

# Chapter 239

## 1985 REPLACEMENT PART

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**TEACHERS' RETIREMENT ACT**

**239.002 Definitions.** As used in this chapter, unless the context requires otherwise

(1) "Active member" means a member of the association who has not retired on account of age or disability

(2) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter

(3) "Association" means a teachers' retirement fund association organized pursuant to this chapter in a school district as defined in this section

(4) "Calendar year" means 12 calendar months commencing on January 1 and ending on December 31 following

(5) "Continuous service" means service not interrupted for more than five years, except that such continuous service shall be computed without regard to interruptions in the case of

(a) A teacher who had returned to the service of the school district as of January 1, 1945, and who remained in that employment until July 1, 1946

(b) A teacher who was in the Armed Services on January 1, 1945, and returned to the school district within one year of the date of being otherwise than dishonorably discharged and remained in that employment until having established membership in the Teachers' Retirement System

(6) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 following

(7) "Pension" means annual payments for life derived from contributions by a school district as defined in this section

(8) "Public Employes' Retirement System" or "Public Employes' Retirement Act" means the provisions of ORS 237 001 to 237 315

(9) "Public employer" means the same as that term is defined in ORS 237 003

(10) "Salary" means the remuneration paid a teacher in cash out of the funds of a school district in return for services to the school district, plus the monetary value, as determined by the board of trustees of the association with the approval of the school board, of whatever living quarters, board, lodging, fuel, laundry and other advantages the school district furnishes the teacher in return for services. The definitions of "salary" and "other advantages" in ORS 237 003

(8)(b) and (c) are applicable under this chapter to the extent pertinent under this chapter

(11) "School board" means the board of directors of a school district as defined in this section

(12) "School district" means any district having more than 10,000 children of school age.

(13) "School year" means the period beginning July 1 and ending June 30 next following

(14) "Teacher" includes all superintendents, assistant superintendents, supervisors, principals, vice principals, directors of departments, and instructors in the employ of school districts as defined in this section pursuant to an election by the school board for a period of one year or more [Amended by 1959 c 613 §2, 1967 c 638 §1, 1983 c 830 §10]

**239.004 Short title.** ORS 239 002 to 239 263 shall be known as the Teachers' Retirement Act [1959 c 613 §1]

**239.100 Membership in system limited.**

Notwithstanding any other provision of law, no person shall be a member of the Teachers' Retirement System who was not a member on June 30, 1973 [1971 c 700 §2]

**239.102 Teacher retirement fund association.** (1) The teachers employed in a school district may, with the consent and approval of the school board, establish an association to be known as teachers' retirement fund association, which shall have duties, powers and privileges as provided in this chapter and in the general laws of this state

(2) Any plan for the establishment of an association shall include a provision for incorporation pursuant to the laws governing the organization of religious, charitable and educational corporations, except as otherwise provided in this chapter

**239.104 Plan of organization; school board approval.** (1) Whenever the teachers in a school district desire to avail themselves of the privileges of this chapter, they shall formulate a plan for the incorporation and organization of an association, and the collection and disbursement of the funds for the benefit of retired teachers in the district

(2) This plan shall be submitted to the school board for approval. When the plan is approved by the school board, the association so established and incorporated may receive, collect, invest, loan and disburse funds in accordance with the plan

**239.106 Approval of plan by teachers.** No association shall be incorporated or com-

mence to collect and disburse funds until the plan proposed by the teachers is approved in writing by a majority of all the teachers in employ of the school district. At the time of incorporation, there shall be filed with the articles of incorporation an affidavit made by the clerk of the school district to the effect that a majority of the teachers have approved in writing the formation of the association.

**239.108 Adoption and revocation of bylaws.** (1) The association may from time to time adopt bylaws, consistent with this chapter, amending or amplifying the plan formulated under ORS 239 104. The bylaws shall be adopted by the association subject to the approval of the school board and shall be effective after the date of approval.

(2) The school board may at any time, upon 90 days' written notice to the board of trustees of the association, withdraw its approval of any bylaw previously approved, in which case such bylaws shall be of no effect after the date when a certified copy of the withdrawal of approval is filed by the school board with the board of trustees after a lapse of the 90-day period of notice.

**239.110 Election of incorporators.** When the plan has been approved by the school board, a meeting of the teachers qualified to be members of the association shall be called by the board, to be held at such time and place as the board may appoint, for the purpose of selecting three or more persons to act as incorporators and trustees of the association until it is fully organized.

**239.112 Duties of incorporators; election of trustees.** (1) The incorporators shall execute and file articles of incorporation as by law provided, and shall receive and act upon applications for membership in such association until 300 members have been elected.

(2) Thereupon the incorporators shall call a meeting of the members elected, to be held at such time and place as they shall designate. At this meeting the corporation shall be fully organized by the election of trustees and other officers, and adoption of bylaws for the government of the association. The trustees elected at the meeting shall be successors of the incorporators selected at the meeting provided for in ORS 239 110.

**239.114 Notice of meetings.** (1) Notice of the meetings under ORS 239 110 and 239 112 shall be given five days before such meeting by posting the same in three public places within the district.

(2) Notice of the meeting of the teachers under ORS 239 110 shall be signed by the clerk of the school district.

(3) Notice of the meeting under ORS 239 112 shall be signed by the incorporators or a majority.

**239.116 Board of trustees is governing body.** The management and administration of the affairs of the association shall be vested in a board of trustees of seven members elected by the active members of the association. [Amended by 1959 c 613 §3]

**239.118 Powers and duties of board of trustees.** The board of trustees shall have the following powers and duties:

(1) To formulate bylaws for submission to the association for adoption.

(2) To provide for the payment of retirement annuities and pensions and disability retirement annuities and pensions to members of the association to whom such payments become payable under this chapter.

(3) To invest and reinvest moneys paid into the retirement fund by members of the association, and to do all things necessary and desirable to the proper investment, management and safe-keeping of the funds. The school board may, but is not required to, issue directives concerning the investments and investment reserves of the association, and the board of trustees shall adhere to all such directives as may be issued by the school board.

(4) To hire, with the approval of the school board, actuaries and accountants.

(5) To hire attorneys.

(6) To prepare and submit to the school board each year an annual report.

(7) To administer the business and affairs of the association.

(8) To receive, hold, sell, mortgage and otherwise dispose of real and personal property, either by gift or purchase or in any other lawful ways, and also to loan and invest the funds of the association in such manner as the officers of the association may deem best and as may be provided by its articles of incorporation and bylaws.

(9) To publish and distribute to all members of the association an annual report including a summary of investments of moneys in the fund, investment earnings, significant legislative or administrative changes in the association and other pertinent information on the operation of the association for the preceding year. [Amended by 1959 c 613 §4, 1961 c 574 §6, 1963 c 616 §4, 1981 c 689 §3]

**239.120 Officers of the association.** (1) The board of trustees shall elect the officers of the association. They shall be members of the board of trustees and active members of the association.

(2) The officers shall be a president, a vice president, a secretary and a treasurer.

(3) The officers shall be elected in the manner and for such terms as determined by the bylaws adopted by the association with the approval of the school board.

**239.122 Employes of the association.** The board of trustees may hire and define the duties of an executive secretary and such other employes as it deems necessary to properly administer and manage the affairs of the association.

**239.124 Annual report.** The association shall, on or before April 1 of each calendar year, prepare and file with the school board a complete annual report of the finances and affairs of the association, containing among other things the following:

(1) The name of each active member, the amount of the reserve of each active member on the records of the association, and the monthly contributions being paid by each active member.

(2) The name of each retired member who retired at the retirement age pursuant to this chapter, the date on which the member retired, the age of the member at retirement, the amount of the reserve credited to the member on the records of the association at retirement and the amount of the annuity which the reserve will provide for the member.

(3) The name of each member who has retired on account of disability, pursuant to this chapter, the date on which the member retired, the amount of the reserve of the member when disability was certified and the amount of the annuity which the reserve will provide for the member.

(4) The amount of each monthly annuity and pension payment made to each member who has retired at the retirement age pursuant to this chapter.

(5) The amount of each monthly disability annuity and pension payment made to each member who has retired on account of disability pursuant to this chapter.

(6) A statement setting forth separately the aggregate amounts paid during the calendar year, immediately preceding the date on which the annual report is filed, and the aggregate amounts estimated to be paid in the calendar year in which

the annual report is filed, for retirement annuities, disability retirement annuities, retirement pensions and disability retirement pensions.

(7) A statement setting forth the total costs and expenses of administering and managing the association during the calendar year immediately preceding the date on which the annual report is filed.

(8) A statement listing the total assets of the association as of the last day of the calendar year immediately preceding the date on which the annual report is filed. [Amended by 1959 c 613 §5]

**239.126 Annual audit.** (1) On or before April 1 of each calendar year, the board of trustees of the association shall cause the books, records and accounts of the association to be audited by a certified public accountant selected annually by the board of trustees and the school board, and equally responsible to both boards.

(2) A copy of the audit report, certified by the accountant, shall be filed with the school board, together with the annual report. The annual audit shall cover the calendar year immediately preceding the date of the filing of the annual report and shall contain a statement of the assets of the association reflecting acquisition costs and an estimate of fair market value, and a statement of the liabilities of the association, as of the close of the calendar year.

(3) The cost of completing the annual audit and of preparing the audit report shall be divided equally between the association and the school district.

**239.128 Additional audit; statement of default; remedies against delinquent associations.** (1) The school board may require the certified public accountant to make such additional audit or examination of the assets, liabilities and affairs of an association, in addition to the annual report, as the board deems necessary. The cost of the audit shall be divided equally between the association and the school district.

(2) On or before July 1 of each calendar year, the school board shall file with the association a statement specifying the acts, practices or procedures of the association alleged to be illegal.

(3) If the association fails, within 90 days after receiving a statement of default, to make good the default or rectify the noncompliance with law, the school board may bring suit in the circuit court of the county in which the school district is located for a declaratory judgment and decree to establish the rights, duties and obligations of the association with respect to the illegal

acts, practices or procedures and for such relief, mandatory or otherwise, as the court shall adjudge or decree

(4) Concurrently with or as an alternative to the remedies in subsection (3) of this section, the school board may withhold the payment of all or any part of any further moneys payable by it to the association under this chapter until the default is rectified or until the association complies with law in the particulars certified by the board

(5) The remedies provided in this section are not exclusive of any other right or remedy which the school board may have to enforce the provisions of this chapter

**239 130** [Renumbered 239 138]

**239.131** [1959 c 613 §40, repealed by 1961 c 574 §10]

**239.133 Reserve accounts in fund; amortizing gains and losses.** (1) At the close of each calendar year, the board of trustees of the association shall set aside, out of interest and other income received through investment of the Teachers' Retirement Fund during the calendar year, such part of the income as the board of trustees and the school board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. Such reserve account shall be maintained and used by the board of trustees to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate, administrative expenses or, except as provided in subsection (3) or (4) of this section, other unforeseen contingency

(2) At the close of each calendar year, the board of trustees shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for annuities varying percentage amounts adopted by the board of trustees as a result of periodic actuarial investigations. The rates at which interest and other income are to be credited to reserves shall be reported by the board of trustees to the Legislative Assembly and disclosed when any legislative committee conducts a hearing on any action, proposal or testimony from the board of trustees or its employees regarding benefits or the financing of benefits provided or to be provided under the Teachers' Retirement System. If the total income available for distribution exceeds those percentages of the total accumulated contributions of active members, the

reserves for annuities shall participate in such excess

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

(4) The board of trustees may provide for amortizing gains and losses of invested capital in such instances as the board of trustees and the school board determine that amortization is preferable to a reserve account provided for in subsection (3) of this section. [1959 c 613 §37, 1967 c 638 §§2, 3, 1975 c 744 §2]

**239.135 Actuarial report.** At least once every four years, and as often as requested by the school board, the board of trustees of the association shall cause a competent actuary familiar with public systems of retirement and death benefits to prepare a report evaluating the current and prospective assets and liabilities of the system and indicating its current and prospective financial condition. In preparing the report, the actuary shall investigate the mortality, disability, service and other experience of the members of the system, shall state fully the condition of the system, and shall make such recommendations as the actuary deems advisable to facilitate administering it properly. The board of trustees shall deliver copies of the report to the members of the school board. [1959 c 613 §38]

**239.137 Administrative expenses of system.** (1) The administrative expenses of the Teachers' Retirement System shall be paid from interest and other income earned by the retirement fund, provided, that if such interest and other income be insufficient the expense in excess thereof shall be paid from the reserve account provided by ORS 239 133 (1)

(2) In order to facilitate financing and administration of the system the board of trustees may provide that extraordinary expenses incurred during one calendar year, such as expenses for

equipment and actuarial studies, may, for purposes of equitably distributing part of the burden of the expenses, be apportioned to subsequent calendar years in such manner as to the board of trustees seems equitable

(3) For each calendar year there shall be deducted from the interest and other income earned by the retirement fund, the administrative expenses of the system for that period, provided, that if such interest and other income be insufficient for such purpose, the excess expense shall be paid by deducting the amount thereof from the reserve account provided by ORS 239 133 (1)

(4) Amounts payable as refunds and retirement allowances shall not for any purpose be deemed expenses of the board of trustees [1959 c 613 §39, 1967 c 638 §4]

**239.138 School board expenses.** The school board of a school district in which an association has been organized pursuant to this chapter may expend from the general fund of the school district such sums of money as are necessary for the payment of attorneys, actuaries, physicians, surgeons, clerk hire and such other costs and expenses as are incurred by the school board in the performance of its powers and duties under this chapter in the enforcement of its provisions [Formerly 239 130]

**239.140 Reissuance of warrant, check or order after seven years.** Any warrant, check or order for the payment of benefits or refunds under the system, by the association, which is canceled, declared void, abandoned or otherwise made unpayable pursuant to law, because it is outstanding and unpaid for a period of more than seven years, may be reissued by the board of trustees of the association without bond if the payee if located after such warrant, check or order is canceled, declared void, abandoned or otherwise made unpayable pursuant to law [1961 c 574 §4]

**239.150 Cost of living adjustments to annuity and pension payments.** If a determination is made under ORS 237 060 to change the retirement allowance under the Public Employees' Retirement System to reflect the percentage increase or decrease in the cost of living for the previous calendar year, the percentage of adjustment so determined shall, subject to the limitations of ORS 237 060 (1) and (3), apply to all monthly annuity and pension payments made to each member under the provisions of ORS chapter 239 Any increase in the monthly annuity and pension payments, commencing with payments made in July 1981, shall be paid by the school district [1973 c 526 §3, 1981 c 689 §4]

**239.201 Teachers' Retirement System, purpose.** (1) A system of retirement and of benefits at retirement or death for teachers in each school district in which there exists an association established pursuant to this chapter hereby is established and shall be known as the Teachers' Retirement System of such school district and be administered by the association as provided in this chapter

(2) The provisions of ORS 239 133 to 239.137 and 239 201 to 239 263 shall be so construed and administered as to effectuate the general purpose to make uniform the contributions and benefits provided by ORS 239 133 to 239 137 and 239 201 to 239 263 with respect to members of the Teachers' Retirement System and the contributions and benefits provided by the Public Employees' Retirement Act with respect to teachers of the school district who are members of the Public Employees' Retirement System

(3) For the purpose of such uniform construction and administration, the Teachers' Retirement System created by ORS 239 201 to 239 263 shall be deemed to have been in existence on and after July 1, 1946, and, as to each member of the association who has not retired on account of age or disability prior to July 1, 1959, service and membership in the association during any period of time from July 1, 1946, shall be deemed service and membership while a member of this system [1959 c 613 §§7, 41]

**239.202** [Repealed by 1959 c 613 §44]

**239.203 Uniformity of contributions and benefits for teacher members of Teachers' Retirement System and Public Employees' Retirement System.** (1) The objective of the Teachers' Retirement Act shall be to provide each teacher who is an active member of the association on or after July 1, 1959, a total disability retirement allowance and a total service retirement allowance identical in respective amounts to the total disability retirement allowance and the total service retirement allowance the teacher would be entitled to at the same rates of employe contributions subject to the same elections as are provided for from time to time by the Public Employees' Retirement Act with respect to retirement benefits at date of retirement and as are provided for from time to time by that Act with respect to employe contributions had the teacher become a member of the Public Employees' Retirement System on July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had the employe

contributions toward retirement and subsequent service to the school district by the teacher been made and performed at identical times and in identical amounts as a member of the Public Employees' Retirement System

(2) Each teacher shall make identical contributions as required under the Public Employees' Retirement Act, as that Act may be amended from time to time, and shall have identical elections with respect to contributions to be exercised at identical times, with identical effect and subject to identical limitations as under that Act. Such election shall be exercised by written notice to the school board and to the board of trustees of the association. From each payroll during the period the school district shall deduct the amount of such contributions and shall transmit the deduction to the association, which shall cause it to be credited to the account of the teacher in the fund. Salary shall be considered earned in the month in which it is paid. The date inscribed on the paycheck or warrant shall be considered as the pay date, regardless of when the salary is actually delivered to the teacher [1959 c 613 §11, 1963 c 616 §5, 1967 c 638 §5, 1969 c 107 §2, 1981 c 761 §7]

**239.204** [Repealed by 1959 c 613 §44]

**239.205 School board payments to association for monthly pension and death benefit payments; interest on delinquent payments.** Upon certification as of the due date thereof by the board of trustees of the association, the school board shall pay into the association the monthly pension payments and additional pension payments provided by ORS 239.258 currently due to retired members of the association, and the death benefit payments currently due to the beneficiaries of deceased members of the association. In the event the school board is delinquent in remitting such payments, the school board shall be charged interest on the total amount of payments due from it at the rate of one percent per month or fraction thereof during which the school board is delinquent. Interest so paid shall be deposited in the Teachers' Retirement Fund and shall be used by the board of trustees in paying administrative expenses of the system [1959 c 613 §12, 1961 c 574 §7, 1965 c 520 §1, 1981 c 541 §10]

**239.206** [Amended by 1953 c 265 §3, repealed by 1959 c 613 §44]

**239.207 Taxes to finance school board's obligations under retirement system.** The school board shall levy and collect annually as part of the taxes levied and collected for school purposes a tax sufficient in the aggregate, together with all fines, penalties and for-

feitures collected or received by the school district from teachers or other employes of the school district for violation of any rule, regulation or law adopted or enacted for the government of such teachers and employes, to continue the pensions of members of the association who retired on account of age or disability prior to July 1, 1959, and to pay the pensions and other expenses imposed upon it by reason of the Teachers' Retirement System created by ORS 239.201 to 239.263 [1959 c 613 §42]

**239.208 Benefit computations not to include ORS chapter 237 variable annuity elections.** (1) Whenever in the administration of the Teachers' Retirement System, in order to determine the total service retirement allowance or the total disability retirement allowance of a teacher, it is necessary as provided in any provision of ORS 239.002 to 239.263 to determine the total service retirement allowance or the total disability retirement allowance a teacher could or would receive from the Public Employees' Retirement System had the teacher become a member of that system on July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had the employe contributions of the teacher toward retirement and subsequent service to the school district been made and performed at identical times and in identical amounts as a member of the Public Employees' Retirement System, such determination shall be made upon the basis that had the teacher been a member of the Public Employees' Retirement System the teacher would not have elected to have any part of the contributions of the teacher to the fund or any part of the balance of the account in the fund paid or transferred from the account in the fund to the Variable Annuity Account in the Public Employees' Retirement Fund established by ORS 237.197

(2) For the purpose of calculating the portion of any retirement allowance or death benefit under ORS 239.002 to 239.263 to be paid by the school board under ORS 239.205, the calculation shall be made as if the retired member had not elected to have any of the contributions of the retired member paid into the Variable Annuity Account [1967 c 638 §22, 1969 c 708 §9]

**239.209 Membership in system; when compulsory, when optional.** No person may become a member of the system unless the person is in the service of the school district and has completed six months' service uninterrupted by a total of more than 30 working days during the six-month period. Every teacher who as a result of an

election by the school board for a period of one year or more completes the six-month period after July 1, 1959, in a school district in which an association has been organized pursuant to this chapter shall become a member of the system at the beginning of the first full pay period of the teacher following the six-month period, and every active member of such association who has completed the six-month period on July 1, 1959, shall be a member of the system, except that any member of the Public Employees' Retirement System who, through the annexation of a political subdivision employing the teacher or by change of employment, becomes a teacher in the school district shall remain a member of the Public Employees' Retirement System unless within 60 days after the effective date of the annexation or change of employment the teacher shall by written notice to the Public Employees' Retirement Board, to the board of trustees of the association and to the school board elect to relinquish membership in the Public Employees' Retirement System and become a member of the Teachers' Retirement System if eligible for membership in that system, and shall be so carried by the school district. Immediately upon such annexation of any political subdivision or such change of employment, the board of trustees of the association shall inform such teacher in writing of the right to exercise an election as in this section provided [1959 c 613 §8]

**239.210 Variable Annuity Account; contribution; investment; purchase and payment of annuities; retirement allowance adjustments.** (1) Any board of trustees of an association under ORS 239 002 to 239 263 may, after 30 days after the date written notice of its intention to do so is given to the school district, establish a separate account to be known as the Variable Annuity Account.

(2) If an account referred to in subsection (1) of this section is established, any active member may elect at any time to have 25, 50 or 75 percent of contributions by the member under ORS 239 203 (2) on and after the effective date of the election paid into the Variable Annuity Account, credited to the account of the member therein and reserved for the purchase of a variable annuity. A member who has elected to have a percentage of contributions so paid, credited and reserved may elect at any time thereafter to have an additional 25 or 50 percent of contributions by the member, but not to exceed a maximum of 75 percent, so paid, credited and reserved. An election shall be in writing on a form furnished by the board of trustees and shall be filed with the board of trustees. An election shall be effective on January 1 following the filing thereof.

(3) An active member who has elected to have contributions paid into the Variable Annuity Account under subsection (2) of this section may thereafter cause the contributions to cease being paid into the account by filing a request in writing on a form furnished by the board of trustees and filed with the board of trustees. The contributions shall cease being paid into the account after December 31 following the filing of the request. Contributions paid into the account before the effective date of the request for cessation shall remain in the account.

(4)(a) An active member who is a member of the association on January 1, 1970, and who thereafter files an election under subsection (2) of this section, may elect at any time to have an amount equal to 10 percent per year, for not more than five years, of the balance of the account of the member in the fund on the effective date of an election filed under subsection (2) of this section, transferred from the account in the fund to the Variable Annuity Account, credited to the account of the member therein and reserved for the purchase of a variable annuity. An election shall be in writing on a form furnished by the board of trustees and be filed with the board of trustees. An election is final and irrevocable upon the filing thereof. The first transfer pursuant to an election shall be made on July 1 following the filing of the election, but may be made, in the discretion of the board of trustees, on an earlier date.

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

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

(5) Moneys in the Variable Annuity Account may be invested in investments authorized for investment of moneys in the fund, but, notwithstanding any other general or specific law, moneys in the account shall be invested primarily in equities, including common stock, securities convertible into common stock, real property and other recognized forms of equities, whether or not subject to indebtedness. Not more than five percent of the amortized value of all of the investments of the account and of moneys in the account immediately available for investment may be invested in the obligations of or equities in a single, primary obligor or issuer. A pro rata

share of the administrative expenses of the association shall be paid from interest earned by the Variable Annuity Account

(6)(a) Except as provided in subsection (7) of this section, the board of trustees shall enter into contracts with one or more persons whom the board of trustees determines to be qualified, whereby the persons undertake to invest and reinvest moneys in the Variable Annuity Account available for investment and acquire, retain, manage and dispose of investments of the account in accordance with subsection (5) of this section and to the extent provided in the contracts.

(b) Performance of functions under contracts so entered into shall be paid for out of the gross interest or other income of the investments with respect to which the functions are performed, and the net interest or other income of the investments after that payment shall be considered income of the Variable Annuity Account

(c) The board of trustees may require a person contracted with to give a fidelity bond in a penal sum as may be fixed by the board of trustees with approval of the school district, with corporate surety authorized to do business in this state

(d) Contracts so entered into and functions performed thereunder shall not be deemed for any purpose to create a relationship of employer and employe with respect either to the school district or the association

(e) A person contracted with shall report to the board of trustees as often as the board of trustees may require, but at least annually, the earnings of the moneys invested during the period covered by the report, the capital gains and losses of the account during the period, the changes in the market value of the investments of the account during the period and such other information as the board of trustees may require

(7) The board of trustees may enter into group annuity contracts with one or more insurance companies authorized to do business in this state. In lieu of any investment of moneys in the Variable Annuity Account as provided in subsections (5) and (6) of this section, the board of trustees may pay, from time to time under contracts so entered into, any moneys in that account available for investment purposes. Contracts so entered into

(a) May provide that annuities purchased thereunder be payable in variable dollar amounts, but if that provision is made, provision also shall be made that a person who is a member of the association and who has an account in the Vari-

able Annuity Account, upon retiring from service and before the first payment of retirement allowance becomes normally due, may elect an option to have the annuities payable to the member or the beneficiary of the member in fixed or variable dollar amount or both

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

(c) Are not to be considered for any purpose contracts of the school district

(8) Upon retiring from service but within 60 days after the date the service retirement allowance becomes normally due, a person who is a member of the association and who has an account in the Variable Annuity Account may elect to transfer the balance in that account to the account of the member in the fund, and by that transfer the annuity shall be based on the account balance in the fund as otherwise provided in ORS 239 002 to 239 263 and the member shall not receive a variable annuity as provided in this section

(9) When an annuity is payable under ORS 239 002 to 239 263 to a person who is a member of the association and who has an account in the Variable Annuity Account or to a beneficiary of that person, the portion of the annuity payable from the Variable Annuity Account shall be proportionately increased or decreased for a calendar year when, as of October 31 of the preceding calendar year, the balance of the account of that person in the Variable Annuity Account exceeds or is less than the current value of the annuity by at least two percent thereof, determined in accordance with the rate of interest and approved actuarial tables then in effect

(10) Notwithstanding subsection (9) of this section, the board of trustees, in the event of extraordinary fluctuation in the market value of investments of the Variable Annuity Account and in order to avoid substantial inequities, may increase or decrease the portions of annuities paid from the account for periods less than a calendar year and determined as of dates other than October 31

(11) Notwithstanding any other provision of ORS 239 002 to 239 263, the retirement allowance to which a person who is a member of the association and who has an account in the Variable Annuity Account and whose effective date of retirement is August 21, 1981, or later, is otherwise entitled under ORS 239 002 to 239 263 shall be subject to the following adjustment

(a) The board of trustees shall determine the difference between the total account of the member in the association and what the total account of the member would have been had the member not participated in the variable annuity program on or after August 21, 1981

(b) If the total account of the member due to participation in the variable annuity program is greater, the monthly retirement allowance of the member shall be increased by the value of the difference, using the annuity tables applicable to the plan selected by the member

(c) If the total account of the member due to participation in the variable annuity program is lesser, the monthly retirement allowance of the member shall be decreased by the value of the difference, using the annuity tables applicable to the plan selected by the member

(12) Except as otherwise specifically provided in this section, the rights and benefits under ORS 239 002 to 239.263 of an active member or a retired member of the association, or of a beneficiary of the member are not affected by this section and the provisions of ORS 239 002 to 239 263 applicable to accounts of active members and retired members of the association are also applicable to such accounts in the Variable Annuity Account [1969 c 708 §8, 1973 c 695 §12, 1975 c 744 §3, 1981 c 761 §9]

**239.211 Effect of interrupted service on membership.** Within the limits hereinafter specified regarding absence from service, no leave of absence, sabbatical leave, illness, accident or emergency preventing or interrupting service shall be deemed to break the continuity of the teacher's membership in the Teachers' Retirement System [1959 c 613 §13]

**239.212 Applicability of certain cost of living adjustments; payment by school district.** Provisions of ORS 237 060, 237 121, 237 147 and 237 209 that affect cost of living adjustments and computation of retirement allowances under the Public Employes' Retirement System are applicable to the rights, privileges and benefits of members of the Teachers' Retirement System Any increase in retirement allowances payable to or on account of persons who have retired as members of the Teachers' Retirement System by reason of the application of provisions of ORS 237 209 shall be paid by the school district [1973 c 695 §11, 1981 c 776 §3]

**239.213 Termination of membership.** A teacher shall cease to be a member of the Teachers' Retirement System

(1) In the event that during any absence from the service of the school district the teacher

withdraws the amount credited to the account of the teacher in the fund, or

(2) In the event that the teacher is absent from the service of the school district for a total of more than five school years after the teacher becomes a member of the system, except that any teacher who completes a school year, who is then absent the next five school years but returns to school employment at the beginning of the sixth school year or reaches earliest service retirement age prior to the beginning of the sixth school year, is deemed to have retained membership in the system This subsection shall be deemed to have been in effect since July 1, 1946 [1959 c 613 §17]

**239.214 Payment of teacher contribution by school district.** Notwithstanding any other provision of ORS 239 002 to 239 263, and subject to the provisions of this section, the school district may agree, by a written employment policy or agreement in effect on or after July 1, 1979, to "pick-up," assume or pay the full amount of contributions to the retirement fund required of all or less than all teacher members of the system employed by the school district If the school district so agrees

(1) The rate of contribution of each teacher member of the system employed by the school district who is covered by such policy or agreement shall uniformly be six percent of salary regardless of the amount of monthly salary.

(2) The full amount of required teacher contributions "picked-up," assumed or paid by the school district on behalf of its teachers shall be considered "salary" within the meaning of ORS 239 002 (10) only for the purpose of computing a teacher member's "final average salary" pursuant to ORS 239 227 (2) and within the meaning of ORS 237 003 (12), and shall not constitute additional "salary" or "other advantages" within the meaning of ORS 239.002 (10) for any other purpose

(3) The full amount of required teacher contributions "picked-up," assumed or paid by the school district on behalf of its teachers shall be added to the individual account balances of the teachers for their annuities and shall be considered teacher contributions for all other purposes of ORS 239 002 to 239 263 [1981 c 373 §3]

**239.215 Separation from service prior to earliest retirement age; reentry of service.** (1) In the event that a teacher who is a member of the Teachers' Retirement System, who has made contributions to the fund during each of five calendar years, and who has not attained earliest retirement age, is separated, for any reason other than death or disability, from all

service entitling the teacher to membership in the system, the account shall remain to the teacher's credit in the fund unless the teacher elects to withdraw it and there shall be paid such death benefits as ORS 239 201 to 239 263 provide, or a disability retirement allowance or, after attaining earliest retirement age, a service retirement allowance, either of which shall consist of

(a) An annuity which shall be the actuarial equivalent of the teacher's accumulated contributions and interest thereon credited to the teacher, and

(b) A pension which when added to the annuity referred to in paragraph (a) of this subsection shall provide the teacher the same total retirement allowance the teacher could receive from the Public Employees' Retirement System had the teacher become a member of that system on July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had employe contributions toward retirement and subsequent service been made and performed at identical times and in identical amounts as a member of the Public Employees' Retirement System and had the teacher's separation from service for a reason other than superannuation, death or disability occurred at the identical time as a member of the Public Employees' Retirement System

(2) In the event that a teacher who is a member of the system and has not attained earliest service retirement age, is separated, for any reason other than death or disability, from all service entitling the teacher to membership in the system, the teacher may, after the expiration of 30 days after the date of separation, withdraw from the fund the amount credited to the teacher's account. Such withdrawal shall cancel all membership rights in the Teachers' Retirement System, including the right to claim credit for any employments prior to withdrawal. If such teacher has contributed to the fund in each of five calendar years and terminates before reaching earliest retirement age, the teacher may, before reaching earliest retirement age, elect to withdraw the teacher's account balance in the fund. Failing to make such election, there shall be paid the benefits or retirement allowances described in subsection (1) of this section

(3) Whenever, within five years after the teacher is separated from all service entitling the teacher to membership in the system, a teacher who has withdrawn the amount credited to the teacher's account reenters the service of the

school district, the teacher's rights in the system which were forfeited by the withdrawal shall be restored upon repaying to the association within one year after reentering the service of the school district, the full amount so withdrawn together with the interest that would have been accumulated on the sum had the amount not been withdrawn [1959 c 613 §18, 1963 c 616 §6, 1967 c 638 §6, 1969 c 708 §1, 1975 c 449 §§10,11, 1975 c 744 §4, 1983 c 830 §11]

**239.216 Restoration of creditable service upon reentry.** (1) A teacher who is a member of the Teachers' Retirement System, and who, after separation from all service entitling the teacher to membership in the system and withdrawal of the amount credited to the account of the teacher in the fund, reenters the service of the school district and serves as a teacher member of the system for 10 years after that reentry, and who has not otherwise obtained restoration of creditable service forfeited by the withdrawal, shall obtain restoration of one full month of creditable service forfeited by the withdrawal for each three full months of service as a teacher member after that reentry if the teacher, within 90 days before the effective date of retirement of the teacher

(a) Applies in writing to the board of trustees of the association for restoration of creditable service, and

(b) Pays to the board of trustees in a lump sum for credit to the account of the teacher in the fund the amount withdrawn and interest on the amount withdrawn compounded annually for each year or portion of a year after the date of the withdrawal and before the effective date of retirement of the teacher. The interest shall be computed at the annual rate of 7.5 percent

(2) If a teacher who obtains restoration of creditable service as provided in this section does not obtain restoration of all creditable service forfeited by the withdrawal pursuant to service after reentry, the payment under subsection (1) of this section shall be reduced proportionately to reflect the percentage of creditable service restored

(3) A teacher who obtains restoration of creditable service as provided in this section is not entitled to elect to receive the service retirement benefit described in ORS 239 229 (2) [1983 c 647 §5]

**Note** Section 6, chapter 647, Oregon Laws 1983, provides

**Sec 6** Section 5 of this Act applies to

(1) A teacher who is a member of the Teachers' Retirement System on or after the effective date of this Act [October 15, 1983] and who forfeited or forfeits creditable service, under

circumstances described in section 5 of this Act, before or on or after the effective date of this Act, and

(2) A retired member of the Teachers' Retirement System whose effective date of retirement is July 1, 1983, or thereafter and before the effective date of this Act, if the member, within 90 days after the effective date of this Act, makes the application and payment as provided in section 5 of this Act

**239.217 Voluntary retirement; service retirement age; reduction of service retirement allowance.** (1) A teacher who is a member of the Teachers' Retirement System and attains the age of 55 shall be retired upon written application by the teacher to the school board and to the board of trustees of the association on a reduced service retirement allowance which shall be the actuarial equivalent of the service retirement allowance at the compulsory retirement age provided for in ORS 239 227

(2) Notwithstanding subsection (1) of this section

(a) A teacher who is a member of the Teachers' Retirement System and attains the age of 55 and has 30 years or more of creditable service in the system shall be retired upon written application by the teacher to the school board and to the board of trustees of the association on a service retirement allowance including, without actuarial reduction, the same pension provided for in ORS 239 227

(b) A teacher who is a member of the Teachers' Retirement System and attains the age of 58 shall be retired upon written application by the teacher to the school board and to the board of trustees of the association on a service retirement allowance including, without actuarial reduction, the same pension provided for in ORS 239 227 [1959 c 613 §20, 1967 c 638 §7, 1975 c 449 §12, 1979 c 812 §2, 1981 c 768 §2]

**239.219 Reemployment of member after voluntary retirement but before reaching compulsory retirement age.** (1)(a) Any member of the Teachers' Retirement System who is retired after having reached earliest service retirement age, but before having reached compulsory retirement age, and who has been retired for more than six consecutive calendar months, may be reemployed before reaching compulsory retirement age by the school district even though such retired teacher has been receiving retirement benefits

(b) Any teacher reemployed as by this subsection provided shall resume making contributions to the retirement fund. Payments of retirement allowance received by such teacher during separation from the service shall not be repaid into the

retirement fund after the teacher reenters public employment except as provided in paragraph (c) of this subsection and subsection (2) of this section, but the amount of annuity payments included in such retirement allowance shall be deducted from such teacher's reserve in the retirement fund and the remainder of the reserve, if any, shall be credited pro rata to the funds from which it was derived

(c) Upon reentering the employment of the school district as by this subsection provided, the former retirement of such teacher and any election of option for payment of retirement benefits theretofore made by the teacher shall be canceled; and thereafter upon retiring such teacher may elect any option for payment of retirement benefits authorized by ORS 239 201 to 239 263, except that teachers who elected to receive lump sum payment of benefits pursuant to ORS 239 229 (2) or 239 253 at the time of their former retirement may not elect any other option at the time of their subsequent retirement unless an amount equal to the lump sum and the interest that would have accumulated on the sum has been repaid by the teacher to the fund. Upon such subsequent retirement, the pension paid the teacher shall be the same as if the teacher had formerly retired, reentered employment with the school district as by this subsection provided, and subsequently retired at identical times and under identical circumstances as a member of the Public Employees' Retirement System

(2) Any member of the system who is retired after having reached earliest service retirement age, but before having reached compulsory retirement age, and who has been retired for less than six consecutive calendar months may be reemployed before reaching compulsory retirement age by the school district, even though such retired teacher has been receiving retirement benefits, only upon immediate repayment in a lump sum by the member of the amount of retirement benefits drawn, after which repayment the account of the member shall be reestablished just as it was at the time of earlier retirement, and the school district shall receive credit for the pension portion of such benefits

(3) If a member of the system who retired before August 21, 1981, is reemployed, as provided in this section, beginning on or after August 21, 1981, the service retirement allowance received upon subsequent retirement by the member shall be

(a) For service before August 21, 1981, an allowance pursuant to ORS 239 227 including a current service pension computed on the basis of ORS 237 147 (2) (1979 Replacement Part)

(b) For service on or after August 21, 1981, an allowance pursuant to ORS 239 227 including a current service pension computed on the basis of ORS 237 147 (2) [1959 c 613 §21, 1967 c 638 §8, 1981 c 761 §10, 1983 c 830 §12]

**239.221 Compulsory retirement age.**

Any teacher who is a member of the Teachers' Retirement System and who has attained the age of 70 years shall be retired from service at the end of the school year in which the teacher attains the age of 70 years and thereafter, except as ORS 239 201 to 239 263 otherwise provide, the date of retirement shall be the first day of the next succeeding school year [1959 c 613 §22, 1967 c 638 §9, 1979 c 861 §6]

**239.223 Employment of teacher or member beyond compulsory retirement age; effect on rights of member beyond compulsory retirement age of holding full-time office.** (1) Any teacher who is a member of the Teachers' Retirement System and reaches the age of compulsory retirement may be continued in service by the school district thereafter to the extent permitted by the Fair Dismissal Law, and not otherwise.

(2) Teachers continuing in employment past compulsory retirement age as provided in this section shall make contributions to the retirement fund. The account balance of any such teacher shall continue to earn interest and at the time of the retirement of such teacher benefits shall be computed on the then attained age of the teacher. Any such teacher continuing in employment past compulsory retirement age, upon reaching compulsory retirement age or within 60 days thereafter, may elect an optional form of payment to become operative upon retirement or upon death, whichever occurs first. No change of an option so elected shall be permitted, nor may there be a change of beneficiary if Option 2 or 3 is elected. Upon the death of the teacher before retirement, or upon retirement, benefits payable under the option elected shall be computed as though both the teacher and the beneficiary were alive. If the beneficiary designated under Option 2 or 3 predeceases a teacher who is a member of the system and who dies before retiring, the account balance of the teacher is subject to the provisions of ORS 239 259.

(3) Nothing in ORS 239 133 to 239 137 and 239 201 to 239 263 shall be construed to prevent the board of any school district not subject to the Fair Dismissal Law from applying to the school board of the district in which the association exists for permission to employ a certificated teacher who has reached retirement age, whether

or not said teacher has been previously employed by the school board making such application, nor shall ORS 239 133 to 239 137 and 239 201 to 239 263 be construed to prevent the school board of the district in which the association exists from granting such permission if it be in the public interest so to do. In the event such permission be granted, such teacher, during the period of such employment, shall not be entitled to any pension or annuity provided by ORS 239 201 to 239 263.

(4) Except as otherwise specifically provided by ORS 239 133 to 239 137 and 239 201 to 239 263, a teacher who has attained compulsory retirement age

(a) May not be retained by any public employer other than the school district in which the association exists in the employment of which the teacher attained compulsory retirement age

(b) May not be employed by any public employer in a position which normally requires 600 hours or more of service per calendar year, but if the teacher is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the teacher may be employed for the number of hours for which the teacher's salary equals the maximum allowed for receipt of the full amount of those benefits to which the teacher is entitled. A person employed as provided in this paragraph shall not be a member of the Public Employees' Retirement System by reason of that employment.

(5) No member of the association who is elected to a full-time salaried office of the state or one of the political subdivisions thereof, or who is appointed to a full-time salaried office having a term fixed by statute or charter after the member has attained compulsory retirement age and whether or not the member has been retired, shall forfeit any rights accrued or accruing to the member, provided, however, that for the period that such member holds such office the member shall not be entitled to any pension or annuity provided by ORS 239.201 to 239 263. Upon ceasing to hold such office, the benefits of the member shall be computed or recomputed upon the basis of the member's age then attained [1959 c 613 §23, 1961 c 574 §8, 1967 c 638 §10, 1979 c 214 §3]

**239.225 Employment by public employer of member receiving service retirement allowance.** (1) Subject to the limitation in subsection (2) of this section, any public employer may employ any member of the association receiving a service retirement allowance if the administrative head of such employer

is satisfied that such employment is in the public interest

(2) The period or periods of employment by one or more public employers of any member of the association receiving a service retirement allowance shall not total 600 hours or more in any calendar year, but if the member is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the member may be employed for the number of hours for which the salary of the member equals the maximum allowed for receipt of the full amount of those benefits to which the member is entitled

(3) Employment under this section shall not affect the status of a member as a retired member of the Teachers' Retirement System and a recipient of retirement benefits under ORS 239 201 to 239.263, and a member so employed shall not be a member of the Public Employees' Retirement System by reason thereof [1959 c 613 §24, 1975 c 744 §5, 1979 c 214 §4]

**239.227 Service retirement allowance at compulsory retirement age.** Upon retiring from service at compulsory retirement age, a person who is a member of the Teachers' Retirement System shall receive a service retirement allowance which shall consist of

(1) A refund annuity based upon annuity tables adopted by the board of trustees of the association with the approval of the school board for use in the administration of the Teachers' Retirement System, 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 of trustees of the association, or shall otherwise be paid according to the provisions of ORS 239 201 to 239 263 for disposal of an amount credited to the account of a member at the time of death in the event that 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 account of the member shall be treated as though death had occurred before retirement

(2) A pension (nonrefund) which, when added to the refund annuity referred to in subsection (1) of this section, shall provide the member

the same total service retirement allowance the member would receive from the Public Employees' Retirement System had the member become a member of that system on July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had the employee contributions toward retirement and subsequent service been made and performed at identical times and in identical amounts as a member of the Public Employees' Retirement System [1959 c 613 §25, 1981 c 541 §11]

**239 228** [1967 c 638 §21, repealed by 1981 c 761 §12]

**239.229 Optional forms of service retirement allowance.** (1) At any time after establishing membership, but within 60 days after the date the service retirement allowance becomes normally due, a teacher who is a member of the Teachers' Retirement System may elect to convert the allowance described by ORS 239.227 as payable after retirement into a service retirement annuity of equivalent actuarial value by selecting one of the optional forms named below. The election of Option 2 or 3 shall be effective immediately upon the member's retirement

Option 1 (a) A life annuity (nonrefund) based upon the annuity tables referred to in ORS 239.227 (1) payable during the member's life only, which shall be the actuarial equivalent of accumulated contributions by the member and interest thereon credited at the time of retirement (if death occurs before the first payment is due, the account shall be treated as though death had occurred before retirement), (b) the life pension (nonrefund) provided by ORS 239 227 (2), or

Option 2 A reduced service retirement allowance payable during the member's life, with the provision that it continue after death for the life of the beneficiary the member nominates by written designation duly acknowledged and filed with the board of trustees of the association at the time of election, should the beneficiary survive the member, or

Option 3 A reduced service retirement allowance payable during the member's life, with the provision that it continue after death at one-half the rate paid to the member and be paid for the life of the beneficiary the member nominates by written designation duly acknowledged and filed with the board of trustees of the association at the time of election, should the beneficiary survive the member

(2) Within 60 days after the date the service retirement allowance becomes normally due, a person who is a member of the Teachers' Retirement

ment System may elect, in lieu of the allowance described by ORS 239 227 as payable after retirement, a service retirement benefit consisting of

(a) A lump-sum refund of accumulated contributions by the member and interest thereon credited at the time of retirement, and

(b) A life pension (nonrefund) provided by ORS 239 227 (2) including a current service pension computed on the basis of ORS 237 147 (2) (1979 Replacement Part) At the same time as making the election under this subsection, the member may elect to convert the pension described by this paragraph into a service retirement annuity of equivalent actuarial value by selecting one of the optional forms named as Option 2 and Option 3 under subsection (1) of this section

(3) The designation of a beneficiary or the election of an option under subsection (1) or (2) of this section may be changed by the member at any time before payment of the first benefit check is normally due [1959 c 613 §27, 1975 c 744 §6, 1977 c 740 §4, 1979 c 658 §6, 1981 c 761 §11]

**239.231 Election of optional forms by beneficiary of deceased member.** If a person who is a member of the Teachers' Retirement System, who has attained compulsory retirement age and who has retired from service, dies without making an election under ORS 239 229 and prior to the expiration of the time within which such election could be made by the person, and the records of the association indicate that the person has designated the surviving spouse beneficiary under ORS 239 259 (1), such surviving spouse may, not more than 60 days after the date of death of such deceased member, elect to receive the amount referred to in ORS 239 259 (1) or elect Option 2 or Option 3 under ORS 239 229, and designate the surviving spouse the beneficiary thereunder with the same force and effect as if the election and designation had been properly made by the deceased member [1959 c 613 §29, 1967 c 638 §11]

**239.233 Disability retirement allowance.** (1) Whenever a teacher who is a member of the Teachers' Retirement System and who is under the compulsory retirement age, is found, after being examined by one or more physicians selected by the school board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which the teacher is qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, the teacher shall receive a disability retirement refund annuity

based on the contributions credited to the account of the teacher and a pension to be provided by the school district which, when added to the disability retirement refund annuity, shall provide the teacher the same total disability retirement allowance the teacher would receive from the Public Employees' Retirement System had the teacher become a member of that system on July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had employe contributions toward retirement and subsequent service been made and performed at identical times and in identical amounts as a member of the Public Employees' Retirement System, provided, however, that payments under such disability retirement annuity and pension for the first 90-day period of such incapacity shall be withheld until such 90-day period has elapsed. As used in this subsection, "injury" means bodily injury causing the disability directly and independently of all other causes and effected solely through accidental means

(2) Whenever a teacher who is a member of the Teachers' Retirement System who has been a teacher of the school district for 10 years or more, and who is under the compulsory retirement age, is found, after being examined by one or more physicians selected by the school board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which the teacher is qualified, from cause other than injury sustained while in actual performance of duty or intentionally self-inflicted, the teacher shall receive a disability retirement refund annuity based on the contributions credited to the account of the teacher and a pension to be provided by the school district which, when added to the disability retirement refund annuity, shall provide the teacher the same total disability retirement allowance the teacher would receive from the Public Employees' Retirement System had the teacher become a member of that system on July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had employe contributions toward retirement and subsequent service been made and performed at identical times and in identical amounts as a member of the Public Employees' Retirement System, provided, however, that payments under such disability retirement annuity and pension for the first 90-day period of such incapacity shall be withheld until such 90-day period has elapsed

(3) A teacher who is a member of the system, who is separated from all service entitling the teacher to membership in the system and who has not withdrawn the amount credited to the account of the teacher in the fund is not eligible for disability benefits referred to in subsection (1) or (2) of this section unless the teacher applies for such disability benefits within five calendar years after the date of such separation from service if the disability of the teacher is continuous from such separation date or within six months after the date of such separation from service if the disability occurs after such separation date

(4) In computing years of employment, for the purpose of subsection (2) of this section, the following schedule shall be used. For employment before July 1, 1946, or before completing six months' service to the school district subsequent to that date uninterrupted by a total of more than 30 working days during the six-month period, whichever is earlier, a member shall be considered to have been employed for one year for each year of prior service credit allowed, and for any minor fraction of a year of continuous service for which no prior service credit was granted. After July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, a member shall be considered to have been employed one year for each 12-month period, or major fraction thereof, during which time the member received compensation for employment which entitled the member to membership in the Teachers' Retirement System, as evidenced by payroll records. For the purpose of determining a member's eligibility for disability benefits, no leave of absence after a teacher ceases to work for the school district shall be considered other than accumulated sick leave not in excess of 90 days. The effective date of the disability shall not in any event be determined by the school board as prior to the last day for which the disabled member performed services for the school district. No benefits may be paid for any month in which the teacher received salary or sick leave benefits from the school district [1959 c 613 §30, 1961 c 574 §9, 1963 c 616 §7, 1967 c 638 §12]

**239.235 Optional forms of disability retirement allowance.** (1) At any time after establishing membership, but before the expiration of 90 days after the school board makes its findings that the teacher is disabled, a teacher who is a member of the Teachers' Retirement System may elect to convert the disability retirement allowance otherwise payable on the account of the teacher into a disability retirement annuity of equivalent actuarial value, by selecting one of

the optional forms named below. The election of Option 2 or 3 shall be effective immediately upon the effective date of the member's disability, and in the event of death within the first 90-day period of incapacity, payment to the beneficiary of the teacher shall be made in accordance with the option selected.

Option 1 (a) A life annuity (nonrefund) payable during the member's life only, which shall be the actuarial equivalent of accumulated contributions and interest thereon credited to the member at the time the member retires (if death occurs before the first payment is due, the account shall be treated as though death had occurred before retirement), (b) a life pension (nonrefund) which, when added to the life annuity referred to in subparagraph (a) of this option, shall provide the member the same total disability retirement annuity the member would receive from the Public Employees' Retirement System upon electing Option 1 provided by ORS 237 181 had the member become a member of that system on July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had employee contributions toward retirement and subsequent service been made and performed at identical times and in identical amounts as a member of the Public Employees' Retirement System, or

Option 2 A reduced disability retirement allowance payable during the period of incapacity, with the provision that after death, if death shall occur after the effective date of disability and during the period of incapacity, it shall continue for the life of the beneficiary whom the member has designated in writing duly acknowledged and filed with the board of trustees of the association at the time of election, should the beneficiary survive the member; or

Option 3 A reduced disability retirement allowance payable during the period of incapacity, with the provision that after death, if death shall occur after the effective date of disability and during the period of incapacity, such allowance shall continue at one-half the rate paid to the member and be paid for the life of the beneficiary whom the member has designated in writing duly acknowledged and filed with the board of trustees of the association at the time of election, should the beneficiary survive the member

(2) The beneficiary designated by a member to receive any benefit under this section shall be the same as designated under 239 259 (1). The

designation of a beneficiary or the election of an option may be changed by a member at any time before the payment of the first benefit check is normally due

(3) The cost to the retirement system and to the school district of a disability retirement allowance in any optional form shall not exceed the cost to the retirement system and to the school district of a nonrefund disability retirement allowance payable to, and on account of, the member making such election

(4) If a member who would have qualified for disability benefits makes preliminary application for such benefits, but dies prior to being found by the school board to be disabled or prior to electing a plan of benefit payments, the surviving spouse of the member shall receive a life income equal to that payable to a beneficiary under Option 3 named in subsection (1) of this section, with the additional guaranty that if such spouse dies prior to receiving, in the form of monthly benefits, an amount equal to the account balance of the member at the time of death, the remainder of such account balance shall be paid in a lump sum under ORS 239 259. If there is no surviving spouse to receive benefits under this subsection, the account balance of the member is subject to the provisions of ORS 239 259 [1959 c 613 §31, 1969 c 708 §3, 1975 c 744 §7]

**239.237 Minimum disability benefits; reduction.** (1) Whenever a teacher who is a member of the Teachers' Retirement System has been found to be entitled to a disability retirement allowance as provided in ORS 239 233, the teacher shall receive not less than an aggregate of \$100 a month under the nonrefund plan, subject to reduction to equivalent actuarial value in the event of exercising any option provided by ORS 239 235

(2) Notwithstanding ORS 239 233, 239 235 and subsection (1) of this section, if a member has been found to be entitled to a disability retirement allowance as provided in ORS 239 233 after the member has passed voluntary retirement age, the amount of monthly disability retirement allowance shall not be less than the amount which the member would have received had the member retired for service and elected the same option

(3) Notwithstanding ORS 239 233, 239 235 and subsection (1) of this section, the amount of a monthly disability retirement allowance shall be reduced by the amount by which the combined total of the disability retirement allowance to which the teacher is otherwise entitled for the month and the earned income of the teacher for

the month exceeds the monthly salary received by the teacher at the time of retirement for disability, but the amount of the reduction shall not reduce the combined total of disability retirement allowance and earned income for the month to less than \$400 [1959 c 613 §32, 1963 c 616 §8, subsection (2) enacted as 1963 c 616 §2, 1967 c 638 §13, 1969 c 708 §4]

**239.239 Medical examinations for applicants for disability retirement allowance.** (1) The school board shall require medical examinations for all applicants for retirement for disability under such general rules as it prescribes, and may provide for the discontinuance of any disability retirement allowance and the forfeiture of all rights under ORS 239.201 to 239 263 in the case of any person who refuses to submit to such an examination

(2) The total costs and expenses of examination and reexamination of members of an association incurred by the school board for the purpose of establishing or determining the existence of disability, with respect to retirement of a member on account of disability, shall be paid by the school district [1959 c 613 §33]

**239.241 Termination of disability retirement; reemployment or separation benefits.** (1) When a member retired because of disability is determined by the school board to be not incapacitated to the extent that the member is disabled from the performance of any work for which the member is qualified, the disability retirement of the member shall be canceled forthwith, the member shall be eligible for reemployment and the individual account of the member shall be credited with the amount which stood to the credit of the member in the account of the member in the fund at the time of retirement for disability. Any such person who for any reason is not reinstated in the service of the school district shall receive separation benefits as provided in ORS 239 201 to 239 263

(2) When a teacher retired because of disability who is within five years of earliest service retirement age applies to the school board for cancellation of disability benefits, the school board may grant such request if

(a) The school board is satisfied, upon the report of its medical examiner, that such teacher is not incapacitated to the extent that the teacher is disabled from the performance of any work for which the teacher is qualified, and

(b) Such teacher is employed by the school district and has demonstrated the ability of the teacher to continue in such employment. When the conditions set forth in paragraphs (a) and (b) of this subsection have been met, the account of

the teacher shall be credited with the amount which stood to the credit of the teacher in the account of the teacher at the time of retirement for disability [1959 c 613 §34, 1967 c 638 §14]

**239.242 Hospital and medical insurance for retired members.** (1) The board of trustees of the association shall investigate terms and conditions upon which hospital and medical or hospital or medical expense insurance protection may be made available to retired members of the system. Such investigation shall be confined to companies authorized to conduct business within the State of Oregon, including health care service contractors as defined in ORS 750 005, and shall be completed before April 1, 1962

(2) Before June 1, 1962, the board of trustees of the association shall, in writing, inform such retired members of the results of such investigation and therewith supply them with a summary of the plan of such insurance protection by it deemed to be the most advantageous to them

(3) Thereafter, and before July 1, 1962, the board of trustees of the association shall, in writing, conduct a poll of all such retired members to determine whether or not they desire that, in their behalf, the board of trustees execute a contract or contracts for such coverage. If a sufficient number of such retired members so balloting request such coverage, the board, in behalf of the eligible retired members so requesting, promptly shall enter into such contract or contracts as are contemplated by such plan

(4) The board of trustees of the association may enter into more than one such contract with one or more such insurance carriers, contracting jointly or severally, if in its opinion it is necessary so to do to obtain optimum coverage at minimum cost

(5) If any such contract or contracts are executed by the board of trustees, it thereafter shall deduct from the retirement benefit payable to each such participating member the cost of providing such insurance coverage for the member and remit it to the insurance carrier or carriers supplying such coverage

(6) Periodically, the board of trustees of the association shall review the current contract or contracts for such insurance coverage and make suitable inquiry in the field for the purpose of determining whether or not a different contract or contracts for such coverage can be, and in the best interest of such participating members ought to be, entered into, and if it thereupon appears to the board of trustees that it would be advantageous to such participating members so to do, the board of trustees shall enter into such differ-

ent contract or contracts in their behalf [1961 c 574 §3, 1967 c 359 §686]

**239.243 Individual accounts for each member.** The board of trustees of the association shall provide for an individual account for each member of the Teachers' Retirement System. Such account shall show the amount of the member's contributions to the fund and the interest which they have earned. The board of trustees of the association shall furnish a written statement thereof upon request by any member or beneficiary of the system. [1959 c 613 §36]

**239.245 Account balances for members of system on June 30, 1959.** (1) On July 1, 1959, and as soon as practicable thereafter, there shall be established with respect to each member of an association organized pursuant to this chapter, who was an active member on June 30, 1959, the normal account balance which would have accumulated to the credit of such member had the member been a member of the Public Employees' Retirement System during the time the member was a member of the association from and after July 1, 1946, or from and after completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had the member been contributing to the Public Employees' Retirement System on the basis of the contribution rates and other tables adopted by the Public Employees' Retirement Board from time to time to attain the objectives of the Public Employees' Retirement System. When the normal account balance has been determined in accordance with this section, any balance in the account of such member in excess of such amount so determined shall be deemed to be excess contributions. When the amount of such normal account balance has been determined in accordance with this section, the board of trustees of the association shall notify each such member of the amount thereof, and also of the amount of excess contributions. Any such member may, by making written request therefor to the board of trustees of the association within not more than 30 days after receipt of the aforementioned notification from the board of trustees, have the normal account balance of the member redetermined by using a rate of five percent of salary, or the rate adopted by the Public Employees' Retirement Board as aforesaid, whichever from time to time is the lower. Likewise, any such member may, by making written request therefor to the board of trustees of the association within not more than 30 days after receipt of the aforementioned notification from the board of trustees, have the member's normal

account balance redetermined on the basis of any election, with respect to the amount of salary to which the aforementioned rate is to be applied, which was available from time to time under the Public Employees' Retirement Act Within 30 days after receipt of notice from the board of trustees of the association that a deficiency exists, each such member who has a deficiency in the amount of the member's account as determined under this section shall make up such deficiency

(2) All excess contributions and the interest thereon not withdrawn by a member of the association before January 1, 1968, shall be used to acquire for that member at retirement a monthly annuity, in addition to the regular retirement allowance, equal to the actuarial equivalent of such excess contributions and the interest thereon existing as of the effective retirement date of the member. Such additional annuity shall not enter into the determination of any pension to be paid by or contributed to by the school district [1959 c 613 §9, 1967 c 638 §15]

**239.247 Credit for service in Armed Forces.** (1) Any teacher of the school district who entered or reenlisted in the Armed Forces of the United States after January 1, 1940, and prior to July 1, 1947, and who, within one year after being otherwise than dishonorably discharged therefrom, returned or returns to the service of the school district shall be entitled, subject to the limitations of ORS 239 201 to 239 263, to credit for all service to the school district prior to July 1, 1946, and to credit for all services in the Armed Forces after January 1, 1940, as though the teacher had been a teacher of the school district throughout the teacher's service in the Armed Forces after that date

(2) Any teacher of the school district who entered or reenlisted in the Armed Forces of the United States during World War I and who, within one year after being otherwise than dishonorably discharged therefrom, returned to the service of the school district, shall be entitled, subject to the limitations of ORS 239 201 to 239 263, to credit for all service in the Armed Forces during World War I, as though the teacher had been a teacher of the school district throughout the teacher's service in the Armed Forces

(3) Any war veteran who was a teacher of the school district and who entered or reentered active service with the Armed Forces of the United States subsequent to June 25, 1950, and who, within one year after being otherwise than dishonorably discharged therefrom, returned or returns to the service of the school district, may,

within one year of the date of such return or of July 1, 1959, whichever is later, pay to the association in a lump sum the total amount of contributions the war veteran would have made based on the war veteran's salary rate at the time of taking military leave, as though the war veteran had remained in the employment of the school district. Any lump-sum contribution so made shall be added to the teacher's normal account balance in the retirement fund and in all respects shall be considered as though made by payroll deduction

(4) This section does not apply to a teacher who does not return to the service of the school district within five years after July 1, 1946, or within five years after the date the teacher entered or reentered active service with the Armed Forces of the United States, whichever is later [1959 c 613 §14, 1967 c 638 §16]

**239.249 Prior service credit and credit for service while transferred or on loan to Federal Government.** Any teacher of the school district participating in the Teachers' Retirement System shall be credited, subject to the limitations of ORS 239 201 to 239 263, with service to the school district prior to July 1, 1946, and with service in any branch or department of the United States Government or with service in the Armed Forces of the United States, or both, as though the teacher had been a teacher of the school district throughout such period of service if, within 40 days from and after separation from such civilian service with the United States Government, or within one year after being otherwise than dishonorably discharged from service in the Armed Forces of the United States, the teacher returned to the service of the school district from which the teacher was transferred or loaned, provided that such teacher comes within either of the following descriptions

(1) Prior to performing service with the United States Government, he was employed by the school district and was transferred or loaned to a branch or department of the United States Government pursuant to an agreement between the school district and such branch or department of the United States Government for the transfer or loan of any departmental unit of such school district to the Federal Government during the war emergency

(2) Served in any branch of the Armed Forces of the United States while on military leave of absence from a position in Federal Government service as set forth in subsection (1) of this section [1959 c 613 §15]

**239.251** [1959 c 613 §16, 1961 c 272 §1, repealed by 1967 c 638 §23]

**239.253 Option of certain separated or retired members to receive lump-sum payments.** (1) Any member of the Teachers' Retirement System who has separated from the service of the school district and whose total retirement allowance at compulsory retirement age or thereafter, as computed by the actuary in accordance with the nonrefund plan, is less than \$10 per month, shall be so notified in writing by the association and within 30 days after the date of such notification may, by written notification to the school board and to the board of trustees of the association, elect to receive as a cash refund in lieu of any and all retirement allowance the sum of his own contributions to the retirement fund plus interest earnings thereon, plus an equal amount to be contributed by the school district, plus the sum of his own excess contributions

(2) A member of the system who has terminated after reaching earliest service retirement age but before having reached compulsory retirement age, whose total retirement allowance at compulsory retirement age, as computed by the actuary in accordance with the nonrefund plan on the basis of that rate of interest applicable at the time of such member's request for refund of contributions, would be less than \$10 per month, may withdraw from the fund in a lump sum the contributions plus interest earnings thereon in lieu of any and all retirement allowance and benefits [1959 c 613 §26, 1963 c 616 §10, 1967 c 638 §17]

**239.254 Partial waiver of benefits to qualify for other governmental pension.**

(1) If receipt in full by a teacher of a retirement allowance under ORS 239 002 to 239 263 would prevent such teacher from receiving in full any other governmental pension to which the teacher is entitled such teacher may waive for a calendar year sufficient monthly payments, or portions thereof, of retirement allowance under ORS 239 002 to 239 263 to permit the teacher to receive in full the other governmental pension. The waiver shall be made in writing and filed with the board of trustees of the association, and the school 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, the waiver applies first to all or the necessary portion of prior service pension, then to all or 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 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 trustees of the association and the school board. If a teacher dies during the period of time in which the teacher's waiver is in effect, the waiver is considered revoked on the date of such death [1961 c 574 §2]

**239 255** [1959 c 613 §10, 1967 c 638 §18, repealed by 1981 c 761 §12]

**239.257 Transfer of account balance to another system.** Whenever a teacher who is past earliest service retirement age separates from the service of the school district and thereafter, but before applying to the board of trustees of the association for retirement benefits, is employed in a position which entitles the teacher to membership in another public employes' retirement system either within or without this state, the board of trustees, upon the written request of the teacher and if in conformance with the provisions of law governing the other public employes' retirement system, may transfer the account balance of the teacher under the Teachers' Retirement System to the other public employes' retirement system. Such transfer shall cancel the right of the teacher to claim any future benefits under the Teachers' Retirement System for service rendered to the school district prior to the date of the transfer [1959 c 613 §19]

**239.258 Distribution of net interest in excess of assumed interest.** (1) The board of trustees of the association, by means of a dividend payment system approved by the school board, may distribute to retired members of the association net interest received for calendar years commencing after December 31, 1959, through investment of the retirement fund in excess of the assumed rate of interest. The share of undistributed excess interest allocated under such dividend payment system to retired members of the association who retired prior to July 1, 1959, may be distributed annually. The shares of undistributed excess interest allocated under such dividend payment system to retired members of the association who retired on or after July 1, 1959, shall be distributed as provided in subsection (2) of this section

(2) Whenever pursuant to ORS 237 199 the Public Employes' Retirement Board pays a dividend to retired employe members of the system, the board of trustees of the association shall pay to each retired member of the association who retired on or after July 1, 1959, and before January 1, 1968, a payment equal in amount to the dividend payment the retired member would have received from the Public Employes' Retirement System as a retired employe member of that

system had the retired member become a member of that system on July 1, 1946, or upon completing six months' service to the school district uninterrupted by a total of more than 30 working days during the six-month period, whichever is later, and had the employee contributions of the retired member toward retirement and subsequent service been made and performed at identical times and in identical amounts as a member of that system and had the retired member retired as a member of that system at the identical time the retired member retired as a member of the association and had the retired member exercised identical options at retirement. Such payment shall consist of

(a) The share of undistributed excess interest allocated to the retired member under the dividend payment system referred to in subsection (1) of this section, and

(b) An additional pension payment to be provided by the school district which, when added to the dividend payment referred to in paragraph (a) of this subsection, shall equal the total payment provided by this subsection

(3) Subsection (2) of this section shall apply with respect to all dividends paid by the Public Employees' Retirement System after December 31, 1959 [1963 c 616 §3, 1965 c 520 §2, 1967 c 638 §19]

**239.259 Payment of credits or accrued benefits on death of member.** (1) In the event that a person who is a member of the Teachers' Retirement System dies before retiring, the amount of money credited at the time of death to the account of the member in the fund shall be paid to the beneficiaries designated by the member. For this purpose a member may designate as a beneficiary any person or the executor or administrator of the estate of the member or a trustee named by the member to execute an express trust in regard to such amount. The withdrawal from the fund of the amount in the account of a member pursuant to ORS 239 215 (2) shall not invalidate a prior designation of beneficiary in the event a member returns to the service of the school district, regardless of whether the sum is repaid to the fund pursuant to ORS 239 215 (3)

(2) In the event that a person who is a member of the Teachers' Retirement System dies before retiring and has not designated a beneficiary under subsection (1) of this section, the amount of money credited at the time of death to the account of the member in the fund shall be paid to the deceased's estate if it is to be probated and, if not, then it shall be paid directly without probate to the surviving next of kin of the

deceased or the guardian of the survivor's estate, share and share alike, payment to be made to survivors in the following groups in the order listed

- (a) Husband or wife, or
- (b) Children, or
- (c) Father and mother, or
- (d) Grandchildren, or
- (e) Brothers and sisters, or
- (f) Nieces and nephews

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

(3) If the beneficiary designated under subsection (1) of this section is the spouse of the member, such spouse may elect to receive the amount payable in actuarially determined monthly payments for the life of such spouse

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

- (a) Expenses of the funeral of the deceased
- (b) Medical expenses of the last illness of the deceased
- (c) Hospital expenses of the last illness of the deceased

Claims for payment of expenses under this subsection shall be filed with the board of trustees of the association within six months after the date of death of the deceased. If no claims are filed within the six-month period, the amount shall be credited to the fund and used as are payments into the association by the school board. If a balance of the amount remains after payment of

valid claims filed within the six-month period, the balance shall be credited to the fund and used as are payments into the association by the school board. Payments under this subsection shall completely discharge the board of trustees, the association and the Teachers' Retirement System on account of the death.

(5) Accrued benefits due a retired member at the time of death are payable to the designated beneficiary and, if none, to the administrator or executor of the estate of the member. If the estate will not be probated, they may be paid, upon receipt by the board of trustees of the association of the affidavit referred to in subsection (2) of this section, to the next of kin in the order listed in subsection (2) of this section. If the estate will not be probated and if there is no beneficiary or next of kin, accrued benefits or a balance due under a refund annuity option shall be paid or credited for the purposes and in the manner provided in subsection (4) of this section. For the purpose of determining accrued benefits due a retired member at the time of death, accrued benefits are considered to have ceased as of the last day of the month preceding the month in which the retired member dies; but if Option 2 or Option 3 under ORS 239 229 has been elected as provided in ORS 239 002 to 239 263 and the beneficiary survives the retired member, the benefits to the beneficiary shall commence as of the first day of the month in which the retired member dies, and payments of benefits under Option 2 or Option 3 shall cease with the payment for the month preceding the month in which the beneficiary dies.

(6) Nothing in ORS 239 133 to 239 137 and 239 201 to 239 263 shall be construed to prevent the association from crediting interest earnings to the account of a deceased member whose beneficiary is a minor, until such time as the beneficiary attains majority, or until a legal guardian for the beneficiary has been named, whichever is sooner [1959 c 613 §28, 1963 c 616 §11, 1969 c 708 §2, 1975 c 744 §8, 1981 c 541 §12, 1983 c 830 §13].

**239.260 Death benefit.** (1) In addition to any other benefits under ORS 239 002 to 239 263, a death benefit, provided by contributions of the school district under ORS 239 205, shall be paid to the beneficiaries designated under ORS 239 259 (1) of a teacher who is a member of the system and who either is employed in the service of the school district on the date of death or who prior to retiring and receiving disability or service retirement allowances, dies as a result of injuries received while employed in the service of the school district or within 120 days after termination from services.

(2) The death benefit referred to in subsection (1) of this section shall be an amount equal to the member's account balance at the time of death.

(3) In the event that a beneficiary has not been named as provided in subsection (1) of this section and ORS 239 259 (1), the death benefit referred to in subsection (1) of this section shall be paid to the same person or persons and in the same manner as provided for payment of money credited to the member's account in ORS 239 259 (2).

(4) In the event that a beneficiary has not been designated and the deceased member has no surviving next of kin referred to in ORS 239 259 (2), the death benefit referred to in subsection (1) of this section shall be used for the same purpose and in the same manner as provided for the use of money credited to the member's account in ORS 239 259 (4).

(5) If the beneficiary designated under subsection (1) of this section and ORS 239 259 (1) is the spouse of the member, such spouse may elect to receive the amount payable in actuarially determined monthly payments for the life of such spouse [1961 c 574 §5, 1963 c 616 §9, 1965 c 263 §1, 1975 c 744 §9, 1983 c 830 §14].

**239.261 Rights and moneys exempt from taxes, execution and process and unassignable; exceptions.** 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 ORS 239 133 to 239 137 and 239 201 to 239 263, and the money in the various funds administered by the association under ORS 239 133 to 239 137 and 239 201 to 239 263, shall be exempt from all state, county and municipal taxes heretofore or hereafter imposed, except as provided in 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 except for execution, garnishment or other process upon a support obligation or an order or notice entered pursuant to ORS 25 050, 25 060, 25 310, 25 350, 25 360, 416 445 or 419 515, and shall be unassignable [1959 c 613 §35, 1969 c 708 §6, 1977 c 666 §15, 1979 c 85 §3, 1985 c 671 §10].

**239.262 Retirement benefits payable to others under certain court decrees.** (1) Notwithstanding ORS 239 261 or any other provision of law, payments under ORS 239 201 to 239 263 of any pension, annuity, retirement allowance or

other benefit that would otherwise be made to a person entitled thereto under ORS 239 201 to 239 263 shall be paid, in whole or in part, by the board of trustees of the association to another person 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 of dissolution of marriage or of separation. Any payment under this subsection to a person bars recovery by any other person.

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

(3) As used in this section, "court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia [1979 c 607 §4]

**239.263 Rights and benefits under repealed law.** (1) The provisions of section 44 of chapter 613, Oregon Laws 1959, repealing certain sections contained in this chapter prior to July 1, 1959, shall not affect the annuity and pension rights of any member of the association who retired on account of age or disability prior to July 1, 1959.

(2) There shall be paid to each member of the association who retired on account of age or disability prior to July 1, 1959, for so long as the member lives and such retirement continues, the annuity being paid the member on July 1, 1959. After July 21, 1973, the annuity shall be increased 25 percent.

(3) The school board shall pay each of the members described in subsection (2) of this section a pension as provided in subsection (4) of this section.

(4) The monthly pension payable by the school district to any member described in subsection (2) of this section shall not be less than \$150.

(5) First effective for the month of October 1977, the monthly annuity and pension of each member described in subsection (2) of this section shall be increased by the following percentages:

(a) Twenty-five percent of the first \$50 of the monthly annuity and pension,

(b) Fifteen percent of the amount of the monthly annuity and pension exceeding \$50 and not exceeding \$150,

(c) Ten percent of the amount of the monthly annuity and pension exceeding \$150 and not exceeding \$250,

(d) Five percent of the amount of the monthly annuity and pension exceeding \$250 and not exceeding \$350, and

(e) One percent of the amount of the monthly annuity and pension exceeding \$350 [1959 c 613 §43, 1961 c 514 §1, subsections (3) and (4) enacted as 1961 c 514 §3, 1973 c 526 §1, 1977 c 627 §2]

**239 302** [Repealed by 1959 c 613 §44]

**239 304** [Repealed by 1959 c 613 §44]

**239 306** [Repealed by 1959 c 613 §44]

**239 308** [Repealed by 1959 c 613 §44]

**239 310** [Repealed by 1959 c 613 §44]

**239.312** [Repealed by 1959 c 613 §44]

**239 314** [Repealed by 1959 c 613 §44]

**239.316** [Repealed by 1959 c 613 §44]

**239 318** [Repealed by 1959 c 613 §44]

**239.320** [Repealed by 1959 c 613 §44]

**239.322** [Repealed by 1959 c 613 §44]

**239.324** [Repealed by 1959 c 613 §44]

**239 326** [Repealed by 1959 c 613 §44]

**239.328** [Repealed by 1959 c 613 §44]

**239 330** [Repealed by 1959 c 613 §44]

**239.332** [Repealed by 1959 c 613 §44]

**239 334** [Repealed by 1959 c 613 §44]

**239 336** [Repealed by 1959 c 613 §44]

**239 338** [Repealed by 1959 c 613 §44]

**239 340** [Repealed by 1959 c 613 §44]

**239 342** [Repealed by 1959 c 613 §44]

**239 344** [Repealed by 1959 c 613 §44]

**239 346** [Repealed by 1959 c 613 §44]

**239 348** [Repealed by 1959 c 613 §44]

**239 350** [Repealed by 1959 c 613 §44]

**239 352** [Repealed by 1959 c 613 §44]

**239 354** [Repealed by 1959 c 613 §44]

**239 356** [Repealed by 1959 c 613 §44]

**239 358** [Repealed by 1959 c 613 §44]

**239 360** [Repealed by 1959 c 613 §44]

**239 362** [Amended by 1959 c 400 §3, repealed by 1959 c 613 §44]

**239 364** [Repealed by 1959 c 613 §44]

**239 402** [Repealed by 1959 c 613 §44]

**239 404** [Repealed by 1959 c 613 §44]

**239 406** [Repealed by 1959 c 613 §44]

**239 408** [Repealed by 1959 c 613 §44]

**239 410** [Repealed by 1959 c 613 §44]

- 239 412 [Repealed by 1959 c 613 §44]  
 239 414 [Repealed by 1959 c 613 §44]  
 239 416 [Repealed by 1959 c 613 §44]  
 239 418 [Repealed by 1959 c 613 §44]  
 239 420 [Repealed by 1959 c 613 §44]  
 239 422 [Repealed by 1959 c 613 §44]  
 239 424 [Repealed by 1959 c 613 §44]  
 239 426 [Repealed by 1959 c 613 §44]  
 239 428 [Repealed by 1959 c 613 §44]  
 239 430 [Repealed by 1959 c 613 §44]  
 239 432 [Repealed by 1959 c 613 §44]  
 239 434 [Repealed by 1959 c 613 §44]  
 239 436 [Repealed by 1959 c 613 §44]  
 239 438 [Repealed by 1959 c 613 §44]  
 239 460 [1953 c 301 §1, repealed by 1959 c 613 §44]  
 239.465 [1953 c 301 §2, repealed by 1959 c 613 §44]  
 239 482 [1955 c 667 §2, repealed by 1959 c 613 §44]  
 239 484 [1955 c 667 §3, repealed by 1959 c 613 §44]  
 239 486 [1955 c 667 §4, repealed by 1959 c 613 §44]  
 239 488 [1955 c 667 §5, repealed by 1959 c 613 §44]  
 239 502 [Repealed by 1959 c 613 §44]  
 239 504 [Repealed by 1959 c 613 §44]

#### COVERAGE OF EMPLOYEES UNDER FEDERAL SOCIAL SECURITY ACT

- 239 705 [1953 c 695 §1, repealed by 1955 c 733 §8]  
 239 710 [1953 c 695 §2, repealed by 1955 c 733 §8]  
 239 715 [1953 c 695 §3, repealed by 1955 c 733 §8]  
 239 720 [1953 c 695 §3, repealed by 1955 c 733 §8]  
 239 725 [1953 c 695 §4, repealed by 1955 c 733 §8]

**239.730 Definitions for ORS 239.730 to 239.755.** As used in ORS 239 730 to 239 755, unless the context requires otherwise, "agreement" means an agreement entered into pursuant to ORS 239 730 to 239 755 between the State of Oregon and the Secretary of Health, Education and Welfare of the United States, or the designated agent or successor, and the modification of the existing agreement between the State of Oregon and the Secretary of Health, Education and Welfare for Old Age and Survivors Insurance coverage of employes of the State of Oregon and of the political subdivisions of the state [1955 c 733 §1]

**239.735 Declaration of policy regarding federal social security coverage for school district employes.** In order to extend to employes of a school district who perform services in positions covered by a retirement system existing and administered by an association pursuant to this chapter, and to the depen-

dents and survivors of such employes, the basic protection accorded to others by the Old Age and Survivors Insurance benefits provided in title 2 of the federal Social Security Act, it is declared to be the policy of this state that, subject to the provisions of ORS 239 730 to 239 755 and not otherwise, such action may be taken by members of the retirement system and by the board of directors of the school district to provide to employes of the school district Old Age and Survivors Insurance benefits on as broad a basis as is permitted under title 2 of the federal Social Security Act at the time an agreement is made effective with respect to the employes in accordance with title 2, section 218, subsections (d) and (f) of the federal Social Security Act Old Age and Survivors Insurance benefits shall be so provided to the employes by an agreement. The members of the retirement system and the board of directors of the school district may take such action as in this section authorized at any time after August 3, 1955 [1955 c 733 §2]

**239.740 Referendum.** Whenever, in any school district in this state in which a retirement system exists and is administered by an association pursuant to this chapter, the board of directors of the school district authorizes such action to be taken, a referendum shall be held as follows

(1) A referendum by secret ballot shall be held on the question of whether service in positions covered by such retirement system shall be excluded from or included under an agreement pursuant to title 2, section 218, subsections (c) and (d) of the federal Social Security Act

(2) An opportunity to vote in such referendum shall be given to and shall be limited to eligible employes of the school district

(3) The date on which the referendum is held shall be fixed by the Governor of the State of Oregon, or by an agency or individual designated by the Governor, and the Governor, or the agency or individual designated by the Governor, shall give written notice of the referendum and the date fixed to the eligible employes of the school district not less than 90 days prior to the date of the referendum so fixed. The written notice of the referendum shall be given in the manner as determined by the Governor, or by the agency or individual designated by the Governor, according to whether the Governor, or such agency or individual, is to supervise such referendum

(4) The referendum shall be conducted under the supervision of the Governor or an agency or individual designated by the Governor

(5) For the purposes of the referendum, an employe of the school district shall be deemed an

"eligible employe" if, at the time such referendum is held, the employe is in a position covered by such retirement system and is a member of such retirement system and if the employe is in such position at the time notice of the referendum is given as required in subsection (3) of this section, except that an employe of the school district shall not be deemed an eligible employe if, at the time the referendum is held, the employe is in a position to which an agreement entered into pursuant to ORS 237 414 applies, or the employe was in a position excluded by or pursuant to title 2, section 218, subsection (d) (5) of the federal Social Security Act [1955 c 733 §3]

**239.745 Authority to enter into agreement extending federal social security benefits to employes.** If a referendum is held as provided in ORS 239.735, and if a majority of the eligible employes of the school district vote in favor of including service in positions covered by the retirement system under an agreement entered into pursuant to title 2, section 218, subsections (c) and (d) of the federal Social Security Act, then the Governor of the State of Oregon shall certify to the Secretary of Health, Education and Welfare of the United States that all the conditions as specified in title 2, section 218, subsection (d) (3) of the federal Social Security Act have been met, and, thereupon the board of directors of the school district may make application to the Public Employees' Retirement Board for inclusion of such eligible employes in an agreement. No agreement negotiated pursuant to this section shall be executed or be effective unless and until the agreement is approved by the board of directors of the school district. [1955 c 733 §4]

**239.750 Requirements of agreement.**

The agreement authorized by ORS 239 730 to 239.755 shall contain terms and provisions and shall be executed in accordance with the following requirements

(1) The agreement shall conform to the provisions of title 2, section 218 of the federal Social Security Act, and amendments thereto, and applicable federal regulations adopted pursuant thereto

(2) The agreement shall provide benefits for employes of the school district who perform services in positions covered by the agreement, and their dependents and survivors, on the same basis as though such services to the school district constituted employment within the meaning of title 2 of the federal Social Security Act

(3) All services performed in the employment of the school district, which constitute employ-

ment within the meaning of title 2 of the federal Social Security Act, shall be covered by the agreement if

(a) Such services are performed by employes of the school district in positions covered by the retirement system on the date of the agreement (other than employes to whose services an agreement entered into pursuant to ORS 237 414 applies), or

(b) Such services are performed by employes of the school district in positions which become covered by the retirement system at any time after the date of the agreement

(4) The agreement shall include all employes of the school district designated in subsection (3) of this section as a "coverage group" within the meaning of the term as defined by title 2, section 218, subsection (c) of the federal Social Security Act.

(5) The agreement shall be effective with respect to services performed after an effective date specified in such agreement, but in no event earlier than December 31, 1954, if the agreement is executed prior to 1958, or in no event earlier than the last day of the calendar year preceding the year in which such agreement is executed by the Secretary of Health, Education and Welfare and by the Governor or an agency or individual designated by the Governor, if the agreement is executed after 1957

(6) Upon the approval of the agreement by the board of directors of the school district, the agreement shall be executed in behalf of the State of Oregon and of the board of directors of the school district by the Governor, or by an agency or individual designated by the Governor so to act [1955 c 733 §6]

**239.755 Effect of entering into agreement.** In the event that an agreement is entered into as authorized by ORS 239 730 to 239 755 providing Old Age and Survivors Insurance benefits to employes of the school district

(1) The school district shall be liable for the contributions required to be remitted by an employer under the provisions of section 1410 of the federal Internal Revenue Code, and amendments thereto, from the date on which the agreement shall become effective in accordance with the terms thereof, and the board of directors of the school district shall levy and collect, as part of the taxes levied and collected annually for school purposes, a tax in sufficient amount in the aggregate to pay the contributions required of an employer under the provisions of section 1410 of the federal Internal Revenue Code from the effective date as so specified in the agreement

(2) The school district shall be liable for and shall withhold from wages and salaries otherwise payable to employees of the school district covered by the agreement the contributions required to be withheld from wages and salaries of employees under the provisions of section 1400 of the federal Internal Revenue Code, and amendments thereto, and such withholding shall be made from and after the date of execution of the agreement.

(3) All employer and employee contributions collected and withheld by the school district as in this section provided and all other moneys received or collected by the school district under ORS 239 730 to 239 755 shall be remitted by the school district to the Public Employees' Retirement Board created by ORS 237 251, and all such moneys so remitted shall be deposited by the Public Employees' Retirement Board as provided in ORS 237 490. All moneys so deposited hereby are appropriated for the purposes of ORS 239 730 to 239 755. All claims against the moneys so deposited shall be certified and audited, and all disbursements therefrom shall be made as specified in ORS 237 490. The moneys so remitted and deposited shall be disbursed for the purpose of paying the amounts required to be paid to the Secretary of the Treasury of the United States pursuant to the agreement entered into under ORS 239 730 to 239 755 and for the purpose of paying the expenses incurred in the administration of ORS 239 730 to 239 755 as authorized in ORS 239 730 to 239 755.

(4) An association administering a retirement system covering services in positions which are covered by the agreement made pursuant to ORS 239 730 to 239 755 shall appropriate out of the annuity fund of the association and remit to the Public Employees' Retirement Board on the date of the execution of the agreement an amount equal to the sum which would have been withheld by the school district from wages and salary of

employees covered by the agreement prior to the date of the execution of the agreement, as required by section 1400 of the federal Internal Revenue Code if the agreement had been executed on the effective date specified therein. The school district shall levy and collect a tax in sufficient amount to pay and to remit to the Public Employees' Retirement Board an amount equal to the sum which would have been so levied, collected and remitted prior to the date of the execution of the agreement, as required by section 1410 of the federal Internal Revenue Code if the agreement had been executed on the effective date specified therein. The amounts remitted to the Public Employees' Retirement Board pursuant to this subsection hereby are appropriated for the purposes of ORS 239.730 to 239 755. The amounts so remitted shall be deposited, all claims against the same shall be certified and audited and disbursements therefrom shall be made as specified in ORS 237 490. The moneys remitted and deposited pursuant to this subsection shall be disbursed for the purpose of paying the amounts required to be paid to the Secretary of the Treasury of the United States pursuant to an agreement entered into under ORS 239 730 to 239 755 with respect to the period from the effective date of the agreement as specified therein to the date of the execution of the agreement.

(5) The board of directors of the school district shall levy and collect a tax in sufficient amount in the aggregate to pay expenses of the district authorized by ORS 239 730 to 239 755.

(6) The agreement authorized by ORS 239 730 to 239 755 shall be subject to all of the provisions of ORS 237.410 to 237 520, to the extent that the provisions of such sections are applicable to the agreement. [1955 c 733 §7]

**239 990** [Repealed by 1959 c 613 §44]

