufficient *[amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of]* **to result in a reserve balance that meets the obligations of that reserve, as identified in periodic actuarial** *[investigations]* **reports pursuant to ORS 238.605.** *[If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.]* **After meeting its statutory and administrative obligations to other reserves and accounts, including such reserves as the board maintains for the purpose of meeting the pension obligations of participating employers to active and inactive members, the board may distribute any excess income to the benefits-in-force reserve in such amounts as are consistent with the sound administration of the system.**

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) *[The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.]* **The board may distribute interest and other income to regular member accounts of members who participated in the system before January 1, 1996, at a rate that exceeds the assumed interest rate for the system only if the moneys set aside in the reserves created pursuant to subsections (1) and (2) of this section and in the reserves for the payment of pensions to those members are sufficient to meet all the actuarially determined obligations of the system expected to be paid by participating employers to those members and their beneficiaries, and only if the reserve accounts created pursuant to subsection (3) of this section are sufficient to meet all future interest crediting obligations for those members pursuant to ORS 238.255.**

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371 (1), for its review and comment.

**SECTION 24. Sections 25 to 29, 31 and 32 of this 2003 Act are added to and made a part of ORS chapter 238.**

**SECTION 25. (1) To remedy the board's errors identified by the Circuit Court in City of Eugene et al v. PERS, Case No.99C-12794, the board shall immediately correct its method of calculating retirement allowances to be paid to all members who retired or will retire after January 1, 2003, to reflect the court's judgment and the board's action on remand of the orders challenged in that case, including the following:**

**(a) Use actuarial factors that reflect the current experience of members, as reported by the board's actuary in the most recent actuarial report;**

**(b) When determining the annuity portion of the allowance pursuant to ORS 238.300 (1), include any adjustment to member accounts made by the board upon remand; and**

**(c) When determining the pension portion of the allowance pursuant to ORS 238.300 (2)(b), match only the amount that would have been the balance in the member's account had the member not participated in the variable annuity account.**

**(2) Nothing in this section is intended to replace or substitute for the final judgment in City of Eugene et al. v. PERS, Case No. 99C-12794.**

**SECTION 26. Adjustment for past errors.**

**(1) The board shall determine the cost of errors identified in the court's judgment of January 15, 2003, in City of Eugene et al v. PERS, Case No. 99C-12794, as follows:**

**(a) For members who retired after October 14, 1996, and before January 1, 2003, calculate the difference between the allowances paid and to be paid to those members and the allowances they would have been paid and would be paid if the allowances had been calculated using actuarial factors that reflected the experience of the members as reported in the last periodic actuarial report issued prior to the date of retirement;**

**(b) For members who retired with a money match benefit after January 1, 2000, and before January 1, 2003, calculate the amount of earnings credited from 1999 income to their regular member accounts in excess of eight percent, and add to that amount the portion of the pension component of such members' allowances attributable to a match of those excess**

earnings; and

(c) For members who retired after October 14, 1996, and before January 1, 2003, and who had a variable annuity account, calculate the difference between the allowances they were and will be paid and the allowances they would have been paid had the board not required an employer match of excess variable earnings but had instead correctly applied ORS 238.260 (12)(1999).

(d) For any members who retired on or after January 1, 2003, and who were paid allowances that exceeded the allowance calculated pursuant to section 25 of this 2003 Act, calculate the amount of the excess payments to those retired members, to the extent those excess amounts are not recovered by the board.

(e) Calculate the difference between the amount allocated to members' regular accounts from 1999 investment income of the fund and the amount that would have been allocated had the board distributed the assumed interest rate to those accounts.

(f) Calculate the additional cost to the system based on the amount determined in paragraph (e) of this subsection being credited to members' accounts and not being placed in fund reserves, including payment of increased benefits to members, the cost of unfunded actuarial liabilities resulting from inadequate reserves, the cost of future interest crediting on the amount determined in paragraph (e) of this subsection, and any other cost actuarially determined to result from that allocation to members' accounts.

(g) Determine the amount of any attorney fees, costs and disbursements awarded to petitioners and intervenors, to be paid by the board, in *City of Eugene et al. v. PERS*, Case No. 99C-12794.

(h) Add the amounts in paragraphs (a) through (g) of this subsection to yield the total cost of the errors for purposes of this section.

(2) The board shall consider the cost determined in subsection (1)(h) of this section as an administrative expense of the fund, to be paid exclusively from future income of the fund, and shall amortize the expense over an actuarially reasonable period, not to exceed fifteen years. In no event shall the cost determined in subsection (1)(h) be considered as an employer liability or charged to employers through contribution rates.

(3) Notwithstanding subsection (2) of this section, the amounts calculated pursuant to subsections (1)(e) and (1)(f) shall not be considered as administrative expenses of the fund to the extent that those amounts are recovered from members' accounts by the board's reallocation of 1999 income on remand from the circuit court or pursuant to any other provision of law.

(4) Notwithstanding ORS 238.360, for any member who retired after October 14, 1996, and before January 1, 2003, the board shall not apply a cost of living adjustment to such retired member's allowance until the allowance is equal to or less than the amount that the retired member would have received had the board calculated the retirement allowance of the retired member after having first made the applicable adjustments indicated in subsection (1)(a) to (f) of this section and had the board subsequently applied the provisions of ORS 238.360 to that allowance. This action shall be taken in lieu of, and not in addition to, any action of the board taken pursuant to ORS 238.715.

(5) Any costs savings to the system that are attributable to the provisions of subsection (4) of this section shall be offset against the costs to be amortized pursuant to subsection (2) of this section.

**SECTION 27.** The board shall recalculate the current contribution rates of all participating employers, pursuant to ORS 238.225, to reflect the provisions of this 2003 Act and shall issue corrected contribution rate orders to participating employers within 90 days of the effective date of this 2003 Act, such rates to be effective on July 1, 2003. In no event shall the board, in determining the contribution rates of employers, include the cost of matching the 1999 earnings credited to members' accounts in excess of the assumed interest rate and any interest subsequently credited on those excess amounts.

**SECTION 28.** Judicial review.

(1) Notwithstanding any other provision of law, exclusive jurisdiction for review of any claim, except for a claim concerning collective bargaining, based on this 2003 Act and that accrues on the effective date of this 2003 Act is conferred on the Supreme Court.

(2) A person adversely affected by this 2003 Act may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:

(a) The petition must be filed within 60 days after the effective date of this 2003 Act.

(b) The petition must include the following:

(A) A statement of the basis of the challenge; and

(B) A statement and supporting affidavit showing how the petitioner is adversely affected.

(3) The petitioner shall serve a copy of the petition by registered or certified mail upon the Public Employees Retirement System, the Attorney General and the Governor.

**(4) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.**

**(5) In reviewing a petition brought under this section, the Supreme Court shall allow participating employers to intervene.**

**(6) In the event the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.**

**SECTION 29. Any collective bargaining agreement to which a participating employer is a party and that is in force on the effective date of this 2003 Act may be opened at the option of any party thereto for the purpose of renegotiating any provision in the agreement that concerns wages or the Public Employees Retirement System. Other provisions of the collective bargaining agreement may be reopened only by mutual consent of the parties thereto.**

**SECTION 30. ORS 238.667 is repealed.**

**SECTION 31. Sections 1 through 32 of this 2003 Act may be cited as “The PERS Reform and Stabilization Act of 2003.”**

**SECTION 32. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.**