

# Enrolled House Bill 2020

Sponsored by COMMITTEE ON PUBLIC EMPLOYEES RETIREMENT SYSTEM

CHAPTER .....

AN ACT

Relating to public employee successor retirement plan; creating new provisions; amending ORS 169.810, 192.502, 196.165, 238.156, 238.300, 238.445, 238.455, 238.460, 238.465, 238.600, 238.610, 238.630, 238.645, 238.650, 238.660, 238.661, 238.665, 238.675, 238.700, 238.705, 238.715, 238.750, 243.105, 243.800, 243.830, 243.930, 268.240, 293.701, 338.135, 341.290, 353.117, 353.250, 377.836, 396.330, 576.306, 656.725 and 777.775; repealing sections 13, 13a and 13b, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003); appropriating money; and declaring an emergency.

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

### DEFINITIONS

**SECTION 1. Definitions. For the purposes of sections 1 to 45 of this 2003 Act:**

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

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

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

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

(a) Persons engaged as independent contractors;

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

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

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

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

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

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

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

(i) Any employee who belongs to a class of employees that was not eligible on the day immediately preceding the effective date of this 2003 Act for membership in the system under the provisions of ORS chapter 238 or other law;

(j) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of section 4 (2) of this 2003 Act;

(k) Any person who is retired under ORS chapter 238 or sections 5 to 26 of this 2003 Act and who continues to receive retirement benefits while employed; and

(L) Judges.

(5) "Firefighter" means:

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

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

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

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

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

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

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

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

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

(9) "Individual account program" means the defined contribution individual account program of the Oregon Public Service Retirement Plan established under section 2 of this 2003 Act.

(10) "Member" means an eligible employee who has established membership in the pension program or the individual account program of the Oregon Public Retirement Retirement Plan and whose membership has not been terminated under section 6 or 30 of this 2003 Act.

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

(12) "Pension program" means the defined benefit pension program of the Oregon Public Service Retirement Plan established under section 2 of this 2003 Act.

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

(14) "Qualifying position" means one or more jobs with one or more participating public employers in which an eligible employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which benefits are not provided under the Oregon Public Service Retirement Plan pursuant to section 4 (2) of this 2003 Act.

(15) "Retired member" means a pension program member who is receiving a pension as provided in sections 18 to 21 of this 2003 Act.

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

(b) "Salary" includes the following amounts:

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

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

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

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

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

(F) The amount of an employee contribution to the individual account program that is paid by the employer and deducted from the compensation of the employee, as provided under section 34 (1) and (2)(a) of this 2003 Act.

(G) The amount of an employee contribution to the individual account program that is not paid by the employer under section 34 of this 2003 Act.

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

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

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

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

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

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

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

(G) Payments for instructional services rendered to institutions of the Department of Higher Education or the Oregon Health and Science University when those services are in excess of full-time employment subject to sections 1 to 45 of this 2003 Act. A person employed under a contract for less than 12 months is subject to this subparagraph only for the months covered by the contract.

(H) The amount of an employee contribution to the individual account program that is paid by the employer and is not deducted from the compensation of the employee, as provided under section 34 (1) and (2)(b) of this 2003 Act.

(I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination

period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

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

**SECTION 1a. Computation of hours of service.** For the purpose of computing hours of service under sections 1 to 45 of this 2003 Act, an eligible employee shall be credited with 40 hours of service for each calendar week in which the employee was employed in a qualifying position unless otherwise shown by records maintained by the participating public employer.

## **OREGON PUBLIC SERVICE RETIREMENT PLAN**

**SECTION 2. Oregon Public Service Retirement Plan established.** (1) The Oregon Public Service Retirement Plan is established. The purpose of the Oregon Public Service Retirement Plan is to provide career public employees with a secure and fair retirement income at an affordable, stable and predictable cost to the taxpayers. The Oregon Public Service Retirement Plan shall be composed of a pension program, established and maintained with the Public Employees Retirement System as a tax-qualified governmental defined benefit plan, and an individual account program, established and maintained as a tax-qualified governmental defined contribution plan. The pension program and the individual account program are separate plans for purposes of federal income tax qualification, and the assets of each program must be held in a separate trust for the exclusive benefit of the participants and beneficiaries in each program. The Public Employees Retirement Board may create separate accounts within the Public Employees Retirement Fund for the assets of the pension program and of the individual account program.

(2) Notwithstanding any provision of ORS chapter 238, any person who is employed by a participating public employer on or after the effective date of this 2003 Act, and who has not established membership in the Public Employees Retirement System before the effective date of this 2003 Act, is entitled to receive only the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers on and after the effective date of this 2003 Act and has no right or claim to any benefit under ORS chapter 238 except as specifically provided by sections 1 to 45 of this 2003 Act.

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

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

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

(d) If a person leaves employment with a participating public employer for career development purposes pursuant to written authorization of the participating public employer under a written policy of the employer that applies generally to the class of employees to which the member belongs, the person has a break in service for the purposes of this subsection

only if the person performs no service with a participating public employer in a qualifying position for a period of 12 consecutive months after leaving employment with the participating public employer.

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

(4) A person establishes membership in the system before the effective date of this 2003 Act for the purposes of this section if:

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

(b) 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.

(5) Except as provided in sections 1 to 45 of this 2003 Act, ORS chapter 238 does not apply to the Oregon Public Service Retirement Plan.

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

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

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

## ADMINISTRATION

**SECTION 3. Oregon Public Service Retirement Plan part of Public Employees Retirement System.** (1) The Oregon Public Service Retirement Plan is part of the Public Employees Retirement System and is administered by the Public Employees Retirement Board.

(2) ORS 238.445, 238.450, 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630, 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696, 238.698, 238.700, 238.705, 238.710 and 238.715 apply to the Oregon Public Service Retirement Plan.

(3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4) of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the provisions of ORS 293.701 to 293.820. The Oregon Investment Council

may invest assets of the individual account program and pension program differently than the other assets of the Public Employees Retirement System.

(4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the limitations imposed by ORS 293.726 (6).

(5) The board may contract with a private provider for the administration of the individual account program. The board is not subject to the provisions of ORS 279.005 to 279.111 in awarding a contract under the provisions of this subsection. The board shall establish procedures for inviting proposals and awarding contracts under this subsection.

**SECTION 3a.** If House Bill 2341 becomes law, section 3 of this 2003 Act is amended to read:

**Sec. 3.** (1) The Oregon Public Service Retirement Plan is part of the Public Employees Retirement System and is administered by the Public Employees Retirement Board.

(2) ORS 238.445, 238.450, 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630, 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696, 238.698, 238.700, 238.705, 238.710 and 238.715 apply to the Oregon Public Service Retirement Plan.

(3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4) of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the provisions of ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the individual account program and pension program differently than the other assets of the Public Employees Retirement System.

(4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the limitations imposed by ORS 293.726 (6).

(5) The board may contract with a private provider for the administration of the individual account program. The board is not subject to the provisions of [ORS 279.005 to 279.111] **sections 1 to 46 or 47 to 87, chapter \_\_\_\_\_, Oregon Laws 2003 (Enrolled House Bill 2341)**, in awarding a contract under the provisions of this subsection. The board shall establish procedures for inviting proposals and awarding contracts under this subsection.

**SECTION 3b.** The amendments to section 3 of this 2003 Act by section 3a of this 2003 Act become operative on March 1, 2005.

## PARTICIPATION BY PUBLIC EMPLOYERS

**SECTION 4. Participation generally.** (1) All public employers participating in the Public Employees Retirement System on the effective date of this 2003 Act:

(a) Shall continue to be participating public employers for the purpose of the Oregon Public Service Retirement Plan;

(b) Shall provide benefits under the pension program established under sections 5 to 26 of this 2003 Act for eligible employees who are members of the pension program; and

(c) Shall participate in the individual account program.

(2) Any participating public employer that provided retirement benefits under ORS chapter 238 for some but not all of the employees of the participating public employer on the day immediately preceding the effective date of this 2003 Act need not provide benefits under the Oregon Public Service Retirement Plan for any class of employees who were not members of the system on the day immediately preceding the effective date of this 2003 Act.

(3) Any public employer that is not a participating public employer on the day immediately preceding the effective date of this 2003 Act may become a participating public employer under the pension program or the individual account program, or both. A public employer may become a participating public employer under this subsection only for the purposes of service performed by eligible employees of the public employer on or after the date the public employer elects to participate in the program.

## PENSION PROGRAM

### (Membership)

**SECTION 5. Establishing membership under pension program.** (1) Except as provided by subsection (2) of this section, an eligible employee who is employed in a qualifying position on or after the effective date of this 2003 Act by a public employer that is participating in the pension program and who will not receive benefits under ORS chapter 238 for service with the participating public employer pursuant to the provisions of section 2 of this 2003 Act becomes a member of the pension program on the first day of the month after the employee completes six full calendar months of employment. The six-month requirement may not be interrupted by more than 30 consecutive working days.

(2) A person who is elected or appointed to an office with a fixed term other than as a member of the Legislative Assembly, or who is appointed by the Governor to an office as head of a department, may elect not to become a member of the pension program by giving the Public Employees Retirement Board written notice not later than 30 days after taking office. An election under this subsection also operates as an election not to become a member of the individual account program. An election under this subsection is irrevocable during the term of office for which the election is made.

**SECTION 6. Termination of membership.** Membership under the pension program terminates when:

- (1) A member dies;
- (2) A member withdraws under section 8 of this 2003 Act; or
- (3) A member forfeits retirement credit under section 12 of this 2003 Act.

### (Vesting)

**SECTION 7. Vesting.** (1) A member of the pension program becomes vested in the pension program on the earliest of the following dates:

(a) The date on which the member completes at least 600 hours of service in each of five calendar years. The five calendar years need not be consecutive, but are subject to the provisions of subsection (2) of this section.

(b) The date on which an active member reaches the normal retirement age for the member under section 15 of this 2003 Act.

(c) If the pension program is terminated, the date on which termination becomes effective, but only to the extent the pension program is then funded.

(2) If a member of the pension program who is not vested in the pension program performs fewer than 600 hours of service in each of five consecutive calendar years, hours of service performed before the first calendar year of the period of five consecutive calendar years shall be disregarded for purposes of determining whether the member is vested under subsection (1)(a) of this section.

(3) Solely for purposes of determining whether a member is vested under this section, hours of service include creditable service, as defined in ORS 238.005, performed by the person before the person became an eligible employee, as long as the membership of the person under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes an eligible employee.

### (Withdrawal)

**SECTION 8. Withdrawal from pension program by vested inactive member.** (1) A vested inactive member may withdraw from the pension program if the actuarial equivalent of the member's benefit under the pension program at the time of withdrawal is \$5,000 or less.

Upon withdrawal, the Public Employees Retirement Board shall pay the withdrawing member the actuarial equivalent of the member's benefit in a lump sum. For the purposes of this subsection, the actuarial equivalent of the member's benefit does not include any value attributable to adjustments to the benefit under section 23 of this 2003 Act.

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

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

(b) Any service performed before the withdrawal may not be credited toward the period of service required by section 5 or 7 of this 2003 Act or toward the accrual of retirement credit under section 11, 13 or 14 of this 2003 Act.

(Computation of Benefit)

**SECTION 9. Amount of pension.** (1) Upon retiring at normal retirement age, a vested pension program member shall be paid an annual pension for the life of the member as follows:

(a) For service as a police officer or firefighter, 1.8 percent of final average salary multiplied by the number of years of retirement credit attributable to service as a police officer or firefighter.

(b) For service as other than a police officer or firefighter, 1.5 percent of final average salary multiplied by the number of years of retirement credit attributable to service as other than a police officer or firefighter.

(2) Notwithstanding any provision of sections 5 to 26 of this 2003 Act, the annual benefit payable to a member under the pension program and under any other tax-qualified defined benefit plan maintained by the participating public employer may not exceed the applicable limitations set forth in 26 U.S.C. 415(b), as in effect on the effective date of this 2003 Act. The Public Employees Retirement Board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect cost-of-living adjustments authorized by the Internal Revenue Service.

(3) The board shall make no actuarial adjustment in a member's pension calculated under this section by reason of the member's retirement after normal retirement age.

**SECTION 10. Final average salary.** (1) For purposes of the computation of pension program benefits under section 9 of this 2003 Act, "final average salary" means whichever of the following is greater:

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

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

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

(3) For the purposes of calculating the final average salary of a member under this section, the salary of the member does not include any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same class of employees as established by rule of the Public Employees Retirement Board.

(Retirement Credit)

**SECTION 11. Accrual of retirement credit.** (1) A pension program member shall accrue no retirement credit for any calendar year in which the member has fewer than 600 hours of service. A member may not accrue more than one full year of retirement credit in any calendar year.

(2) When an eligible employee becomes a member under section 5 of this 2003 Act, the board shall credit the eligible employee with retirement credit for the period of employment required of the employee under section 5 of this 2003 Act.

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

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

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

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

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

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

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

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

(b) An employee of the State Board of Higher Education engaged in teaching or other school activity at an institution of higher education;

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

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

**SECTION 11a. Temporary provision for person employed before January 1, 2004.** Notwithstanding section 11 (2) of this 2003 Act, if an eligible employee is employed by a participating public employer in a qualifying position on or after the effective date of this 2003 Act and before January 1, 2004, and will not receive benefits under ORS chapter 238 for

service with the participating public employer pursuant to the provisions of section 2 of this 2003 Act, the Public Employees Retirement Board shall not credit the eligible employee with retirement credit for any period of employment required of the employee under section 5 of this 2003 Act that is performed before January 1, 2004.

**SECTION 12. Loss of retirement credit.** (1) A pension program member who is not vested forfeits all retirement credit if the member performs fewer than 600 hours of service in each of five consecutive calendar years. A forfeiture under this section takes effect at the end of the fifth calendar year.

(2) If a pension program member forfeits retirement credit under this section and is subsequently reemployed by a participating public employer:

(a) The person may acquire retirement credit under the pension program only for the purpose of service performed after the person is reemployed; and

(b) Any service performed before the forfeiture may not be credited toward the period of service required by section 5 or 7 of this 2003 Act, or toward the accrual of retirement credit under section 11, 13 or 14 of this 2003 Act.

**SECTION 13. Retirement credit for service in uniformed services.** (1) Notwithstanding any other provision of sections 5 to 26 of this 2003 Act, an eligible employee who leaves a qualifying position for the purpose of performing service in the uniformed services, and who subsequently returns to employment with a participating public employer with reemployment rights under federal law, is entitled to accrue retirement credit, credit toward the probationary period required by section 5 of this 2003 Act and credit toward the vesting requirements of section 7 of this 2003 Act under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing benefits and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to benefits and service credit for any period of service in the uniformed services, including 26 U.S.C. 414(u), as in effect on the effective date of this 2003 Act. Benefits and service credit under rules adopted by the board pursuant to this subsection may not exceed benefits and service credit required under federal law for periods of service in the uniformed services.

**SECTION 14. Retirement credit for periods of disability.** (1) Notwithstanding any other provision of sections 5 to 26 of this 2003 Act, an active member of the pension program described in subsection (2) of this section who becomes disabled shall accrue retirement credit and hours of service credit for vesting purposes for the period during which the member is disabled.

(2) The provisions of this section apply only to:

(a) A member who has accrued 10 years or more of retirement credit before the member becomes disabled; or

(b) A member who becomes disabled by reason of injury or disease sustained while in the actual performance of duty.

(3) Retirement credit accrues under this section only for as long as the member remains disabled or until the member reaches the normal retirement age under section 15 of this 2003 Act.

(4) If a disabled member does not return to employment with a participating public employer after the period of disability, the member shall receive a pension under section 18, 19 or 20 of this 2003 Act upon retirement based on an adjusted salary. The adjusted salary shall be the salary paid to the disabled member on the date the member left active employment with the participating public employer by reason of disability, adjusted for each year after the member left employment and before the member's effective date of retirement to reflect cost-of-living changes, based on the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United

States Department of Labor. Adjustments under this subsection may not exceed a two percent increase or decrease for any year. An adjustment shall be made under this subsection only for calendar years in which the member is disabled for at least six months during the year.

(5) A pension program member is considered to be disabled for the purpose of this section if the member is found, after being examined by one or more physicians selected by the Public Employees Retirement Board, to be mentally or physically incapacitated for an extended duration and unable to perform any work for which qualified, by reason of injury or disease that was not intentionally self-inflicted.

(Retirement)

**SECTION 15. Normal retirement age; normal retirement date.** (1) Except as provided in subsection (2) of this section, normal retirement age for a member of the pension program is the earlier of:

(a) 65 years of age; or

(b) 58 years of age if the member has 30 years or more of retirement credit.

(2) Normal retirement age for a member of the pension program who retires from service as a police officer or firefighter, and who has held a position as a police officer or firefighter continuously for a period of not less than five years immediately preceding the effective date of retirement, is the earlier of:

(a) 60 years of age; or

(b) 53 years of age if the member has 25 years or more of retirement credit.

(3) The normal retirement date of a member is the first day of the month beginning on or after the date the member reaches normal retirement age.

**SECTION 16. Earliest retirement age; earliest retirement date.** (1) Except as provided in subsection (2) of this section, earliest retirement age for a member of the pension program is 55 years of age.

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

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

**SECTION 17. Latest retirement date; required minimum distributions.** (1) An active member of the pension program who is 70-1/2 years of age or older must retire not later than April 1 of the calendar year following the calendar year in which the member terminates employment with all participating public employers. An inactive member of the pension program must retire not later than April 1 of the calendar year following the calendar year in which the member attains 70-1/2 years of age.

(2) Notwithstanding any other provision of sections 5 to 26 of this 2003 Act, the entire interest of a member of the pension program must be distributed over a time period commencing no later than the required beginning date set forth in subsection (1) of this section, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on the effective date of this 2003 Act. The Public Employees Retirement Board shall adopt rules implementing those minimum distribution requirements.

(Pension)

**SECTION 18. Normal retirement benefit.** Upon retiring on normal retirement date or thereafter, a member of the pension program who is vested shall be paid an annual pension for the life of the member, calculated as provided in section 9 of this 2003 Act. The annual pension provided for under this section shall be paid in equal monthly installments, payable as of the first day of each calendar month, beginning on the later of the member's normal retirement date or the member's effective date of retirement and ending on the first day of the month in which the member dies.

**SECTION 19. Early retirement.** A member of the pension program who is vested may retire with a reduced pension that is the actuarial equivalent of the pension provided for in section 18 of this 2003 Act at any time on or after the member's earliest retirement date as described in section 16 of this 2003 Act.

**SECTION 20. Survivorship benefits.** (1) Before the effective date of retirement of a member of the pension program, the member may elect to convert the pension calculated under section 18 or 19 of this 2003 Act into the actuarial equivalent pension as follows:

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

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

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

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

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

(3) Subsection (2) of this section does not apply to a pension benefit that is paid in a lump sum under section 21 of this 2003 Act.

**SECTION 21. Cash out of small benefits.** If the monthly pension benefit payable to a member of the pension program under section 18 of this 2003 Act is less than \$200, or the monthly death benefit payable to the beneficiary of a deceased member under section 25 of this 2003 Act is less than \$200, the Public Employees Retirement Board shall convert the benefit into a lump sum that represents the actuarial equivalent of the present value of the pension or death benefit and pay that amount to the member or the deceased member's beneficiary in lieu of a pension or death benefit under sections 5 to 26 of this 2003 Act.

**SECTION 22. Actuarial equivalency factor tables.** (1) Once every two calendar years, the Public Employees Retirement Board shall adopt actuarial equivalency factor tables for the purpose of computing the payments to be made to members of the pension program and their beneficiaries and alternate payees under ORS 238.465. The tables may be adopted in conjunction with the biennial evaluation of the Public Employees Retirement System required by ORS 238.605. Tables adopted under this section must use the best actuarial information on mortality available at the time the board adopts the tables, as provided by the actuary engaged by the board. Actuarial equivalency factor tables adopted under this section become effective on January 1 of the calendar year following adoption of the tables by the board. All computations of payments must use the actuarial equivalency factor tables that are in effect on:

(a) The effective date of retirement for any member or alternate payee;

(b) The date that the first payment is due for any person receiving a death benefit under section 25 of this 2003 Act; or

(c) The date that the first payment is due after any recalculation of payments that is not attributable to error, including but not limited to recalculations under ORS 238.465 (2).

(2) The board may not defer or delay implementation of the actuarial equivalency factor tables adopted under this section.

(Cost-of-living Adjustment)

**SECTION 23. Cost-of-living adjustment.** (1) As soon as practicable after January 1 each year, the Public Employees Retirement Board shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. Before July 1 each year, the board shall adjust every pension payable under sections 18, 19 and 20 of this 2003 Act, every disability benefit under section 25a of this 2003 Act and every death benefit payable under section 25 of this 2003 Act by multiplying the monthly payment by the percentage figure determined by the board. If a person has been receiving a pension or benefit for less than 12 months on July 1 of a calendar year, the board shall make a pro rata reduction of the adjustment based on the number of months that the pension or benefit was received before July 1 of the year. The adjustment shall be made for the payments payable on August 1 and thereafter.

(2) An increase or decrease in the benefit payments under this section may not exceed two percent in any year. A pension or death benefit may not be adjusted to an amount that is less than the amount that would have been payable if no cost-of-living adjustment had been made since the pension or death benefit first became payable.

(Employer Contribution)

**SECTION 24. Employer contribution.** (1) A participating public employer shall contribute to the pension program at intervals designated by the Public Employees Retirement Board all amounts determined by the board to be actuarially necessary to adequately fund the pension program benefits to be provided under sections 5 to 26 of this 2003 Act, other than the disability benefit provided under section 25a of this 2003 Act, and the reasonable costs of administering the pension program and the trust in which assets of the program are held. From time to time, the board shall determine the liabilities attributable to the pension program, other than the disability benefit provided by section 25a of this 2003 Act, and shall set the amount of contributions to be made by participating public employers, and by other public employers who are required to make contributions on behalf of members, to ensure that those liabilities will be funded no more than 40 years after the date on which the determination is made. All participating public employers shall be considered to be a single employer for the purposes of the contributions required under this section.

(2) For the purpose of the actuarial computation required under subsection (1) of this section, the board shall separately establish the liability of participating public employers for police officers and firefighters, and shall require that public employers that employ police officers and firefighters make contributions for those employees based on the liability established under this section.

(Death Benefit)

**SECTION 25. Death benefit.** (1) If a member of the pension program who is vested dies before the member's effective date of retirement, the Public Employees Retirement Board

shall pay the death benefit provided for in this section to the spouse of the member or to any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits.

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

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

(A) As of the date of death if the member dies after the earliest retirement date for the member under section 16 of this 2003 Act; or

(B) As if the member became an inactive member on the date of death and thereafter retired at the earliest retirement date if the member dies before the earliest retirement date for the member under section 16 of this 2003 Act.

(3) The board may commence payment of the death benefit provided by this section:

(a) As of the date of death if the member dies after the earliest retirement date for the member under section 16 of this 2003 Act;

(b) As of the date the member would have attained 55 years of age if the member is not a police officer or firefighter at the time of death and the member dies before the earliest retirement date for the member under section 16 of this 2003 Act; or

(c) As of the date the member would have attained 50 years of age if the member is a police officer or firefighter at the time of death and the member dies before the earliest retirement date for the member under section 16 of this 2003 Act.

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

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

(5) Notwithstanding any other provision of sections 5 to 26 of this 2003 Act, distributions of death benefits under the pension program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on the effective date of this 2003 Act. The board shall adopt rules implementing those minimum distribution requirements.

#### (Disability Benefit)

**SECTION 25a. Disability benefit.** (1) Subject to subsection (3) of this section, an active member of the pension program described in subsection (2) of this section who becomes disabled shall receive a disability benefit in the amount of 45 percent of the salary of the member determined as of the last full month of employment before the disability commences.

(2) The provisions of this section apply only to:

(a) A member who has accrued 10 years or more of retirement credit before the member becomes disabled; or

(b) A member who becomes disabled by reason of injury or disease sustained while in the actual performance of duty.

(3)(a) Except as provided by paragraph (b) of this subsection, the sum of the monthly amount of the disability benefit under this section and of any monthly payment by reason of temporary total disability or permanent total disability under the provisions of ORS chapter 656 may not exceed 75 percent of the member's monthly salary, determined as of the

date the member becomes disabled. The Public Employees Retirement Board shall reduce any disability benefit payable under this section in the amount determined to be necessary by the board to meet the limitation imposed by this subsection.

(b) This subsection does not affect cost-of-living adjustments under section 23 of this 2003 Act, and increases in the monthly amount of the disability benefit under this section due to those cost-of-living adjustments may not be considered by the Public Employees Retirement Board in determining whether the limitation imposed by this subsection has been exceeded.

(4) A disability retirement pension under this section shall be paid until:

(a) The member is no longer disabled; or

(b) The member attains normal retirement age under section 15 of this 2003 Act.

(5) A member is considered to be disabled for the purpose of this section if the member is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration and unable to perform any work for which qualified, by reason of injury or disease that was not intentionally self-inflicted.

**SECTION 25b. Funding of disability benefit.** (1) A participating public employer shall contribute to the pension program, at intervals designated by the Public Employees Retirement Board, all amounts determined by the board to be actuarially necessary to adequately fund the disability benefits to be provided under section 25a of this 2003 Act and the reasonable costs of administering the provision of those benefits. The board shall periodically determine the liabilities attributable to the disability benefits and shall set the amount of contributions to be made by participating public employers, and by other public employers who are required to make contributions on behalf of members, to ensure that those liabilities will be funded no more than 40 years after the date on which the determination is made. All participating public employers shall be considered to be a single employer for the purposes of the contributions required under this section.

(2) For the purpose of the actuarial computation required under subsection (1) of this section, the board shall separately establish the liability of participating public employers for police officers and firefighters, and shall require that public employers that employ police officers and firefighters make contributions for those employees based on the liability established under this section.

#### (Reemployment of Retired Members)

**SECTION 26. Reemployment after commencement of pension benefits.** (1) Except as provided in subsection (3) of this section, the Public Employees Retirement Board shall cease making pension payments to a retired member of the pension program who is reemployed by a participating public employer in a qualifying position. A retired member of the pension program who is employed in a qualifying position becomes an active member of the pension program without serving the probationary period provided for in section 5 of this 2003 Act.

(2) If a retired member of the pension program is reemployed under the provisions of this section, any option chosen by the member under section 20 of this 2003 Act is canceled, and upon retiring thereafter the member may elect any option provided for in sections 18 and 20 of this 2003 Act. The board shall recalculate the pension of the member upon subsequent retirement.

(3) A retired member of the pension program who becomes a member of the Legislative Assembly shall continue to receive the pension elected by the member. A retired member of the pension program who becomes a member of the Legislative Assembly may not elect under section 46a of this 2003 Act to become an active member of the Oregon Public Service Retirement Plan or a legislator member of the state deferred compensation plan.

**NOTE:** Sections 27 and 28 were deleted by amendment. Subsequent sections were not renumbered.

## INDIVIDUAL ACCOUNT PROGRAM

### (Membership)

**SECTION 29. Establishing membership under individual account program.** Except as provided in section 5 (2) of this 2003 Act, an eligible employee who is employed in a qualifying position on or after the effective date of this 2003 Act by a public employer that is participating in the individual account program and who will not receive benefits under ORS chapter 238 for service with the participating public employer pursuant to the provisions of section 2 of this 2003 Act becomes a member of the individual account program on the first day of the month after the employee completes six full calendar months of employment. The six-month probationary period may not be interrupted by more than 30 consecutive working days.

**SECTION 30. Termination of membership.** Membership under the individual account program terminates when:

- (1) A member dies; or
- (2) An inactive member receives a distribution of the vested accounts of the member under section 40 of this 2003 Act.

### (Vesting)

**SECTION 31. Vesting.** (1) A member of the individual account program becomes vested in the employee account established for the member under section 37 (2) of this 2003 Act on the date the employee account is established.

(2) A member who makes rollover contributions becomes vested in the rollover account established for the member under section 37 (4) of this 2003 Act on the date the rollover account is established.

(3) If an employer makes employer contributions for a member under section 36 of this 2003 Act, the member becomes vested in the employer account established under section 37 (3) of this 2003 Act on the earliest of the following dates:

- (a) The date on which the member completes at least 600 hours of service in each of five calendar years;
- (b) The date on which an active member reaches the normal retirement age for the member under section 15 of this 2003 Act;
- (c) If the individual account program is terminated, the date on which termination becomes effective, but only to the extent the account is then funded;
- (d) The date on which an active member becomes disabled, as described in section 14 (4) of this 2003 Act; or
- (e) The date on which an active member dies.

(4) If a member of the individual account program who is not vested in the employer account performs fewer than 600 hours of service in each of five consecutive calendar years, hours of service performed before the first calendar year of the period of five consecutive calendar years shall be disregarded for purposes of determining whether the member is vested under subsection (3)(a) of this section.

(5) Solely for purposes of determining whether a member is vested under subsection (3)(a) of this section, hours of service include creditable service, as defined in ORS 238.005, performed by the person before the person became an eligible employee, as long as the membership of the person under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes an eligible employee.

### (Employee Contributions)

**SECTION 32. Employee contributions.** (1) A member of the individual account program must make employee contributions to the individual account program of six percent of the member's salary.

(2) Employee contributions made by a member of the individual account program under this section shall be credited by the board to the employee account established for the member under section 37 (2) of this 2003 Act.

**SECTION 33. Transitional rule for chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003).** (1) Except as provided in subsection (2) of this section, all members of the Public Employees Retirement System who established membership in the Public Employees Retirement System before the effective date of this 2003 Act as described in section 2 of this 2003 Act become members of the individual account program on January 1, 2004.

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

**SECTION 33a. Repeal of Transition Account Program in chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003).** Sections 13, 13a and 13b, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), are repealed.

**SECTION 33b. Notwithstanding section 14, chapter 625, Oregon Laws 2003 (Enrolled House Bill 3020) (amending section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)), section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is repealed.**

**SECTION 33c. Notwithstanding section 331a, chapter \_\_\_\_\_, Oregon Laws 2003 (Enrolled House Bill 2341) (amending section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003)), if House Bill 2341 becomes law, section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is repealed.**

**SECTION 34. Employer payment of employee contribution.** (1) A participating public employer may agree, by a written employment policy or by a collective bargaining agreement, to pay the employee contribution required under section 32 of this 2003 Act. The policy or agreement need not include all members of the individual account program employed by the employer.

(2) An agreement under this section to pay the required employee contribution may provide that:

(a) Employee compensation be reduced to generate the funds needed to make the employee contributions; or

(b) Additional amounts be paid by the employer for the purpose of making the employee contributions, and employee compensation not be reduced for the purpose of generating the funds needed to make the employee contributions.

(3) A participating public employer must give written notice to the Public Employees Retirement Board at the time that a written employment policy or collective bargaining agreement described in subsection (1) of this section is adopted or changed. The notice must specifically indicate whether the agreement is as described in subsection (2)(a) or (b) 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 35. Transitional rule.** A participating public employer that is paying employee contributions on behalf of employees of the public employer under the provisions of ORS 238.205 on the day immediately preceding the effective date of this 2003 Act, whether by reason of having agreed to "pick-up" or by reason of having agreed to assume or pay those contributions:

(1) Must make the employee contributions required by section 32 of this 2003 Act until December 31, 2005; and

(2) Must continue to make the employee contributions required by section 32 of this 2003 Act after December 31, 2005, until such time as the public employer gives notice of an adoption or change as provided in section 34 (3) of this 2003 Act.

(Employer Contributions)

**SECTION 36. Employer contributions.** (1) A participating public employer may agree, by a written employment policy or agreement, to make employer contributions for members of the individual account program employed by the employer. The percentage of salary paid as employer contributions may not be less than one percent of salary or more than six percent of salary, and must be a whole number. A participating public employer may make an agreement under this section for specific groups of employees employed by the public employer.

(2) If a participating public employer makes employer contributions under this section and the member for which the contributions are made fails to vest in the employer account under the provisions of section 31 of this 2003 Act, the Public Employees Retirement Board shall apply the contributions in the employer account against other obligations of the employer under the Oregon Public Service Retirement Plan.

(Individual Accounts)

**SECTION 37. Individual accounts established.** (1) Upon any contributions being made to the individual account program by or on behalf of a member of the program, the Public Employees Retirement Board shall create the account or accounts described in this section. Each account shall be adjusted at least annually in accordance with rules adopted by the board to reflect any net earnings or losses on those contributions and to pay the reasonable administrative costs of maintaining the program to the extent the earnings on the assets of the program are insufficient to pay those costs. The adjustments described in this subsection shall continue until the account is distributed to the member or forfeited.

(2) The board shall establish an employee account, which shall consist of the employee contributions made by or on behalf of the member as adjusted under subsection (1) of this section.

(3) If the public employer agrees to make employer contributions under section 36 of this 2003 Act, the board shall establish an employer account, which shall consist of the employer contributions made on behalf of the member as adjusted under subsection (1) of this section.

(4) If the board accepts rollover contributions on behalf of the member, the board shall establish a rollover account, which shall consist of the rollover contributions made by the member as adjusted under subsection (1) of this section. Contributions and the earnings attributable to the contributions must be accounted for separately.

(5) The board shall provide an annual statement to each active and inactive member of the program that reflects the amount credited to the accounts established under this section. The statement shall reflect whether the member is vested in the employer account under the provisions of section 31 of this 2003 Act.

(Rollover Contributions)

**SECTION 38. Rollover contributions.** (1) The Public Employees Retirement Board may accept rollover contributions from a member of the individual account program or from an eligible retirement plan from which the member is entitled to an eligible rollover distribution. The board may accept rollover contributions under this section only if the amounts contributed qualify as eligible rollover distributions under the federal income tax laws governing tax-qualified retirement plans and, if the rollover contribution is made by the mem-

ber, the contribution is paid to the individual account program within the time limits established by the federal income tax laws governing tax-qualified retirement plans.

(2) The board shall adopt rules and establish procedures for determining whether to accept a rollover contribution under this section and shall require such documentation as may be necessary to ensure that the receipt of a rollover contribution does not jeopardize the status of the individual account program as a tax-qualified governmental plan.

(Limitation on Contributions)

**SECTION 39. Limitation on contributions.** Notwithstanding any other provision of sections 29 to 43 of this 2003 Act, the annual addition to the employee and employer accounts of a member of the individual account program for a calendar year, together with the annual additions to the accounts of the member under any other defined contribution plan maintained by the participating public employer for a calendar year, may not exceed the lesser of \$40,000, or 100 percent of the member's compensation for that calendar year. For purposes of this section, "annual addition" has the meaning given that term in 26 U.S.C. 415(c)(2), as in effect on the effective date of this 2003 Act, and "compensation" has the meaning given the term "participant's compensation" in 26 U.S.C. 415(c)(3), as in effect on the effective date of this 2003 Act. The Public Employees Retirement Board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect cost-of-living adjustments authorized by the Internal Revenue Service.

(Withdrawal by Inactive Member)

**SECTION 40. Distribution of accounts to inactive member.** (1) An inactive member of the individual account program may elect at any time to receive a distribution of the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under section 31 of this 2003 Act.

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

(3) If an inactive member receives a distribution under subsection (1) of this section and is subsequently reemployed by a participating public employer, any service performed before the date the member became an inactive member may not be used toward the period of service required for vesting in the employer account under section 31 of this 2003 Act.

(Defined Contribution Benefit)

**SECTION 41. Payment of accounts at retirement.** (1) Upon retirement on or after the earliest retirement date, as described in section 16 of this 2003 Act, a member of the individual account program shall receive in a lump sum the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under section 31 of this 2003 Act.

(2) In lieu of a lump sum payment under subsection (1) of this section, a member of the individual account program may elect to receive the amounts in the member's employee account and employer account, to the extent the member is vested in those accounts under section 31 of this 2003 Act, in substantially equal installments paid over a period of 5, 10, 15 or 20 years. Installments may be made on a monthly, quarterly or annual basis. In no event may the period selected by the member exceed the time allowed by the minimum distribution requirements described in subsection (4) of this section. The Public Employees Retirement Board shall by rule establish the manner in which installments will be adjusted to reflect

investment gains and losses on the unpaid balance during the payout period elected by the member under this subsection.

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

(4) Notwithstanding any other provision of sections 29 to 43 of this 2003 Act, the entire interest of a member of the individual account program must be distributed over a time period commencing no later than the latest retirement date set forth in section 17 of this 2003 Act, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on the effective date of this 2003 Act. The board shall adopt rules implementing those minimum distribution requirements.

**SECTION 42. Death benefits.** (1) If a member of the individual account program dies before retirement, the amounts in the member's employee account, rollover account and employer account, to the extent the member is vested in those accounts under section 31 of this 2003 Act, shall be paid in a lump sum to the beneficiary or beneficiaries designated by the member for the purposes of this section.

(2) If a member of the individual account program is married at the time of death, or there exists at the time of death any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits, the spouse or other person shall be the beneficiary for purposes of the death benefit payable under this section unless the spouse or other person consents to the designation of a different beneficiary or beneficiaries before the designation has been made and the consent has not been revoked by the spouse or other person as of the time of the member's death. Consent and revocation of consent must be in writing, acknowledged by a notary public, and submitted to the Public Employees Retirement Board in accordance with rules adopted by the board. If the member's spouse is designated as the member's beneficiary and the marriage of the member and spouse is subsequently dissolved, the former spouse shall be treated as predeceasing the member for purposes of this section, unless the member expressly designates the former spouse as beneficiary after the effective date of the dissolution or the former spouse is required to be designated as a beneficiary under the provisions of ORS 238.465.

(3) For purposes of this section and section 41 (3) of this 2003 Act, if a member fails to designate a beneficiary, or if the person or persons designated do not survive the member, the death benefit provided for in this section shall be paid to the following person or persons, in the following order of priority:

(a) The member's surviving spouse or other person who is constitutionally required to be treated in the same manner as a spouse;

(b) The member's surviving children, in equal shares; or

(c) The member's estate.

(4) The entire amount of a deceased member's vested accounts must be distributed by December 31 of the fifth calendar year after the year in which the member died. Notwithstanding any other provision of sections 1 to 45 of this 2003 Act, distributions of death benefits under the individual account program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on the effective date of this 2003 Act. The Public Employees Retirement Board shall adopt rules implementing those minimum distribution requirements.

**SECTION 43. Credit for service in uniformed services.** (1) Notwithstanding any other provision of sections 29 to 43 of this 2003 Act, an eligible employee who leaves a qualifying position for the purpose of performing service in the uniformed services, and who subse-

quently returns to employment with a participating public employer with reemployment rights under federal law, is entitled to credit toward the probationary period required by section 29 of this 2003 Act, credit toward the vesting requirements of section 31 of this 2003 Act and contributions under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing contributions and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to benefits and service credit for any period of service in the uniformed services, including 26 U.S.C. 414(u), as in effect on the effective date of this 2003 Act. Contributions and service credit under rules adopted by the board pursuant to this subsection may not exceed contributions and service credit required under federal law for periods of service in the uniformed services.

## DIRECT ROLLOVERS

**SECTION 44. Direct rollovers.** (1) To the extent required by law, and except as otherwise provided by rules adopted by the Public Employees Retirement Board under subsection (4) of this section, any portion of a distribution of benefits described in subsection (2) of this section shall, at the election of and in lieu of distribution to the distributee, be paid directly to an eligible retirement plan specified by the distributee.

(2) The provisions of subsection (1) of this section apply to a distribution of any benefit under the pension program or the individual account program except:

(a) A distribution that is one of a series of substantially equal periodic payments made at least annually for the life or life expectancy of the distributee, or for the joint lives or life expectancies of the distributee and a designated beneficiary;

(b) A distribution that is one of a series of substantially equal periodic payments made at least annually for a specified period of 10 years or more; and

(c) A distribution to the extent that the distribution is required under 26 U.S.C. 401(a)(9).

(3) The provisions of subsection (1) of this section apply to any portion of a distribution of benefits under the pension program or the individual account program even though the portion consists of after-tax employee contributions that are not includable in gross income. Any portion of a distribution that consists of after-tax employee contributions that are not includable in gross income may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution plan described in 26 U.S.C. 401(a) or 403(a) that agrees to account separately for amounts transferred, including accounting separately for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income. The amount transferred shall be treated as consisting first of the portion of the distribution that is includable in gross income, determined without regard to 26 U.S.C. 402(c)(1).

(4) The board shall adopt rules implementing the direct rollover requirements of 26 U.S.C. 401(a)(31) and the regulations implementing that section, and may adopt administrative exceptions to the direct rollover requirements to the extent permitted by 26 U.S.C. 401(a)(31) and the regulations implementing that section.

(5) All references in this section to federal laws and regulations are to the laws and regulations in effect on the effective date of this 2003 Act.

(6) For purposes of this section:

(a) "Distributee" means a member, a member's surviving spouse or a member's alternate payee under ORS 238.465.

(b) "Eligible retirement plan" means:

(A) An individual retirement account described in 26 U.S.C. 408(a);

(B) An individual retirement annuity described in 26 U.S.C. 408(b), other than an endowment contract;

(C) A qualified trust under 26 U.S.C. 401(a), that is a defined contribution plan and permits the acceptance of rollover contributions;

(D) An annuity plan described in 26 U.S.C. 403(a);

(E) An eligible deferred compensation plan described in 26 U.S.C. 457(b) that is maintained by an eligible governmental employer described in 26 U.S.C. 457(e)(1)(A) and that agrees to account separately for amounts transferred into such plan from the distributing plan; or

(F) An annuity contract described in 26 U.S.C. 403(b).

## RULES

**SECTION 44a. Rules for Oregon Public Service Retirement Plan.** (1) The Public Employees Retirement Board shall adopt rules for the administration of sections 1 to 45 of this 2003 Act.

(2) All rules adopted by the board under this section become part of the written plan document for the purpose of the status of the pension program and the individual account program as qualified governmental retirement plans and trusts under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code.

## CHANGES TO OREGON PUBLIC SERVICE RETIREMENT PLAN

**SECTION 44b. Limitation on powers of board, director and staff.** (1) The Public Employees Retirement Board, the director employed by the board and staff employed by the board may not adopt any rule or take any administrative action that has the effect of increasing the total liability for benefits under sections 1 to 45 of this 2003 Act that is in excess of one-tenth of one percent.

(2) Subsection (1) of this section does not apply to any rule or administrative action 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.

**SECTION 44c. Application of legislative changes to legislators.** Any law enacted after January 1, 2004, that has the effect of increasing the total liability for benefits under sections 1 to 45 of this 2003 Act that is in excess of one-tenth of one percent does not apply to service by members of the Legislative Assembly that entitles those members to benefits under the Oregon Public Service Retirement Plan.

**SECTION 44d. Legislative intent relating to increased benefits.** It is the intent of the Legislative Assembly that any increase in benefits under the Oregon Public Service Retirement Plan be provided through changes in the individual account program and not through changes in the pension program.

**SECTION 44e.** (1) Subject to the provisions of this section, until June 30, 2005, the Public Employees Retirement System may use assets of the Public Employees Retirement Fund that are unrelated to the Oregon Public Service Retirement Plan to pay the administrative costs of the pension program and the individual account program. The authority created by this subsection is in addition to and not in lieu of the authority of the system to use assets of the pension program and the individual account program to pay administrative expenses of those programs.

(2) Not later than January 1, 2010, the Public Employees Retirement Board shall transfer from accounts of the Oregon Public Service Retirement Plan the amount used under subsection (1) of this section, with interest, to accounts in the fund established to provide re-

retirement benefits under ORS chapter 238. The rate of interest must be at least equal to the rate that the moneys would have earned had the moneys remained invested in the fund established to provide retirement benefits under ORS chapter 238, and in no event less than two percent per annum.

(3) Until such time as all moneys and interest are repaid under subsection (2) of this section, beneficiaries of the fund established to provide retirement benefits under ORS chapter 238 have a security interest in the assets of the Oregon Public Service Retirement Plan equal to the amount used under subsection (1) of this section and the interest required under subsection (2) of this section. The security interest may be foreclosed in an action at law.

(4) If the board fails to transfer any amount required under subsection (2) of this section before January 1, 2010, a person entitled to benefits under ORS chapter 238 may bring a mandamus action to compel the board to make the transfer and to perform all acts within the authority of the board to collect employer or employee contributions to the Oregon Public Service Retirement Plan necessary to fund the transfer.

(5) In determining the amount of employer contributions necessary under the provisions of section 24 of this 2003 Act, the board shall include any amounts required to be transferred under subsection (2) of this section that are attributable to paying the costs of administering the pension program.

(6) The board shall deduct from the individual accounts established under section 37 of this 2003 Act the amounts to be transferred under subsection (2) of this section that are attributable to paying the costs of administering the individual account program. The deduction must be a uniform percentage of the individual accounts.

**SECTION 45. Contract rights under Oregon Public Service Retirement Plan.** The Legislative Assembly may change the benefits payable to persons who become members of the Public Employees Retirement System on or after the effective date of this 2003 Act, as described in section 2 of this 2003 Act, as long as the change applies only to benefits attributable to service performed and salary earned on or after the date the change is made.

**SECTION 45a.** Section 45b of this 2003 Act is added to and made a part of ORS 173.025 to 173.055.

**SECTION 45b. Fiscal impact statements.** The Legislative Fiscal Officer, with the aid of the Public Employees Retirement Board and public employers providing benefits under sections 1 to 45 of this 2003 Act, shall prepare a fiscal impact statement on each measure introduced in the Legislative Assembly that would increase employer contributions under sections 1 to 45 of this 2003 Act. If the Legislative Fiscal Officer determines that a proposed measure would result in an increase in the total liability for benefits under sections 1 to 45 of this 2003 Act that is in excess of one-tenth of one percent, the Legislative Fiscal Officer shall promptly notify the Public Employees Retirement Board. The board shall thereafter promptly give notice of the proposed measure, and the fiscal impact of the proposed measure as determined by the Legislative Fiscal Officer, to all public employers providing benefits under sections 1 to 45 of this 2003 Act.

## TAX QUALIFICATION

**SECTION 46.** As soon as practicable after the effective date of this 2003 Act, the Public Employees Retirement Board shall submit the provisions of sections 1 to 45 of this 2003 Act to the Internal Revenue Service and seek approval of the pension program and individual account program as tax-qualified governmental retirement plans and trusts under the Internal Revenue Code.

## MEMBERS OF LEGISLATIVE ASSEMBLY

**SECTION 46a. Retirement plan election.** (1) A person appointed or elected as a member of the Legislative Assembly must elect within 30 days after taking office if the person will:

(a) Become a member of the Oregon Public Service Retirement Plan established under sections 1 to 45 of this 2003 Act;

(b) Become a legislator member of the state deferred compensation plan under section 46c of this 2003 Act; or

(c) Decline to become a member of the Oregon Public Service Retirement Plan, or to become a legislator member of the state deferred compensation plan, for service as a member of the Legislative Assembly.

(2) Written notice of a person's election under this section must be given to the Public Employees Retirement Board. If the board does not receive written notice within 30 days after the person takes office, the person shall be conclusively deemed to have elected to become a legislator member of the state deferred compensation plan under section 46c of this 2003 Act.

(3) Any member of the Legislative Assembly who elects to become a member of the Oregon Public Service Retirement Plan may request that the Public Employees Retirement Board roll over the amount in the regular account maintained for the member under ORS 238.250 into the individual account maintained for the member under the individual account program.

(4) An election under this section does not affect the ability of a person appointed or elected as a member of the Legislative Assembly to participate in the state deferred compensation plan in the manner provided by ORS 243.401 to 243.507.

**SECTION 46b. Application; temporary provision for current members of Legislative Assembly.** (1) Except as provided in subsection (2) of this section, section 46a of this 2003 Act applies to all members of the Legislative Assembly who take office on or after the effective date of this 2003 Act.

(2) In addition to the options provided by section 46a of this 2003 Act, any person who is a member of the Legislative Assembly on the effective date of this 2003 Act and who is a member of the Public Employees Retirement System on the effective date of this 2003 Act may elect to remain a member of the system under ORS chapter 238 for so long as the member remains in continuous service as a member of the Legislative Assembly. An election under this subsection must be made in the manner provided by section 46a (2) of this 2003 Act.

(3) A member of the Legislative Assembly remains in continuous service as a member of the Legislative Assembly for the purposes of subsection (2) of this section for so long as the member continues in office without a break in service as described in sections 2 and 2a of this 2003 Act.

**SECTION 46c. Legislator members of state deferred compensation plan.** (1) If a person appointed or elected as a member of the Legislative Assembly elects under section 46a of this 2003 Act to participate in the state deferred compensation plan as a legislator member, the Legislative Assembly shall make employer contributions to the plan in an amount that is equal to six percent of the member's salary. A legislator member may make contributions to the plan in any amount that does not exceed the maximum allowed by federal law governing the plan's tax qualification.

(2) Any member of the Legislative Assembly who elects to become a legislator member of the state deferred compensation plan may request that the Public Employees Retirement Board roll over the amount in the regular account maintained for the member under ORS 238.250 into the state deferred compensation plan.

(3) Except for the contributions required by subsection (1) of this section, the Legislative Assembly may not "pick-up," assume or pay any contributions on behalf of a legislator member of the state deferred compensation plan.

**SECTION 46d. Special rule for public employees elected or appointed to Legislative Assembly.** (1) A person who is serving with a participating public employer, who will receive benefits under ORS chapter 238 by reason of that service, who is elected or appointed to the Legislative Assembly, and who does not leave employment with the participating public employer by reason of that election or appointment, must elect one of the options provided by section 46a of this 2003 Act for the purposes of service by the person during sessions of the Legislative Assembly. A person described in this subsection shall receive benefits under ORS chapter 238 for all hours of service that are not performed during a session of the Legislative Assembly.

(2) A person who is serving with a participating public employer, who is a member of the pension program or the individual account program, and who is elected or appointed to the Legislative Assembly may not make an election under section 46a of this 2003 Act and shall continue membership in the pension program or individual account program for the purposes of all service by the person as a member of the Legislative Assembly.

**SECTION 46e.** 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 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 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)]* **(B)** For service as other than a police officer[,] **or** firefighter [*or*], **including service as a 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[,] **or** firefighter [*or member of the Legislative Assembly*] before the effective date of retirement.

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

(A) 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 46f. The amendments to ORS 238.300 by section 46e of this 2003 Act apply to periods of service as a member of the Legislative Assembly served by reason of appointment or election to the Legislative Assembly on or after the effective date of this 2003 Act, including periods of service as a member of the Legislative Assembly served by reason of reelection to the Legislative Assembly after the effective date of this 2003 Act.**

**NOTE:** Section 47 was deleted by amendment. Subsequent sections were not renumbered.

#### CONFORMING AMENDMENTS

**SECTION 48.** ORS 169.810 is amended to read:

169.810. (1) Assumption by the regional correctional facility of those custodial duties formerly performed by a county or city jail constitutes an assumption of duties by a public employer subject to ORS 236.610 to 236.640.

(2) An employee who transfers from employment at a county or city jail to employment at a regional correctional facility operated by the county or city by which the employee has been employed shall be accorded the following rights:

(a) If a trial or probationary service period is required for employment at the county or city jail, the period of county or city employment of the employee shall apply to that requirement.

(b) An employee who transfers from employment at a county or city jail to employment at the regional correctional facility shall retain accumulated unused sick leave with pay and the accumulated unused vacation with pay to which the employee was entitled under county or city employment on the day before the transfer that are supported by written records of accumulation and use pursuant to a plan formally adopted and applicable to the employee under county or city employment.

(c) Notwithstanding any other provision of law applicable to a retirement system for county employees or city employees, an employee who transfers from employment at a county or city jail to employment at the regional correctional facility who was participating in a retirement system under county or city employment may elect, not later than the first day of the month following the month in which the employee transfers, to continue under the retirement system in which participating and not to become, if eligible, a member of another retirement system. The election shall be made in writing and shall be submitted to the regional correctional facility administrator, the Public Employees Retirement Board and the governing body of the counties and cities that operate the regional correctional facility.

(d) If an employee elects to continue under the retirement system in which participating under county or city employment, the employee shall continue to make required contributions to that system and the administration of the regional correctional facility shall make contributions on behalf of the employee required of an employer participating in that system.

(e) If an employee fails to elect to continue under the retirement system in which participating under county or city employment as provided in paragraph (c) of this subsection or was not participating in a retirement system under county or city employment, the employee shall become, if eligible, a member of the Public Employees Retirement System. If the employee is eligible to become a member of the Public Employees Retirement System, the period of continuous service of the employee under county or city employment immediately before the transfer of the employee shall apply to the six months' service requirement of ORS 238.015 **or section 5 or 29 of this 2003 Act.**

(3) The county or city employment records, or a copy thereof, applicable to an employee transferred under subsection (2) of this section shall be provided by the person having custody of the records to the regional correctional facility administrator.

**SECTION 49.** ORS 192.502 is amended to read:

192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3)(a) Public body employee or volunteer addresses, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption does not apply:

(A) To such employees or volunteers if they are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(B) To such employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance; or

(C) To a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member.

(b) Nothing in this subsection exempting employee records from disclosure relieves a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions,

their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapter 238 and [ORS 238.410] **sections 1 to 45 of this 2003 Act.**

(13) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption.

(14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(15) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(16) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(17) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(18) All information supplied by a person under ORS 151.430 to 151.491 for the purpose of requesting court-appointed counsel, and all information supplied to the State Court Administrator from whatever source for the purpose of verifying indigency of a person pursuant to ORS 151.430 to 151.491.

(19) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(20) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(21) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(22) The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.

(23) The following records, communications and information submitted to the Housing and Community Services Department by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence requested to be confidential.

(k) Tenant files relating to certification.

(L) Housing assistance payment requests.

(24) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(25) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(26) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085

and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Personally identifiable information about customers of a municipal electric utility or a people's utility district. The utility or district may, however, release such information to a third party if the customer consents in writing or electronically, if the disclosure is necessary to render utility or district services to the customer, or if the disclosure is required pursuant to a court order. The utility or district may charge as appropriate for the costs of providing such information. The utility or district may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(28) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(29) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(30) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS 646.380 to 646.396, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(31) A county elections security plan developed and filed under ORS 254.074.

**SECTION 50.** ORS 192.502, as amended by sections 80 and 81, chapter 962, Oregon Laws 2001, is amended to read:

192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3)(a) Public body employee or volunteer addresses, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption does not apply:

(A) To such employees or volunteers if they are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(B) To such employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance; or

(C) To a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member.

(b) Nothing in this subsection exempting employee records from disclosure relieves a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapter 238 and [ORS 238.410] **sections 1 to 45 of this 2003 Act.**

(13) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption.

(14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(15) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(16) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been

concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(17) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(18) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(19) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(20) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(21) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(22) The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.

(23) The following records, communications and information submitted to the Housing and Community Services Department by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence requested to be confidential.

(k) Tenant files relating to certification.

(L) Housing assistance payment requests.

(24) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(25) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(26) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Personally identifiable information about customers of a municipal electric utility or a people's utility district. The utility or district may, however, release such information to a third party if the customer consents in writing or electronically, if the disclosure is necessary to render utility or district services to the customer, or if the disclosure is required pursuant to a court order. The utility or district may charge as appropriate for the costs of providing such information. The utility or district may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(28) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(29) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(30) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS 646.380 to 646.396, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(31) A county elections security plan developed and filed under ORS 254.074.

**SECTION 51.** ORS 196.165 is amended to read:

196.165. (1) The Columbia River Gorge Commission established under ORS 196.150 may designate its employees as employees and the commission as an employer subject to the Oregon Public Employees Retirement System under ORS chapter 238 **and sections 1 to 45 of this 2003 Act** or as an employer and employees subject to a retirement system provided by the State of Washington under the laws of the State of Washington.

(2) The commission may designate its employees as employees eligible under benefit plans provided under ORS 243.105 to 243.285 or under benefit plans provided under the laws of the State of Washington.

**SECTION 51a.** ORS 238.156, as amended by section 21, chapter 625, Oregon Laws 2003 (Enrolled House Bill 3020), is amended to read:

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

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

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

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

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

(c) After returning to employment and before retirement, the employee pays to the Public Employees Retirement Board in a lump sum six percent of the salary that would have been paid to the member during the period of military service in the Armed Forces based on the employee's salary rate at the time the employee entered or reentered the Armed Forces, as though the employee had remained in the employment of the employer. Any lump sum contribution made under this paragraph shall be added to the employee's regular account[, or to the employee's transition account established under section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), if the employee does not have a regular account,] and in all respects shall be considered as though made by payroll deduction.

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

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

**SECTION 52.** ORS 238.445 is amended to read:

238.445. (1) Except as provided in this section, the right of a person to a pension, an annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit or death benefit, or any other right accrued or accruing to any person under the provisions of this chapter **or sections 1 to 45 of this 2003 Act**, and the money in the various funds created by ORS 238.660 and 238.670, shall be exempt from garnishment and all state, county and municipal taxes heretofore or hereafter imposed, except as provided under ORS chapter 118, shall not be subject to execution, garnishment, attachment or any other process or to the operation of any bankruptcy or insolvency law heretofore or hereafter existing or enacted, and shall be unassignable.

(2) Subsection (1) of this section does not apply to state personal income taxation of amounts paid under this chapter **and sections 1 to 45 of this 2003 Act**.

(3) Unless otherwise ordered by a court under ORS 25.387, the exemption from execution or other process granted under this section applies to 75 percent of amounts paid under this chapter **and sections 1 to 45 of this 2003 Act** if the execution or other process is issued for a support ob-

ligation or an order or notice entered or issued under ORS chapter 25, 107, 108, 109, 110, 416, 419B or 419C.

**SECTION 53.** ORS 238.455 is amended to read:

238.455. (1)(a) Whenever a member of the system is retired for service and is entitled to receive a retirement allowance or benefit which is payable monthly, and the board is unable to calculate the amount of the monthly payment in time to allow mailing of the monthly payment to the member within 62 days of the date the first monthly payment is due, the board shall calculate an estimated amount for the monthly payment based on the information then available to the board and shall mail that payment to the member within 62 days of the date the first monthly payment is due.

(b) Whenever a member of the system is retired for disability and is entitled to receive a retirement allowance or benefit which is payable monthly, and the board is unable to calculate the amount of the monthly payment in time to allow mailing of the monthly payment to the member within 10 days of either the date the board approves the member's application or the date that the first monthly payment is due, whichever is later, the board shall calculate an estimated amount for the monthly payment based on the information then available to the board and shall mail that payment to the member within 10 days of the date the board approves the member's disability benefit, the date the board receives the member's election of one of the optional forms of disability retirement allowance or the date the first monthly payment is due, whichever is later.

(2) The board shall continue to mail estimated payments under subsection (1) of this section until such time as the correct amount of the monthly payment is determined.

(3) The board shall notify the member receiving an estimated payment under subsection (1) of this section that the payment is an estimated payment only. The board shall further notify the member of the provisions of subsection (4) of this section.

(4) If the board determines that any estimated payment made to the member under subsection (1) of this section resulted in payment to the member of an amount other than the correct amount due the member as a retirement allowance or benefit, the board shall immediately so notify the member. Thereafter, the board may increase or decrease the monthly payment to the member until such time as the total difference between the amount or amounts the member received and the amount or amounts the member should have received is accounted for. Thereafter the member shall receive the monthly payment as finally calculated by the board.

(5) If the estimated payment made to the member under subsection (1) of this section results in an underpayment to the member of \$10 or more a month, the board shall pay interest on the balance of such underpayment at the rate credited to the Public Employees Retirement Fund for the prior year until such time as the underpayment is paid to the member pursuant to subsection (4) of this section.

(6) No member shall have any right to any allowance or other benefit other than that provided for in this chapter **and sections 1 to 45 of this 2003 Act** based on the board's estimate under this section or based on any other estimate made by the board for any other purpose under this chapter **and sections 1 to 45 of this 2003 Act**.

**SECTION 54.** ORS 238.460 is amended to read:

238.460. (1) If receipt in full by a person of a retirement allowance **or other benefit** under this chapter **or sections 1 to 45 of this 2003 Act** would prevent such person from receiving in full any other governmental pension to which the person is entitled, such person may waive for a calendar year sufficient monthly payments, or portions thereof, of retirement allowance **or other benefit** under this chapter **or sections 1 to 45 of this 2003 Act** to permit the person to receive in full the other governmental pension. The waiver shall be made in writing and filed with the Public Employees Retirement Board not less than 15 days before the first day of the month to which the waiver applies.

(2) If for any month the waiver does not apply to the full retirement allowance due **under this chapter**, the waiver applies first to all or the necessary portion or prior service pension, then to all or to the necessary portion of current service pension, and then to the necessary portion of annuity.

(3) The waiver may be revoked at any time, but no retirement allowance **or other benefit** waived for the period of time in which the waiver is in effect shall be paid. The revocation shall be made in writing and filed with the board. If a person dies during the period of time in which the waiver is in effect, the waiver is considered revoked on the date of such death.

**SECTION 55.** ORS 238.465, as amended by section 89, chapter 945, Oregon Laws 2001, is amended to read:

238.465. (1) Notwithstanding ORS 238.445 or any other provision of law, payments under this chapter **or sections 1 to 45 of this 2003 Act** of any pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit that would otherwise be made to a person entitled thereto under this chapter **or sections 1 to 45 of this 2003 Act** shall be paid, in whole or in part, by the Public Employees Retirement Board to an alternate payee if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the total value of benefits payable to a member and to an alternate payee under this section may not be greater than the value of the benefits the member would otherwise be eligible to receive. Any payment under this subsection to an alternate payee bars recovery by any other person.

(2) A decree, order or settlement providing for payment to an alternate payee under subsection (1) of this section may also provide:

(a) That payments to the alternate payee may commence, at the election of the alternate payee, at any time after the earlier of:

(A) The earliest date the member would be eligible to receive retirement benefits if the member separates from service; or

(B) The date the member actually separates from service due to death, disability, retirement or termination of employment.

(b) That the alternate payee may elect to receive payment in any form of pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit in the form of a joint and survivor annuity, that would be available to the member under this chapter **or sections 1 to 45 of this 2003 Act**, or that would be available to the member if the member retired or separated from service at the time of election by the alternate payee, without regard to the form of benefit elected by the member.

(c) That the alternate payee's life is the measuring life for the purpose of measuring payments to the alternate payee under the form of benefit selected by the alternate payee and for the purpose of determining necessary employer reserves.

(d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person designated by the member as a beneficiary under ORS 238.300, 238.305 or 238.325 **or section 20 or 41 of this 2003 Act** be changed, even though the member has retired and has begun receiving a retirement allowance **or pension**. If a change of beneficiary is ordered under this paragraph, the board shall adjust the anticipated benefits that would be payable to the member and the beneficiary to ensure that the cost to the system of providing benefits to the member and the new beneficiary does not exceed the cost that the system would have incurred to provide benefits to the member and the original beneficiary. The decree, order or settlement may not provide for any change to the option selected by the retired member under ORS 238.300, 238.305, 238.320 or 238.325 **or section 20 or 41 of this 2003 Act** as to the form of the retirement benefit.

(3) The board shall adopt rules that provide for:

(a) The creation of a separate account in the name of the alternate payee reflecting the decree's, order's or agreement's distribution of the member's benefits under this chapter **or sections 1 to 45 of this 2003 Act**;

(b) The establishing of criteria to determine whether domestic relations decrees, orders and agreements comply with this section; and

(c) The definitions and procedures for the administration of this section.

(4) If a decree, order or agreement awards an interest to an alternate payee, and if the alternate payee predeceases the member before the alternate payee has commenced receiving benefits, the alternate payee shall be considered a member of the system who died before retiring for the purposes of the death benefits provided in ORS 238.390 and 238.395 **and sections 25 and 42 of this 2003 Act**, but for purposes of the death benefits provided in ORS 238.395, the alternate payee shall be considered a member of the system who died before retiring only if the member would have been eligible for death benefits under ORS 238.395 had the member died at the same time as the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons entitled to receive the benefits under ORS 238.390 and 238.395 **and sections 25 and 42 of this 2003 Act**, shall constitute payment in full of the alternate payee's interest under the decree, order or agreement.

(5) Any increase in the retirement allowance provided to the member shall increase the amounts paid to the spouse or former spouse of the member in the same proportion, except that an alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other retirement allowance increase until benefits are first paid from the system on behalf of the member.

(6) An alternate payee under this section is not eligible to receive the benefits provided under ORS 238.410, 238.415, 238.420 and 238.440 by reason of the provisions of this section.

(7) An alternate payee who elects to begin receiving payments under subsection (1) of this section before the member's effective date of retirement is not eligible to receive any additional payment by reason of credit in the system acquired by the member after the alternate payee begins to receive payments.

(8) Subsection (1) of this section applies only to payments made by the board after the date of receipt by the board of written notice of the decree, order or agreement and such additional information and documentation as the board may prescribe.

(9) Whenever the board is required to make payment to an alternate payee under the provisions of this section, the board shall charge and collect out of the benefits payable to the member and the alternate payee actual and reasonable administrative expenses and related costs incurred by the board in obtaining data and making calculations that are necessary by reason of the provisions of this section. The board may not charge more than \$300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. The board shall allocate expenses and costs charged under the provisions of this subsection between the member and the alternate payee based on the fraction of the benefit received by the member or alternate payee.

(10) As used in this section, "court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia.

**SECTION 55a.** ORS 238.600 is amended to read:

238.600. (1) A system of retirement and of benefits at retirement or death for employees of public employers hereby is established and shall be known as the Public Employees Retirement System. **The Public Employees Retirement System consists of ORS chapter 238 and sections 1 to 45 of this 2003 Act.** Any similar system being operated by a public employer on April 8, 1953, may be integrated into this system as hereinafter provided.

(2) If the Public Employees Retirement System is terminated, or if contributions may no longer be made to the system, each member of the system has a nonforfeitable right to the benefits that the member has accrued as of the date of the termination, or as of the date that contributions may no longer be made to the system, to the extent that those benefits are funded.

**SECTION 56.** ORS 238.610 is amended to read:

238.610. (1) The administrative expenses of the system shall be paid from interest earned by the retirement fund; provided, that if such interest be insufficient the expense in excess thereof shall be paid from the contributions which this chapter *[requires]* **and sections 24 and 25b of this 2003 Act require** participating employers to pay into the Public Employees Retirement Fund.

(2) In order to facilitate financing the establishment and administration of the system the board may designate fiscal periods and may provide that extraordinary expenses incurred during one such period, such as expenses for equipment and actuarial studies, may, for purposes of equitably dis-

tributing part of the burden of the expenses, be apportioned to subsequent fiscal periods in such manner as to the board seems equitable.

(3) For each fiscal period designated by the board there shall be deducted from the interest earned by the retirement fund, the administrative expenses of the system for that period; provided, that if such interest be insufficient for such purpose, the excess expense shall be paid by deducting from the account of each employer participating in the system that fraction of the administrative expense of the system for that period which the employer's total contribution to the fund for the period is of the sum of all the employers' contributions to the fund for the period.

(4) Amounts payable as refunds and retirement allowances shall not for any purpose be deemed expenses of the board and shall not be included in its biennial departmental budget.

**SECTION 57.** 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 members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. 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 **and sections 1 to 45 of this 2003 Act**, 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) Shall arrange for actuarial service for the system;

(c) Shall employ a director;

(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 pensions**, and establish from time to time for that purpose the necessary actuarial factors, which shall constitute a part of the system; and

(h) 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 58.** ORS 238.645 is amended to read:

238.645. The system shall be administered, subject to the limitations of this chapter, **sections 1 to 45 of this 2003 Act** and the budget prescribed by the board, by the director provided for by ORS 238.630 and by a staff which the board authorizes and which the director appoints. The director shall hold that position during the discretion of the board and the members of the staff shall hold their respective positions during the discretion of the director. No member of the staff may be removed from it, however, in a manner contrary to the laws of the state regarding civil service. The director shall furnish such bond as is required by the board.

**SECTION 59.** ORS 238.650 is amended to read:

238.650. (1) Subject to the limitations of this chapter **and sections 1 to 45 of this 2003 Act**, the Public Employees Retirement Board shall, from time to time, establish rules for transacting its business and administering the system in accordance with the requirements of ORS 183.310 to 183.550.

(2) All rules adopted by the board become part of the written plan document of the Public Employees Retirement System for the purpose of the status of the 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.

**SECTION 60.** ORS 238.660, as amended by section 29, chapter 625, Oregon Laws 2003 (Enrolled House Bill 3020), is amended to read:

238.660. (1) The Public Employees Retirement Fund is declared to be a trust fund, separate and distinct from the General Fund, for the uses and purposes set forth in this chapter[, *section 13, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003),*] and ORS 237.950 to 237.980 **and sections 1 to 45 of this 2003 Act**, and for no other use or purpose, except that this provision shall not be deemed to amend or impair the force or effect of any law of this state specifically authorizing the investment of moneys from the fund. Interest earned by the fund shall be credited to the fund. Except as otherwise specifically provided by law, the Public Employees Retirement Board established by ORS 238.630 is declared to be the trustee of the fund. Consistent with the legislative intent expressed in ORS 238.601, and to the extent it is consistent with the board's fiduciary duties, the board shall give equal consideration to the interests of participating public employers and the interests of members. Nothing in this subsection shall be construed to impose a fiduciary duty on the board to consider the interests of public employers, and the board shall consider the interests of public employers only with respect to matters unrelated to the board's fiduciary duties as trustee of the fund.

(2) Until all liabilities to members and their beneficiaries are satisfied, assets of the fund may not be diverted or otherwise put to any use that is not for the exclusive benefit of members and their beneficiaries. This subsection does not limit return of employer contributions for health benefits in the manner provided by ORS 238.410, 238.415 and 238.420 upon satisfaction of all liabilities for health benefits under those sections.

(3) The State of Oregon and other public employers that make contributions to the fund have no proprietary interest in the fund or in the contributions made to the fund by them. The state and other public employers disclaim any right to reclaim those contributions and waive any right of reclamation they may have in the fund. This subsection does not prohibit alteration or refund of employer contributions if the alteration or refund is authorized under this chapter **or sections 1 to 45 of this 2003 Act** and is due to erroneous payment or decreased liability for employer contributions under the system.

(4) The board may accept gifts of money or other property from any source, given for the uses and purposes of the system. Money so received shall be paid into the fund. Money or other property so received shall be used for the purposes for which received. Unless otherwise prescribed by the source from which the money or other property is received, the money shall be considered as income

of the fund and the other property shall be retained, managed and disposed of as are investments of the fund.

(5) All moneys paid into the fund shall be deposited with the State Treasurer, who shall be custodian of the fund and pay all warrants drawn on it in compliance with law. No such warrant shall be paid until the claim for which it is drawn is first approved by the director or designee and otherwise audited and verified as required by law. Monthly, each beneficiary's gross benefit shall be calculated; applicable deductions made for taxes, insurance and other withholdings; and the net amount paid to the beneficiary, by check or by electronic funds transfer (EFT) to the beneficiary's bank. A deduction summary shall be made, by type, and a check issued for the aggregate of each type for transmittal to the appropriate taxing jurisdiction, vendor or institution. A voucher shall be prepared and transmitted to the Oregon Department of Administrative Services for reimbursement of the checking account, and the department shall draw a warrant on the State Treasurer, payable to the Public Employees Retirement System, for the amount thereof.

(6) Any warrant, check or order for the payment of benefits or refunds under the system out of the fund issued by the board which is canceled, declared void or otherwise made unpayable pursuant to law because it is outstanding and unpaid for a period of more than two years, may be reissued by the board without bond if the payee is located after such warrant, check or order is canceled, declared void or otherwise made unpayable pursuant to law.

(7) All references in this chapter to checks or warrants are subject to the provisions of ORS 291.001 (1).

(8) The board shall provide for an annual audit of the retirement fund and for an annual report to the Legislative Assembly and to all members of, retirees of, and all employers participating in, the system. The annual report must contain financial statements prepared in accordance with generally accepted accounting principles. The financial statements must include the report of any independent auditor.

**(9) The board may review legislative proposals for changes in the benefits provided under this chapter and sections 1 to 45 of this 2003 Act and may make recommendations to committees of the Legislative Assembly on those proposed changes. In making recommendations under this subsection, the board acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommendations under this subsection on the Oregon Public Service Retirement Plan established by sections 1 to 45 of this 2003 Act, the board shall seek to maintain the balance between benefits and costs, and the relative risk borne by employers and employees with respect to investment performance, reflected in sections 1 to 45 of this 2003 Act as in effect on January 1, 2004.**

**(10) The board shall appoint a committee to advise the board on legislative proposals for changes in the benefits provided under this chapter and sections 1 to 45 of this 2003 Act. The committee must have an equal number of members representing labor and management. No costs of reviewing legislative proposals and making recommendations under this subsection may be charged to the fund. Any member of the committee 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 committee, and the wages or salary of the member may not be reduced by the employer during periods that the member is released from duty for the purpose of conducting the official business of the committee.**

**SECTION 61.** ORS 238.661 is amended to read:

238.661. Moneys in the Public Employees Retirement Fund are continuously appropriated to the Public Employees Retirement Board to carry out the purposes of this chapter **and sections 1 to 45 of this 2003 Act.**

**SECTION 62.** ORS 238.665 is amended to read:

238.665. Contributions required by this chapter **or sections 1 to 45 of this 2003 Act** to be placed in the retirement fund, and interest required to be allocated to the member accounts of members of the retirement system and to participating employers, shall not be included in the biennial departmental budget of the board.

**SECTION 63.** ORS 238.675 is amended to read:

238.675. (1)(a) Any benefit payment that is payable as the result of the death of a member may be transferred by the Public Employees Retirement Board to another account or reserve in the fund if:

(A) The total benefit payable to the beneficiaries designated by the deceased member is less than \$250 in amount;

(B) Ten years have passed since the death of the member; and

(C) No claim has been made for the benefit payment.

(b) Amounts transferred under this section shall be credited to accounts or reserves in the fund designated by the board in its discretion.

(c) The board shall establish procedures for the filing of a delayed claim by a beneficiary of a deceased member who would otherwise be entitled to receive a benefit payment. Delayed claims may be filed after the 10-year period provided for in paragraph (a) of this subsection.

(2)(a) The Public Employees Retirement Board may transfer the amount credited to the member account of a former member to another account or reserve in the fund if:

(A) The total amount credited to the member account of the former member is less than \$250;

(B) The membership of the person in the system has been terminated under the provisions of ORS 238.095 (2) **or the membership of the person in the pension program or individual account program has been terminated under section 6 or 30 of this 2003 Act;** and

(C) Ten years have passed since the former member ceased to be a member of the system and no claim has been made for payment of the amount credited to the member account of the former member.

(b) Amounts transferred under this section shall be credited to reserves or accounts in the fund designated by the board in its discretion.

(c) The board shall establish procedures for the filing of a delayed claim by a former member of the system who would otherwise be entitled to receive amounts credited to the member account of the former member. Delayed claims may be filed after the 10-year period provided for in paragraph (a) of this subsection.

**SECTION 64.** ORS 238.700 is amended to read:

238.700. All provisions of ORS 238.655, 238.705, 238.710 and 238.715 hereby are made applicable for enforcement of the requirements of ORS chapter 238 **and sections 1 to 45 of this 2003 Act.**

**SECTION 65.** ORS 238.705 is amended to read:

238.705. (1) All public employers that are members of the system shall promptly and regularly remit to the Public Employees Retirement Board all contributions required of them by law and furnish all reports required by the board.

(2) Any public employer delinquent in remitting contributions shall be charged interest on the total amount of contributions due from it at the rate of one percent per month or fraction thereof during which the public employer is delinquent. Interest so paid shall be deposited in the Public Employees Retirement Fund and shall be used by the board in paying administrative expenses of the system.

(3) If any state officer or agency fails to remit any contribution or other obligation required by law, the Public Employees Retirement Board, within 30 days after the date the request therefor has been made by it by registered mail or by certified mail with return receipt, may certify to the Oregon Department of Administrative Services the fact of such failure and the amount of the delinquent contribution or obligation, together with its request that such amount be set over from funds of the delinquent officer or agency to the credit of the Public Employees Retirement Fund. A copy of such certification and request shall be furnished the delinquent officer or agency. The department shall, within 10 days after receipt of the request of the board, approve the payment of such amount by the delinquent officer or agency from funds allocated to the officer or agency for the current biennium and draw a warrant for payment of the amount of the contribution or obligation due out of funds in the State Treasury allocated to the use of the delinquent officer or agency.

(4) If any public employer other than a state agency fails to remit any contribution or pay any other obligation due under this chapter **or sections 1 to 45 of this 2003 Act**, the board may certify to the department the fact of such failure. Upon receipt of the certification the department shall withhold payment to the public employer of any revenues or funds in the State Treasury in which the public employer is entitled by law to share and which have been apportioned to the public employer until the board certifies to the department that the failure has been remedied. The board shall send a copy of each certification it makes under this subsection to the public employer affected.

(5) Any public employer delinquent in making reports or supplying information concerning its employees in the manner required by the board shall be charged a penalty of the lesser of \$2,000 or one percent of the total annual contributions, for each month or fraction thereof during which the employer is delinquent. In addition, the board may send an auditor to the office of the employer to examine its records and to obtain the necessary reports, the entire cost of such audit to be paid by the delinquent employer. Penalties and other charges so paid shall be used by the board in paying administrative expenses of the system.

**SECTION 66.** ORS 238.715 is amended to read:

238.715. (1) If the Public Employees Retirement Board determines that a member of the system or any other person receiving a monthly payment from the Public Employees Retirement Fund has received any amount in excess of the amounts that the member or other person is entitled to under this chapter **and sections 1 to 45 of this 2003 Act**, the board may recover the overpayment or other improperly made payment by:

(a) Reducing the monthly payment to the member or other person for as many months as may be determined by the board to be necessary to recover the overpayment or other improperly made payment; or

(b) Reducing the monthly payment to the member or other person by an amount actuarially determined to be adequate to recover the overpayment or other improperly made payment during the period during which the monthly payment will be made to the member or other person.

(2)(a) Any person who receives a payment from the Public Employees Retirement Fund and who is not entitled to receive that payment, including a member of the system who receives an overpayment, holds the improperly made payment in trust subject to the board's recovery of that payment under this section or by a civil action or other proceeding.

(b) The board may recover an improperly made payment in the manner provided by subsection (1) of this section from any person who receives an improperly made payment from the fund and who subsequently becomes entitled to receive a monthly payment from the fund.

(c) The board may recover an improperly made payment by reducing any lump sum payment in the amount necessary to recover the improperly made payment if a person who receives an improperly made payment from the fund subsequently becomes entitled to receive a lump sum payment from the fund.

(3) Unless the member or other person receiving a monthly payment from the fund authorizes a greater reduction, the board may not reduce the monthly payment made to a member or other person under the provisions of subsection (1) of this section by an amount that is equal to more than 10 percent of the monthly payment.

(4) Before reducing a benefit to recover an overpayment or erroneous payment, or pursuing any other collection action under this section, the board shall give notice of the overpayment or erroneous payment to the person who received the payment. The notice shall describe the manner in which the person who received the payment may appeal the board's determination that an overpayment or erroneous payment was made, the action the board may take if the person does not respond to the notice and the authority of the board to assess interest, penalties or costs of collection.

(5) If the board determines that an overpayment or erroneous payment was caused by a fraudulent or intentional act of the person who received the payment, the board may assess interest in an amount equal to one percent per month on the balance of the improperly made payment until the payment is fully recovered. The board may also assess to the member or other person all costs

incurred by the board in recovering the payment, including attorney fees. Interest and costs may be collected in the manner prescribed in subsections (1) and (2) of this section. The board may waive the interest and costs on an overpayment or other improperly made payment for good cause shown.

(6) Notwithstanding ORS 293.240, the board may waive the recovery of any payment or payments made to a person who was not entitled to receive the payment or payments if the total amount of the overpayment or other improperly made payments is less than \$50.

(7) A payment made to a person from the fund may not be recovered by the board unless within six years after the date that the payment was made the board has commenced proceedings to recover the payment. For the purposes of subsection (1) of this section, the board shall be considered to have commenced proceedings to recover the payment upon mailing of notice to the person receiving a monthly payment that the board has determined that an overpayment or other improperly made payment has been made.

(8) The remedies authorized under this section are supplemental to any other remedies that may be available to the board for recovery of amounts incorrectly paid from the fund to members of the system or other persons.

(9) The board shall adopt rules establishing the procedures to be followed by the board in recovering overpayments and erroneous payments under this section.

**SECTION 67.** ORS 238.750 is amended to read:

238.750. This chapter **and sections 1 to 45 of this 2003 Act** shall be known as the Public Employees' Retirement Act of 1953.

**SECTION 68.** ORS 243.105 is amended to read:

243.105. As used in ORS 243.105 to 243.285, unless the context requires otherwise:

(1) "Benefit plan" includes, but is not limited to, contracts for insurance or other benefit based on life; supplemental medical, supplemental dental, optical, accidental death or disability insurance; group medical, surgical, hospital or any other remedial care recognized by state law; and related services and supplies. "Benefit plan" includes comparable benefits for employees who rely on spiritual means of healing.

(2) "Board" means the Public Employees' Benefit Board.

(3) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation, or a board-approved guarantor of benefit plan coverage and compensation.

(4)(a) "Eligible employee" means an officer or employee of a state agency who elects to participate in one of the group benefit plans described in ORS 243.135. The term includes state officers and employees in the exempt, unclassified and classified service, and state officers and employees, whether or not retired, who:

(A) Are receiving a service [or] **retirement allowance, a disability retirement allowance or a pension** under the Public Employees Retirement System or are receiving a service [or] **retirement allowance, a disability retirement allowance or a pension** under any other retirement or disability benefit plan or system offered by the State of Oregon for its officers and employees;

(B) Are eligible to receive a service retirement allowance under the Public Employees Retirement System and have reached earliest retirement age under ORS chapter 238;

**(C) Are eligible to receive a pension under sections 5 to 26 of this 2003 Act, and have reached earliest retirement age as described in section 16 of this 2003 Act;** or

[(C)] **(D) Are eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by the State of Oregon and have attained earliest retirement age under the plan or system.**

(b) "Eligible employee" does not include individuals:

(A) Engaged as independent contractors;

(B) Whose periods of employment in emergency work are on an intermittent or irregular basis;

(C) Who are employed on less than half-time basis unless the individuals are employed in positions classified as job-sharing positions or unless the individuals are defined as eligible under rules of the board;

(D) Appointed under ORS 240.309;

(E) Provided sheltered employment or [*made-work*] **make-work** by the state in an employment or industries program maintained for the benefit of such individuals; or

(F) Provided student health care services in conjunction with their enrollment as students at the state institutions of higher education.

(5) "Family member" means an eligible employee's spouse and any unmarried child or stepchild within age limits and other conditions imposed by the board with regard to unmarried children or stepchildren.

(6) "Payroll disbursing officer" means the officer or official authorized to disburse moneys in payment of salaries and wages of employees of a state agency.

(7) "Premium" means the monthly or other periodic charge for a benefit plan.

(8) "State agency" means every state officer, board, commission, department or other activity of state government.

**SECTION 69.** ORS 243.800 is amended to read:

243.800. (1) Notwithstanding any provision of ORS chapter 238 or ORS 243.910 to 243.945 **or sections 1 to 45 of this 2003 Act**, the State Board of Higher Education may establish and administer an optional retirement plan for administrative and academic employees of the Oregon University System who are eligible for membership in the Public Employees Retirement System. The optional retirement plan must be a qualified plan under the Internal Revenue Code, capable of accepting funds transferred under subsection (7) of this section without the transfer being treated as a taxable event under the Internal Revenue Code, and willing to accept those funds. Retirement and death benefits shall be provided under the plan by the purchase of annuity contracts, fixed or variable or a combination thereof, or by contracts for investments in mutual funds.

(2) The State Board of Higher Education shall select at least two life insurance companies providing fixed and variable annuities and at least two investment companies providing mutual funds, but not more than five companies in total, for the purpose of providing benefits under the optional retirement plan authorized by this section. The State Board of Higher Education shall establish selection criteria for the purpose of this subsection.

(3) An administrative or academic employee may elect to participate in an optional retirement plan offered under the provisions of this section in the following manner:

(a) An administrative or academic employee who is an active member of the Public Employees Retirement System may make an irrevocable election to participate in the plan within 180 days after the plan's implementation date, effective as of the date of election.

(b) An employee, as defined in ORS 243.910 (2), who is an active member of the Public Employees Retirement System and who has elected, and not canceled that election, to be assisted by the State Board of Higher Education under ORS 243.940 may make an irrevocable election to participate in the plan within 180 days of the plan's implementation date, effective as of the date of election.

(c) An administrative or academic employee who is hired after the plan's implementation date may make an irrevocable election to participate in the plan within the first six months of employment, effective on the first of the month following six full months of employment.

(4) Administrative or academic employees who do not elect to participate in an optional retirement plan:

(a) Remain members of the Public Employees Retirement System if they are members on the date the plan is implemented;

(b) Continue to be assisted by the State Board of Higher Education under ORS 243.920 if they are being so assisted; or

(c) Become members of the Public Employees Retirement System in accordance with ORS chapter 238 **and sections 1 to 45 of this 2003 Act**, if they commence employment after the optional plan is implemented.

(5) Except as provided in subsection (6) of this section, employees who elect to participate in the plan are ineligible for active membership in the Public Employees Retirement System or for any assistance by the State Board of Higher Education under ORS 243.920 as long as those employees are employed in the Oregon University System and the plan is in effect.

(6)(a) An administrative or academic employee who elects to participate in the optional retirement plan authorized by this section and who has not made contributions to the Public Employees Retirement System during each of five calendar years shall be considered by the Public Employees Retirement Board to be a terminated member under the provisions of ORS 238.095 **and section 6 of this 2003 Act** effective as of the effective date of the election, and the amount credited to the member account of the member shall be transferred directly to the optional retirement plan by the Public Employees Retirement Board in the manner provided by subsection (7) of this section.

(b) An administrative or academic employee who elects to participate in the optional retirement plan authorized by this section and who has made contributions to the Public Employees Retirement System during each of five calendar years shall be considered to be an inactive member by the Public Employees Retirement Board and shall retain all the rights, privileges and options under ORS chapter 238 **or sections 1 to 45 of this 2003 Act** unless the employee withdraws the amounts credited to the member account of the member pursuant to ORS 238.265.

(7) Any withdrawals from the Public Employees Retirement Fund under subsection (6) of this section, whether by termination under subsection (6)(a) of this section or by elective withdrawal under subsection (6)(b) of this section, shall be transferred directly to the optional retirement plan by the Public Employees Retirement Board and shall not be made available to the employee.

(8) An employee participating in the optional retirement plan authorized by this section shall contribute monthly an amount equal to the percentage of the employee's salary that the employee would otherwise have contributed as an employee contribution to the Public Employees Retirement System if the employee had not elected to participate in the optional retirement plan.

(9) The State Board of Higher Education shall contribute monthly to the optional retirement plan authorized under this section the percentage of salary of each employee participating in the plan equal to the percentage of salary that would otherwise have been contributed as an employer contribution on behalf of the employee to the Public Employees Retirement System if the employee had not elected to participate in the optional retirement plan.

(10) Both employee and employer contributions to an optional retirement plan authorized under this section shall be remitted directly to the companies that have issued annuity contracts to the participating employees or directly to the mutual funds.

(11) Benefits under the optional retirement plan authorized under this section are payable to employees who elect to participate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accordance with the terms of the annuity contracts or the terms of the contract with the mutual fund. Employees electing to participate in the plan agree that benefits payable under the plan are not obligations of the State of Oregon or of the Public Employees Retirement System.

**SECTION 70.** ORS 243.830 is amended to read:

243.830. An agreement executed pursuant to ORS 243.820 by an employee who is subject to ORS chapter 238 **or sections 1 to 45 of this 2003 Act**, or a similar retirement program for public employees, in no way affects the contributions to be made or the benefits to be provided for such employee under ORS chapter 238, **sections 1 to 45 of this 2003 Act** or the other similar program. Reduction of salary or foregoing a salary increase by a stated amount under ORS 243.820 shall not be deemed a reduction in salary for the purpose of such contributions and benefits.

**SECTION 71.** ORS 243.930 is amended to read:

243.930. (1) If an employee assisted under ORS 243.920 (1) has made contributions to the Public Employees Retirement Fund during each of five calendar years [*as provided in ORS chapter 238*], the board shall contribute an amount toward the purchase of the supplemental retirement benefits equal to the contributions toward the purchase made by the employee on annual salary in excess of \$4,800.

The amounts of those contributions by the board shall be paid promptly by the board to the life insurance or annuity company in accordance with the terms of the applicable contract.

(2) If an employee assisted under ORS 243.920 (1) has not made contributions to the Public Employees Retirement Fund during each of five calendar years [*as provided in ORS chapter 238*], the board shall contribute an amount toward the purchase of the supplemental retirement benefits equal to that which it would contribute for current service under the Public Employees Retirement System with respect to the annual salary in excess of \$4,800 of the employee if the employee contributed under the system on that part of the salary.

(3) The amounts of contributions by the board under subsection (2) of this section, at intervals designated by the Public Employees Retirement Board, shall be paid into the Public Employees Retirement Fund. The Public Employees Retirement Board shall keep a separate account for those amounts and prorated earnings thereof, and for investment purposes the moneys in the separate account shall be commingled with those of the Public Employees Retirement Fund and shall be invested in the same manner as moneys of the Public Employees Retirement Fund are invested.

(4) When an employee, with respect to whose annual salary in excess of \$4,800 the board has contributed under subsection (2) of this section, has made contributions to the Public Employees Retirement Fund during each of five calendar years [*as provided in ORS chapter 238*], an amount equal to the contributions made under ORS 243.920 (2) shall be paid promptly to the life insurance or annuity company out of the separate account referred to in subsection (3) of this section, which hereby is appropriated for that purpose, for the purchase of additional supplemental retirement benefits for the employee. If the moneys in the separate account are not sufficient for that purpose, the amount of the deficiency shall be paid promptly by the board to the life insurance or annuity company for that purchase.

(5) If an employee is separated from the service of the board before the employee has made contributions to the Public Employees Retirement Fund during each of five calendar years [*as provided in ORS chapter 238*], the amounts of contributions by the board paid into the Public Employees Retirement Fund under subsection (3) of this section and prorated earnings thereof shall remain in the separate account referred to in subsection (3) of this section for the purpose described in subsection (4) of this section, and the employee is not entitled to any part thereof or any benefit derived therefrom.

**SECTION 72.** ORS 268.240 is amended to read:

268.240. (1) A district that is not participating in the Public Employees Retirement System may, by application to the board, include any class of employees of the district in the system established by ORS chapter 238 **and sections 1 to 45 of this 2003 Act** without entering into a contract of integration with the board under ORS 238.680.

(2) The board shall consider an application received under this section to be an application to become a participating employer under ORS chapter 238 **and sections 1 to 45 of this 2003 Act** but only to the extent of providing membership for the class of employees described in the application.

(3) The board, upon such terms as are set forth in a contract between the board and the employer, shall allow every employee in the specified class to become members of the Public Employees Retirement System in accordance with ORS chapter 238 **and sections 1 to 45 of this 2003 Act**.

(4) When a district enters into a contract with the board under subsection (3) of this section, the district shall agree to eventually extend coverage under ORS chapter 238 **and sections 1 to 45 of this 2003 Act** to all eligible district employees through successive contracts with the board.

(5) All employees who have completed the period of service with the public employer that is required under ORS 238.015 **or section 5 or 29 of this 2003 Act** shall become members of the system on a date specified by the board. All other employees in the described class shall become members upon completion of the required period of service.

(6) As used in this section, "board" means the Public Employees Retirement Board established under ORS 238.630.

**SECTION 73.** ORS 338.135 is amended to read:

338.135. (1) Employee assignment to a public charter school shall be voluntary.

(2) A public charter school or the sponsor of the public charter school may be considered the employer of any employees of the public charter school. If a school district board is not the sponsor of the public charter school, the school district board shall not be the employer of the employees of the public charter school and the school district board may not collectively bargain with the employees of the public charter school. The public charter school governing body shall control the selection of employees at the public charter school.

(3) The school district board of the school district within which the public charter school is located shall grant a leave of absence to any employee who chooses to work in the public charter school. The length and terms of the leave of absence shall be set by negotiated agreement or by board policy. However, the length of the leave of absence may not be less than two years unless:

(a) The charter of the public charter school is terminated or the public charter school is dissolved or closed during the leave of absence; or

(b) The employee and the school district board have mutually agreed to a different length of time.

(4) An employee of a public charter school operating within a school district who is granted a leave of absence from the school district and returns to employment with the school district shall retain seniority and benefits as an employee pursuant to the terms of the leave of absence. Notwithstanding ORS 243.650 to 243.782, a school district that was the employer of an employee of a public charter school not operating within the school district may make provisions for the return of the employee to employment with the school district.

(5) For purposes of ORS chapter 238 **and sections 1 to 45 of this 2003 Act**, a public charter school shall be considered a public employer and as such shall participate in the Public Employees Retirement System.

(6) For teacher licensing, employment experience in public charter schools shall be considered equivalent to experience in public schools.

(7)(a) Notwithstanding ORS 342.173, a public charter school may employ as an administrator a person who is not licensed by the Teacher Standards and Practices Commission.

(b) Any person employed as a teacher in a public charter school shall be licensed or registered to teach by the Teacher Standards and Practices Commission.

(c) Notwithstanding paragraph (a) or (b) of this subsection, at least one-half of the total full-time equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by the commission pursuant to ORS 342.135, 342.136, 342.138 or 342.140.

(8) Notwithstanding ORS 243.650, a public charter school shall be considered a school district for purposes of ORS 243.650 to 243.782. An employee of a public charter school may be a member of a labor organization or organize with other employees to bargain collectively. Bargaining units at the public charter school may be separate from other bargaining units of the sponsor or of the school district in which the public charter school is located. Employees of a public charter school may be part of the bargaining units of the sponsor or of the school district in which the public charter school is located.

(9) A school district or the State Board of Education may not waive the right to sponsor a public charter school in a collective bargaining agreement.

**SECTION 74.** ORS 341.290 is amended to read:

341.290. The board of education of a community college district shall be responsible for the general supervision and control of any and all community colleges operated by the district. Consistent with any applicable rules of the State Board of Education, the board may:

(1) Subject to ORS chapter 238 **and sections 1 to 45 of this 2003 Act**, employ administrative officers, professional personnel and other employees, define their duties, terms and conditions of employment and prescribe compensation therefor, pursuant to ORS 243.650 to 243.782.

(2) Enact rules for the government of the community college, including professional personnel and other employees thereof and students therein.

(3) Prescribe the educational program.

(4) Control use of and access to the grounds, buildings, books, equipment and other property of the district.

(5) Acquire, receive, hold, control, convey, sell, manage, operate, lease, lease-purchase, lend, invest, improve and develop any and all property of whatever nature given to or appropriated for the use, support or benefit of any activity under the control of the board, according to the terms and conditions of such gift or appropriation.

(6) Purchase real property upon a contractual basis when the period of time allowed for payment under the contract does not exceed 30 years.

(7) Fix standards of admission to the community college, prescribe and collect tuition for admission to the community college, including fixing different tuition rates for students who reside in the district, students who do not reside in the district but are residents of the state and students who do not reside in the state.

(8) Prescribe and collect fees and expend funds so raised for special programs and services for the students and for programs for the cultural and physical development of the students.

(9) Provide and disseminate to the public information relating to the program, operation and finances of the community college.

(10) Establish or contract for advisory and consultant services.

(11) Take, hold and dispose of mortgages on real and personal property acquired by way of gift or arising out of transactions entered into in accordance with the powers, duties and authority of the board and institute, maintain and participate in suits and actions and other judicial proceedings in the name of the district for the foreclosure of such mortgages.

(12) Maintain programs, services and facilities, and, in connection therewith, cooperate and enter into agreements with any person or public or private agency.

(13) Provide student services including health, guidance, counseling and placement services, and contract therefor.

(14) Join appropriate associations and pay any required dues therefor from resources of the district.

(15) Apply for federal funds and accept and enter into any contracts or agreements for the receipt of such funds from the federal government or its agencies for educational purposes.

(16) Exercise any other power, duty or responsibility necessary to carry out the functions under this section or required by law.

(17) Prescribe rules for the use and access to public records of the district that are consistent with ORS 192.420, and education records of students under applicable state and federal law and rules of the State Board of Education. Whenever a student has attained 18 years of age or is attending an institution of post-secondary education, the permission or consent required of and the rights accorded to a parent of the student regarding education records shall thereafter be required of and accorded to only the student. However, faculty records relating to matters such as conduct, personal and academic evaluations, disciplinary actions, if any, and other personal matters shall not be made available to public inspection for any purpose except with the consent of the person who is the subject of the record or upon order of a court of competent jurisdiction.

(18) Enter into contracts for the receipt of cash or property, or both, and establish annuities pursuant to ORS 731.704 to 731.724; and, commit, appropriate, authorize and budget for the payment of or other disposition of general funds to pay, in whole or in part, sums due under an annuity agreement, and to provide the necessary funding for reserves or other trust funds pursuant to ORS 731.716.

(19) Encourage gifts to the district by faithfully devoting the proceeds of such gifts to the district purposes for which intended.

(20) Build, furnish, equip, repair, lease, purchase and raze facilities; and locate, buy and acquire lands for all district purposes. Financing may be by any prudent method including but not limited to loans, contract purchase or lease. Leases authorized by this section include lease-purchase agreements whereunder the district may acquire ownership of the leased property at a nominal

price. Such financing agreements may be for a term of up to 30 years except for lease arrangements which may be for a term of up to 50 years.

(21) Participate in an educational consortium with public and private institutions that offer upper division and graduate instruction. Community colleges engaged in such consortiums may expend money, provide facilities and assign staff to assist those institutions offering upper division and graduate instruction.

(22) Enter into contracts of insurance or medical and hospital service contracts or may operate a self-insurance program as provided in ORS 341.312.

**SECTION 75.** ORS 353.117 is amended to read:

353.117. (1) Pursuant to ORS 353.050, Oregon Health and Science University may create and maintain an entity that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, as amended, for the purpose of conducting clinical care and practice and advancing other university missions by the faculty.

(2) Any entity created by the university under subsection (1) of this section shall be considered:

(a) A public employer for purposes of ORS 236.605 to 236.640 and ORS chapter 238 **and sections 1 to 45 of this 2003 Act;**

(b) A unit of local government for purposes ORS 190.003 to 190.130;

(c) A public provider of health care for purposes of ORS 192.525;

(d) A public body for purposes of ORS 30.260 to 30.300 and 307.112;

(e) A public agency for purposes of ORS 200.090; and

(f) A public corporation for purposes of ORS 307.090.

**SECTION 76.** ORS 353.250 is amended to read:

353.250. Notwithstanding the provisions of ORS chapter 238 **and sections 1 to 45 of this 2003 Act**, the Oregon Health and Science University may offer to its employees, in addition to the Public Employees Retirement System, alternative retirement programs.

**SECTION 77.** ORS 377.836 is amended to read:

377.836. (1) Except as otherwise provided by law, and except as provided in subsection (2) of this section, the provisions of ORS chapters 240, 276, 279, 282, 283, 291, 292 and 293 do not apply to the Travel Information Council. The council is subject to all other statutes governing a state agency that do not conflict with ORS 377.700 to 377.840, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS 183.310 to 183.550. Subject to the requirements of ORS chapter 238 **and sections 1 to 45 of this 2003 Act**, the council's employees are members of the Public Employees Retirement System.

(2) The following shall apply to the council:

(a) ORS 279.800 to 279.830;

(b) ORS 282.210 to 282.230; and

(c) ORS 293.235, 293.240, 293.245, 293.611, 293.625 and 293.630.

**SECTION 78.** ORS 396.330 is amended to read:

396.330. (1) State employees of the Oregon Military Department who are not otherwise members of the Oregon National Guard may be required as a condition of employment to obtain membership in the Oregon State Defense Force when in the judgment of the Adjutant General the membership maintains or enhances the readiness and stability of the department to provide services if the need for Oregon State Defense Force assistance should arise. The decision of the Adjutant General shall be carried out by written regulation and shall not be subject to collective bargaining.

(2) Members of the Oregon National Guard or Oregon State Defense Force who are ordered to state active duty under the provisions of ORS chapter 399 shall be considered as being in the military service of the state and shall be considered temporary employees of the military department.

(3) State employees of the military department may be ordered to state active duty under ORS chapter 399 without jeopardizing their status as regular employees. Employees so ordered must be in an authorized leave status from their regular military department employment during the period served on active duty.

(4) State employees of the military department shall be subject to ORS chapter 240 or 243 when performing as regular employees.

(5) Members of the Oregon National Guard who are serving under Title 10 or Title 32 of the United States Code are not eligible, by reason of that service, for the rights or benefits of public employees granted or authorized by ORS chapters 236, 237, 238, 240 or 243 **or sections 1 to 45 of this 2003 Act**. Except as required by federal law or regulation, ORS chapters 652, 653, 654, 656, 657, 659, 659A, 661 and 663 do not apply to members of the Oregon National Guard who are serving under Title 10 or Title 32 of the United States Code.

**SECTION 79.** ORS 576.306 is amended to read:

576.306. (1) The commission may contract with an independent contractor for the performance of any services. However, the commission may not contract with an independent contractor to perform the discretionary functions of the commission. ORS chapters 240 and 279 do not apply to the commission in obtaining such services, except that no contract for such services shall take effect until approved by the State Department of Agriculture as provided in subsection (7) of this section.

(2) The commission may rent space or acquire supplies and equipment from any contractor as described in subsection (1) of this section. ORS chapters 276, 278, 279 and 283 and ORS 291.038 do not apply to such rentals or acquisitions.

(3) Except as provided in this section, a contractor described in subsection (1) of this section shall be considered an independent contractor and not an employee, eligible employee, public employee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 240, 243, 291, 292, 316 and 652 **and sections 1 to 45 of this 2003 Act**.

(4) Nothing in this section precludes the state or a commission from being considered the employer of the contractor described in subsection (1) of this section for purposes of unemployment compensation under ORS chapter 657 and ORS 670.600.

(5) A contractor described in subsection (1) of this section shall be considered an independent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

(6) A contractor described in subsection (1) of this section shall not be considered a public official, public officer, state officer or executive official for purposes of Oregon law, including ORS chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

(7) The State Department of Agriculture shall review the contract described in subsection (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and ending dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

(8) The Oregon Department of Administrative Services, in consultation with the State Department of Agriculture, shall adopt rules necessary for the screening and selection of independent contractors under this section.

(9) Except as provided in subsection (8) of this section, the department may promulgate any rules necessary for the administration and enforcement of this section.

**SECTION 80.** ORS 656.725 is amended to read:

656.725. (1) Individuals holding the position of Administrative Law Judge created by the amendments to ORS 656.724 by section 51, chapter 332, Oregon Laws 1995, have the authority to perform only those duties, functions and powers provided in ORS chapters 654, 655 and 656, and such other duties, functions and powers as may be prescribed by the Workers' Compensation Board pursuant to ORS 656.726.

(2) Administrative Law Judges are not judges for the purposes of any provision of the Oregon Constitution and are not judges for the purposes of judges' retirement under ORS chapter 238 **and sections 1 to 45 of this 2003 Act**.

**SECTION 81.** ORS 777.775 is amended to read:

777.775. (1) An export trading corporation is not a public agency or public contracting agency for the purposes of ORS 279.011 to 279.063 or 279.435.

(2) An export trading corporation is not a public employer for the purposes of ORS chapter 238 and sections 1 to 45 of this 2003 Act.

**SECTION 82.** ORS 293.701, as amended by section 9, chapter 6, Oregon Laws 2002 (third special session), and section 35a, chapter 67, Oregon Laws 2003 (Enrolled House Bill 2003), is amended to read:

293.701. As used in ORS 293.701 to 293.820, unless the context requires otherwise:

(1) "Council" means the Oregon Investment Council.

(2) "Investment funds" means:

(a) Public Employees Retirement Fund referred to in ORS 238.660;

(b) Industrial Accident Fund referred to in ORS 656.632;

(c) Consumer and Business Services Fund referred to in ORS 705.145;

(d) Employment Department Special Administrative Fund referred to in ORS 657.822;

(e) Insurance Fund referred to in ORS 278.425;

(f) Funds under the control and administration of the Division of State Lands;

(g) Oregon Student Assistance Fund referred to in ORS 348.570;

(h) Moneys made available to the Commission for the Blind under ORS 346.270 and 346.540 or rules adopted thereunder;

(i) Forest rehabilitation bonds sinking fund referred to in ORS 530.280;

(j) Oregon War Veterans' Fund referred to in ORS 407.495;

(k) Oregon War Veterans' Bond Sinking Account referred to in ORS 407.515;

(l) World War II Veterans' Compensation Fund;

(m) World War II Veterans' Bond Sinking Fund;

(n) Savings and loan association funds in the hands of the Director of the Department of Consumer and Business Services;

(o) Funds in the hands of the State Treasurer that are not required to meet current demands;

(p) State funds that are not subject to the control and administration of officers or bodies specifically designated by law;

(q) Funds derived from the sale of state bonds;

(r) Social Security Revolving Account referred to in ORS 237.490;

(s) Investment funds of the State Board of Higher Education lawfully available for investment or reinvestment;

(t) Local Government Employer Benefit Trust Fund referred to in ORS 657.513;

(u) Elderly and Disabled Special Transportation Fund established by ORS 391.800;

(v) Education Stability Fund established by ORS 348.696;

(w) Deferred Compensation Fund established under ORS 243.411; and

(x) Trust for Cultural Development Account established under ORS 359.405.

[*(y) Transition Account Fund established by section 13a of this 2003 Act.*]

(3) "Investment officer" means the State Treasurer in the capacity as investment officer for the council.

## **PERS INFORMATION TECHNOLOGY SYSTEM**

**SECTION 83.** Subject to such direction and oversight as may be provided by the Legislative Assembly, the Public Employees Retirement Board shall take all steps necessary to develop and implement a dedicated information technology system to manage the Oregon Public Service Retirement Plan established by sections 1 to 45 of this 2003 Act. The board shall ensure that the essential record keeping components of the information technology system are in operation as soon as practicable. The board shall ensure that the information technology system is designed to support the current and future business and technology needs of the Public Employees Retirement System arising out of the implementation of sections 1 to 45 of this 2003 Act.

**CAPTIONS**

**SECTION 84.** The unit and section captions used in this 2003 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2003 Act.

**EMERGENCY CLAUSE**

**SECTION 85.** 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.

**Passed by House May 2, 2003**

**Received by Governor:**

**Repassed by House August 26, 2003**

.....M.,....., 2003

**Approved:**

.....  
Chief Clerk of House

.....M.,....., 2003

.....  
Speaker of House

.....  
Governor

**Passed by Senate July 7, 2003**

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

**Repassed by Senate August 26, 2003**

.....M.,....., 2003

.....  
President of Senate

.....  
Secretary of State