

Proposed Amendments to
House Bill 2003

4/24/03 (DH/ps)

LC 2553

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

In line 4, delete <<238.395,>>.

In line 5, delete <<238.580, 238.630, 238.640, 238.670,>>.

Delete lines 7 through 29 and insert:

<<Whereas 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; and

<<Whereas since 1995 the cost to taxpayers of funding the Public Employees Retirement System (PERS) has increased dramatically, with the cost of PERS increasing when PERS investment income was good and the cost of PERS continuing to increase when PERS investment income was poor; and

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

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

<<Whereas the cost of PERS to the taxpayers is determined almost exclusively by the benefits paid and projected to be paid to PERS members; and

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

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

<<Whereas the City of Eugene et al. v. State of Oregon, Case Nos. 99C-12794, 00C-16173, 99C-12838 and 99C-20235, Marion County Circuit Court found that the Public Employees Retirement Board paid benefits in excess of those authorized by law by: (a) Unlawfully using outdated mortality tables to calculate retirees' monthly benefits; (b) Unlawfully requiring employers to match earnings in the employees' variable accounts when those employees' pensions are calculated under the <money match formula>; and (c) Unlawfully abusing its discretion in

failing to set aside adequate statutorily mandated reserves out of investment income while crediting imprudently large amounts of investment income to member accounts; and

<<Whereas the intent of the Legislative Assembly in providing that member accounts would receive earnings at the assumed interest rate was to ensure that at the time of retirement, member accounts would be credited with no less than cumulative earnings at the assumed interest rate for each year that the member account existed; and

<<Whereas unless immediate steps are taken to reform and stabilize PERS 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; and

<<Whereas this 2003 Act is intended to reform and stabilize PERS, remedy the effects of prior 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; and

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

<<Whereas the amendments to ORS chapter 238 are intended to make only those changes necessary to restore PERS to a more stable, sustainable condition, without reducing any current member's benefit to a level below the level originally intended by the Legislative Assembly; and

<<Whereas this 2003 Act shall be known as the PERS Reform and Stabilization Act of 2003; now, therefore,>>.

On page 2, delete lines 1 through 16.

Delete lines 18 through 45.

Delete pages 3 through 15 and insert:

:SECHDG.

<<**ELIMINATION OF EMPLOYEE CONTRIBUTIONS**

:NPAR.

<<**SECTION 1.** ORS 238.200 is amended to read:

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

<<(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 **Public Employees Retirement 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, a member of the system, or a participating employer acting on behalf of the member pursuant to ORS 238.205, is not permitted or required to make employee contributions to the fund on or after July 1, 2003.**

<<**SECTION 2.** 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 **employee contributions [to the fund required of] required or permitted by ORS 238.200 for all or less than all active members of the system employed by the employer to the extent employee contributions are required or permitted 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.

<<(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 3.** 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 may not be permitted to contribute to the Variable Annuity Account after June 30, 2003.

<<(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) to (c) of this subsection, a member may not elect to transfer funds under this subsection after June 30, 2003.

<<(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 4.** 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 first establishes membership in the system before the effective date of this 2003 Act**, the actuarial equivalent of the annuity provided by the accumulated contributions of the member. **A person establishes membership in the system before the effective date of this 2003 Act for the purposes of this subparagraph if:**

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

<<(ii) **The person performed any period of service for a participating public employer before the effective date of this 2003 Act that is credited to the six-month period of employment required of an employee under ORS 238.015 before an employee may become a member of the system.**

<<(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.

:SECHDG.

<<CREDITING OF TIER ONE ACCOUNTS

:NPAR.

<<**SECTION 5.** ORS 238.255, as amended by section 1, chapter :HR2., Oregon Laws 2003 (Enrolled House Bill 2001), is amended to read:

238.255. (1) The regular account for an active or inactive member of the system, **if any**, shall be examined each year. If the 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 Public Employees Retirement 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 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.

<<(2) Notwithstanding subsection (1) of this section, the board may not credit any earnings to the regular accounts of members who established membership in the system before January 1, 1996, as described in ORS 238.430, in any year in which there is a deficit in the reserve account established under subsection (1) of this section, or credit any earnings to the regular accounts of those members that would result in a deficit in that reserve account.

<<[(2)] (3) The regular account for an active or inactive member who established membership in the system before January 1, 1996, as described in ORS 238.430, may not be credited with earnings in excess of the assumed interest rate until:

~~<<[(a) The reserve account established under subsection (1) of this section no longer has a deficit;]~~

<<[(b)] (a) The reserve account established under subsection (1) of this section is fully funded with amounts determined by the board, after consultation with the actuary employed by the board, to be necessary to ensure 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; and

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

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

:SECHDG.

<<MINIMUM ACCOUNT BALANCE

:NPAR.

<<SECTION 7. Section 8 of this 2003 Act is added to and made a part of ORS chapter 238.

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

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

<<(3) The provisions of this section apply only to a member who establishes membership in the system before January 1, 1996, as described in ORS 238.430, and who retires on or after February 1, 2004.

:SECHDG.

<<RETIRED MEMBERS

:NPAR.

<<SECTION 9. Section 10 of this 2003 Act is added to and made a part of ORS chapter 238.

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

<<(2) The Public Employees Retirement Board shall calculate a revised service retirement allowance for members described in subsection (5) of this section. The revised service retirement allowance shall be calculated as follows:

<<(a) The board shall establish a member account balance for the member as of the member's effective date of retirement, determined as though the member account for the member had been credited with :HR3B. percent earnings in calendar year 1999.

<<(b) The board shall calculate a service retirement allowance for the member under ORS 238.300 as of the member's effective date of retirement, using the member account balance established under paragraph (a) of this subsection.

<<(c) If the member elected an optional service retirement allowance calculation under ORS 238.305, the board shall convert the service retirement allowance calculated under paragraph (a) of

this section to the optional calculation elected by the member.

<<(d) The board shall adjust the revised service retirement allowance calculated under paragraphs (b) and (c) of this subsection for each calendar year after the member's effective date of retirement based on the cost of living adjustment provided for in ORS 238.360.

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

<<(4) The service retirement allowance payable to or on account of members described in subsection (5) of this section shall be the greater of the revised service retirement allowance calculated under subsection (2) of this section or the fixed service retirement allowance calculated under subsection (3) of this section.

<<(5) The provisions of this section apply to members who:

<<(a) Established membership in the Public Employees Retirement System before January 1, 1996, as described in ORS 238.430;

<<(b) Receive a service retirement allowance calculated under ORS 238.300 (2)(b)(A); and

<<(c) Retire after February 1, 2000, and before February 1, 2004.

:SECHDG.

<<INACTIVE VESTED MEMBERS

:NPAR.

<<**SECTION 11.** 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) 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 the member account of the member under this section 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 allowances described in ORS 238.425.

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

<<**SECTION 12.** 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.~~]

:SECHDG.

<<**TRANSITION ACCOUNTS**

:NPAR.

<<**SECTION 13.** (1) An active member of the Public Employees

Retirement System, as defined by ORS 238.005, shall make payments to a transition account established for the member under the provisions of this section. Payments must be in the amount of six percent of the salary of the employee, as defined by ORS 238.005.

<<(2) A public employer, as defined by ORS 238.005, that participates in the system may agree to make all or part of the transition payments on behalf of employees of the public employer who are active members of the system. An agreement may be made by a collective bargaining agreement or by policy of the employer.

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

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

<<(5) The Public Employees Retirement Board shall establish a transition account program for payments made under this section. Transition accounts must be kept separate from the Public Employees Retirement Fund and the General Fund. Except as provided in subsection (9) of this section, all earnings and losses on a transition account shall be credited by the board to the transition account. If the membership of the employee in the system is terminated under the provisions of ORS 238.095, the board shall cease investment of the amounts in the transition account and, after the effective date of the termination, shall no longer credit earnings and losses to the transition account.

<<(6) Amounts held in a transition account under this section must be distributed to the member within 90 days after the member's effective date of retirement under ORS chapter 238, or within 90 days after termination of the person's membership in the system under ORS 238.095.

<<(7) Distribution from a member's transition account shall be made in a single lump sum payment.

<<(8) The board shall adopt rules and establish procedures for transition payments and accounts.

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

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

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

:SECHDG.

<<BOARD COUNSEL

:NPAR.

<<SECTION 14. Section 14a of this 2003 Act is added to and made a part of ORS chapter 238.

<<SECTION 14a. The Attorney General shall consult with the Governor on appointment of separate counsel pursuant to ORS 180.235 to represent the Public Employees Retirement Board in any matter or in any class of matters in which the benefits payable under the Public Employees Retirement System are at issue.

:SECHDG.

<<REMEDY IN CITY OF EUGENE V. STATE OF OREGON

:NPAR.

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

<<(a) The board may withhold cost of living increases under ORS 238.360 from a retired member whose benefit is greater than the correctly calculated benefit of the member until such time as the member's benefit is equal to the correctly calculated benefit.

<<(b) The board may treat all or part of the present value of the benefits erroneously paid and payable to retired members as a result of the erroneous benefit calculations as an administrative expense of the system, to be paid exclusively from future income of the fund, and to be amortized over an actuarially reasonable period not to exceed 15 years.

<<(2) In no event may the cost of erroneous benefit calculation methods identified in City of Eugene et al. v. State of Oregon be considered an employer liability or charged to employers through contribution rates.

:SECHDG.

<<EMPLOYER CONTRIBUTION RATES

:NPAR.

<<SECTION 15. The Public Employees Retirement Board shall recalculate the contribution rates of all participating public

employers, pursuant to ORS 238.225, to reflect the provisions of this 2003 Act and shall issue corrected contribution rate orders to participating public employers within 90 days after the effective date of this 2003 Act. The corrected rates are effective July 1, 2003.>>.

On page 16, delete lines 1 through 29.

Delete lines 35 through 37.

In line 38, delete <<(2)>> and restore <<(1)>>.

Delete lines 40 through 42.

In line 43, delete <<(4)>> and restore <<(2)>>.

In line 44, delete <<(5)>> and restore <<(3)>>.

On page 17, line 1, delete <<(6)>> and restore <<(4)>>.

In line 10, delete <<(7)>> and restore <<(5)>>.

In line 15, delete <<(8)>> and restore <<(6)>>.

In line 17, delete <<(9)>> and restore <<(7)>>.

In line 32, delete <<(10)>> and restore <<(8)>>.

Delete line 45 and insert <<(9) <Firefighter> does not include a volunteer firefighter>>.

On page 18, line 1, delete <<of this section>>.

In line 6, delete <<(12)>> and restore <<(10)>>.

In line 8, delete <<(13)>> and restore <<(11)>>.

In line 9, delete <<(14)(a)>> and restore <<(12)(a)>>.

In line 21, delete <<(15)(a)>> and restore <<(13)(a)>>.

In line 26, delete <<(16)>> and restore <<(14)>>.

In line 34, delete <<(17)>> and restore <<(15)>>.

In line 36, delete <<(18)>> and restore <<(16)>>.

On page 20, line 1, delete <<(19)>> and restore <<(17)>>.

In line 7, delete <<(20)>> and restore <<(18)>>.

In line 9, delete <<(21)>> and restore <<(19)>>.

In line 11, delete <<(22)(a)>> and restore <<(20)(a)>>.

In line 45, delete <<(23)>> and restore <<(21)>>.

On page 21, line 1, delete <<(24)>> and restore <<(22)>>.

In line 2, delete <<(25)>> and insert <<(23)>>.

In line 3, delete <<(26)>> and insert <<(24)>>.

On page 24, line 34, after <<member>> delete the boldfaced material.

In line 35, delete the boldfaced material.

On page 25, delete lines 8 through 17 and insert:

<<**NOTE:** Section 21 was deleted by amendment. Subsequent sections were not renumbered.>>.

On page 27, lines 6 and 7, delete the boldfaced material.

On page 28, delete lines 24 through 45 and delete page 29.

On page 30, delete lines 1 through 25 and insert:

<<**NOTE:** Sections 26 through 28 were deleted by amendment. Subsequent sections were not renumbered.>>.

On page 32, lines 4 through 19, delete the boldfaced material.

On page 34, lines 22 through 37, delete the boldfaced material.

On page 36, delete lines 13 through 20 and insert:
<<**NOTE:** Section 33 was deleted by amendment. Subsequent sections were not renumbered.>>.

On page 37, line 27, after <<member>> delete the boldfaced material.

In lines 28 through 31, delete the boldfaced material.

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

<<**SEVERABILITY**

:NPAR.

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

On page 39, in line 12, delete <<on its passage>> and insert <<July 1, 2003>>.