

Chapter 243

1987 REPLACEMENT PART

Public Employe Rights and Benefits

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LIFE INSURANCE FOR POLICE AND FIREMEN

243.005 Definitions for ORS 243.005 to 243.045. As used in ORS 243.005 to 243.045:

(1) "Fireman" means persons employed by a city, county or district whose duties involve fire fighting and includes a volunteer fire fighter whose position normally requires less than 600 hours of service per year.

(2) "Police officer" includes police chiefs and policemen of a city who are classified as police officers by the council or other governing body of the city; sheriffs and those deputy sheriffs whose duties, as classified by the county governing body are the regular duties of police officers; employes of districts, whose duties, as classified by the governing body of the district are the regular duties of police officers; employes of the Department of State Police who are classified as police officers by the Superintendent of State Police; employes of the Oregon State Lottery Commission classified by the Director of the Oregon State Lottery as enforcement agents; and employes of Department of Corrections institutions as defined in ORS 421.005 whose duties, as assigned by the superintendent, include the custody of persons committed to the custody of or transferred to the Department of Corrections institution; but "police officer" does not include volunteer or reserve police officers or persons considered by the respective governing bodies to be civil deputies or clerical personnel.

(3) "Public employer" means a city, a county or the state, or one of its agencies or political subdivisions that employs police officers or firemen. [1971 c.692 §6; 1985 c 302 §11; 1987 c 320 §149]

243.010 [Amended by 1955 c 203 §1, 1959 c 162 §1, 1969 c 597 §141, repealed by 1971 c 692 §14]

243.015 Life insurance for police and firemen. On or before July 1, 1973, the Department of General Services shall enter into a contract with an insurance company licensed to do business in this state to purchase insurance as described in ORS 243.025 for all police officers and firemen in the service of public employers. [1971 c.692 §7; 1973 c 409 §1]

243.020 [Amended by 1955 c 203 §2, 1955 c 503 §1, 1957 c.204 §1; 1959 c 162 §2, repealed by 1971 c.692 §14]

243.025 Issuance of \$10,000 life insurance certificate. When the Department of General Services has awarded the contract under ORS 243.015, but not later than July 1, 1973, every police officer and fireman in the service of a

public employer shall be issued, pursuant to the contract provided for in ORS 243.015, a certificate of insurance in the face amount of \$10,000, covering death caused by injury sustained during working hours as a police officer or fireman or death resulting from such an injury within 365 days. The insurance certificate shall set forth the names of any beneficiaries whom the insured may designate. [1971 c.692 §8; 1973 c.409 §2]

243.030 [Amended by 1955 c 203 §3, repealed by 1955 c 503 §2]

243.035 Premiums and administrative costs to be budgeted and paid by public employers. (1) The premiums and administrative costs incurred by the Department of General Services for the insurance provided for in ORS 243.005 to 243.045 shall be paid by the affected public employers and shall not come from funds of the Public Employees' Retirement System.

(2) Every public employer shall include in its budget amounts sufficient to pay the annual premiums accruing on the policies of insurance issued pursuant to ORS 243.005 to 243.045, and amounts sufficient to reimburse the Department of General Services for its administrative expenses incurred under ORS 243.005 to 243.045. [Subsection (1) enacted as 1971 c 692 §9, subsection (2) enacted as 1971 c 692 §10]

243.040 [Amended by 1955 c 203 §4, 1959 c 162 §3; repealed by 1971 c 692 §14]

243.045 Police and firemen considered common group for certain purposes. For purposes of the Insurance Code, police officers and firemen are considered to be associated in a common group formed for purposes other than the obtaining of insurance. [1971 c 692 §11, 1973 c 409 §3]

243.050 [Amended by 1955 c 203 §5, 1959 c 162 §4, 1969 c.502 §6, repealed by 1971 c.692 §14]

243.055 Exemption from requirements of ORS 243.005 to 243.045 for certain public employers. (1) Notwithstanding ORS 243.005 to 243.045, if a public employer provides benefits equal to or better than the insurance required under ORS 243.025, as determined by the Director of the Department of Insurance and Finance, the public employer is exempt from the requirements of ORS 243.005 to 243.045 for so long as such benefits continue to be equal or better than the insurance required, as determined by the Director of the Department of Insurance and Finance.

(2) Determinations pursuant to subsection (1) of this section shall be made after reasonable

notice and opportunity for hearing as provided in ORS 183.310 to 183.550. [1971 c.692 §12; 1973 c.612 §13]

243.060 [Amended by 1955 c.203 §6; 1957 c.204 §2; 1959 c.162 §5, 1969 c 502 §7, repealed by 1971 c.692 §14]

243.070 [Repealed by 1971 c.692 §14]

BENEFIT PLANS

(Generally)

243.105 Definitions for ORS 243.105 to 243.205. As used in ORS 243.105 to 243.205, unless the context requires otherwise:

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

(2) "Eligible employe" means an officer or employe of a state agency who elects to participate in one of the group benefit plans described in ORS 243.135. The term includes state officers and employes in the exempt, unclassified and classified service, and state officers and employes, whether or not retired, who receive a service or disability retirement allowance under the Public Employes' Retirement System. The term does not include individuals:

(a) Engaged as independent contractors;

(b) Whose periods of employment in emergency work are on an intermittent or irregular basis, or who are employed on less than a half-time basis unless the individual is employed in a position classified as a job-sharing position;

(c) Appointed under ORS 240.309;

(d) Provided sheltered employment or made-work by the state in an employment or industries program maintained for the benefit of such individuals; or

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

(3) "Administrator" means the Administrator of the Personnel Division.

(4) "Health benefit plan" means a contract for group medical, surgical, hospital or any other remedial care recognized by state law and related services and supplies and shall include comparable benefits for employes who rely on spiritual means of healing.

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

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

(7) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Insurance and Finance, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation.

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

(9) "Board" means the State Employes' Benefit Board. [1971 c.527 §1; 1979 c.302 §3; 1979 c 468 §30a; 1981 c.773 §1; 1983 c.640 §1; 1985 c.224 §2; 1985 c 635 §4]

Note: See note following 243.303.

243.107 Employes eligible to participate under ORS 243.105 to 243.205. A person employed by a state institution of higher education may be considered an eligible employe for participation in one of the group benefit plans described in ORS 243.135 if the State Board of Higher Education determines that funds are available therefor and if:

(1) Notwithstanding ORS 243.105 (2)(e), the person is a student enrolled in an institution of higher education and is employed as a graduate teaching assistant, graduate research assistant or a fellow at the institution and elects individually to be considered an eligible employe; or

(2) Notwithstanding ORS 243.105 (2)(b), the person is employed on a less than half-time basis in an unclassified instructional or research support capacity and elects individually to be considered an eligible employe. [1983 c 266 §2]

243.110 [1955 c 313 §1; 1959 c.540 §1, 1963 c.313 §1, repealed by 1967 c.627 §12]

243.115 State Employes' Benefit Board; membership; chairman. (1) There is hereby created in the Personnel Division of the Executive Department, a State Employes' Benefit Board to be composed as follows:

(a) The Governor or designee;

(b) The Director of the Department of General Services;

(c) The Administrator of the Personnel Division of the Executive Department; and

(d) Four persons representing state employes, who shall be appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(2) In addition, one member of the Senate, appointed by the President of the Senate, and one member of the House of Representatives,

appointed by the Speaker of the House, shall serve as advisory members without vote.

(3) The Administrator of the Personnel Division of the Executive Department shall serve as chairman of the board. [1971 c 527 §2; 1973 c 792 §7]

243.120 [1963 c.331 §8; 1967 c 267 §1, repealed by 1967 c 627 §12]

243.125 Powers and duties; compensation and expenses. (1) The board shall prescribe rules for the conduct of its business. Members of the board who are not members of the Legislative Assembly shall receive no compensation for their services, but shall be paid for their necessary and actual expenses while on official business. Members of the board who are members of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly. The board shall study all matters connected with the providing of adequate health care coverage for state employes on the best basis possible with relation both to the welfare of the employes and to the state. The board shall design benefits, devise specifications, analyze carrier responses to advertisements for bids and decide on the award of contracts. Contracts shall be signed by the chairman on behalf of the board.

(2) Subject to ORS 183.310 to 183.550, the board may make rules not inconsistent with ORS 243.105 to 243.205, 243.215 and 292.051 to determine the terms and conditions of eligible employee participation and coverage.

(3) The board shall prepare specifications, invite bids and do acts necessary to award contracts for health benefit plan and dental benefit plan coverage of eligible employes for a one- or two-year period.

(4) The board may retain consultants when it determines the necessity and shall, subject to the State Personnel Relations Law, employ such personnel as are required to perform the functions of the board. [1971 c.527 §3, 1975 c 560 §1; 1975 c 667 §1a, 1983 c 640 §2; 1987 c 879 §9]

243.130 Health care cost containment principles. In designing benefits and devising specifications, as required by ORS 243.125, the board shall give primary consideration to health care cost containment principles including:

(1) Multiple choices for employes and beneficiaries.

(2) Fixed employer subsidy to produce a personal financial interest on the part of the employe.

(3) Fair market rules to protect both insurance providers and covered employes.

(4) Competition between organized provider groups. [1981 c 93 §4]

243.135 Health benefit plans for public employes; terms and conditions. (1) Notwithstanding any other benefit plan contracted for and offered by the board, the board shall contract for a health benefit plan or plans best designed to meet the needs and provide for the welfare of eligible employes and the state.

(2) The board may approve more than one carrier for each type of plan contracted for and offered but the number of carriers shall be held to a number consistent with adequate service to eligible employes and their family members.

(3) Where appropriate for a contracted and offered health benefit plan, the board shall provide options under which an eligible employe may arrange coverage for family members.

(4) Payroll deductions for such costs as are not payable by the state may be made upon receipt of a signed authorization from the employe indicating an election to participate in the plan or plans selected and the deduction of a certain sum from the employe's pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employes and their family members at an additional cost or premium.

(6) Transfer of enrollment from one plan to another shall be open to all eligible employes and their family members under rules adopted by the board. Because of the special problems that may arise in individual instances under comprehensive group practice plan coverage involving acceptable physician-patient relations between a particular panel of physicians and particular eligible employes and their family members, the board shall provide a procedure under which any eligible employe may apply at any time to substitute a health service benefit plan for participation in a comprehensive group practice benefit plan. [1971 c 527 §4, 1975 c 560 §2, 1977 c.313 §1, 1983 c 640 §3]

243.145 Board authority with respect to health benefit plans; termination of participation of state agency. (1) The board shall have authority to employ whatever means are reasonably necessary to carry out the purposes of ORS 243.105 to 243.205, 243.215 and 292.051. Such authority shall include but is not limited to authority to seek clarification, amendment, modification, suspension or termination of any agreement or contract which in the board's judgment requires such action.

(2) Upon providing specific notice in writing to the carrier, employe organization, Executive Department and affected, eligible employes, and after affording opportunity for a public hearing upon the issues which may be involved, the board may enter an order withdrawing approval of any health benefit plan. Thirty days after entry of the order, the board shall terminate all withholding authorizations of eligible employes and terminate all state participation in the plan.

(3) The board by order may terminate the participation of any state agency if within three months the state agency fails to perform any action required by ORS 243.105 to 243.205, 243.215 and 292.051 or by board rule. [1971 c 527 §5]

243.155 Board may contract without state participation for additional benefit plans to be provided at expense of participating employes. (1) The board may contract with carriers to provide, at the expense of participating employes and without state participation, for coverage, insurance or other benefit based on life, supplemental medical, supplemental dental and accidental death or disability insurance plans.

(2) If on or after September 9, 1971, any state agency contracts for any of the benefits described in subsection (1) of this section on behalf of any state employes, the administrative expenses thereof shall be paid by assessment of the participating employes. Such contracts are subject to approval of the board before they become operative. The board may withdraw approval for any such benefit in the same manner as it withdraws approval under ORS 243.145. [1971 c 527 §6, 1975 c.667 §2]

243.157 Payment of cost for retired officer or employe. The state may pay none of the cost of making health benefit plan coverage available to a retired state officer or employe who is an eligible employe and to family members or may agree, by collective bargaining agreement or otherwise, to pay part or all of that cost. [1985 c 224 §4]

243.160 Eligibility of retired state officer or employe to participate in dental benefit plan. A retired state officer or employe who is an eligible employe must participate in one of the group benefit plans described in ORS 243.135 in order to obtain dental benefit plan coverage. [1981 c 773 §4]

243.165 State Employes' Benefit Account; continuing appropriation for account. (1) There hereby is created in the General Fund an account to be known as the State Employes' Benefit Account, the balances of

which are continuously appropriated to cover administrative expenses incurred in connection with the administration of ORS 243.105 to 243.205, 243.215 and 292.051.

(2) There hereby is appropriated to the State Employes' Benefit Account all refunds and dividends from any carrier or contractor because of any agreement or contract entered into between the carrier and the board and, subject to ORS 243.185, an amount not to exceed two percent of the monthly state and employe contributions for any benefit available under ORS 243.105 to 243.205; 243.215 and 292.051. [1971 c.527 §7]

243.175 Computation of health benefit contributions by employe and state. (1) The monthly contribution of each eligible employe for health benefit plan coverage described in ORS 243.135 (1) shall be the total cost per month of the benefit coverage afforded under the plan or plans, for which the employe exercises the option, including the administrative expenses therefor, less the portion thereof contributed by the state.

(2) The state contribution shall be the amount necessary to pay the cost of the health benefit plan or plans, including the cost of enrollment of all family members and the eligible employes, including the administrative expenses therefor, or the amount appropriated or otherwise authorized therefor by the Legislative Assembly, whichever is the lesser.

(3) When more than one individual shares a single position that is classified as a job-sharing position, the state shall contribute to obtain coverage for the individuals a total amount not greater than the amount referred to in subsection (2) of this section to obtain coverage for one individual in the same position. The individuals shall receive credit for the state contribution in such proportions as they and the employer agree upon, and each individual who desires coverage shall make further contribution in such amounts as may be appropriate to comply with subsection (1) of this section. [1971 c.527 §8, 1973 c 225 §1; 1975 c 667 §3, 1977 c 570 §3, 1979 c 302 §1]

243.180 Computation of dental benefit contributions by employe and state. (1) The monthly contribution of each eligible employe for dental benefit plan coverage shall be the total cost per month of the benefit coverage afforded under the plan or plans for which the employe exercises the option, including the administrative expenses therefor, less the portion thereof contributed by the state.

(2) The state contribution shall be the amount necessary to pay the cost of the dental benefit plan or plans, including the cost of enroll-

ment of all family members and the eligible employes and the administrative expenses therefor, or the amount appropriated or otherwise authorized therefor by the Legislative Assembly, whichever is the lesser.

(3) When more than one individual shares a single position that is classified as a job-sharing position, the state shall contribute to obtain coverage for the individuals a total amount not greater than the amount referred to in subsection (2) of this section to obtain coverage for one individual in the same position. The individuals shall receive credit for the state contribution in such proportions as they and the employer agree upon, and each individual who desires coverage shall make further contribution in such amounts as may be appropriate to comply with subsection (1) of this section. [1975 c 667 §5; 1977 c 570 §4; 1979 c.302 §2, 1979 c.538 §2]

243.182 Expenditure of health benefit contributions made by employes and state. The health benefit contributions made by employes and the state pursuant to ORS 243.175 and dental benefit contributions made by employes and the state pursuant to ORS 243.180 may be expended, respectively, solely for health benefit plans and dental benefit plans or may, if determined by the board to be appropriate, be commingled and expended for either health benefit plans or dental benefit plans, or both health benefit plans and dental benefit plans. [1981 c.93 §3]

243.185 Transfer of moneys from General Fund for payment of costs of health benefit plans. Subject to legislative approval of budgetary authorization for operation of the board and its administration of the health benefit plans and other duties under ORS 243.105 to 243.205, 243.215 and 292.051, an amount not to exceed two percent of the state and the employe contributions, as described in ORS 243.155 and 243.175, shall be forwarded by each payroll disbursing officer to the board and deposited by it in the State Treasury to the credit of the State Employes' Benefit Account to meet administrative and other costs authorized by ORS 243.105 to 243.205, 243.215 and 292.051. However, no such assessment shall be required for any month in which the balance in the account exceeds five percent of the monthly total of state and employe contributions. [1971 c 527 §9]

243.195 Salary deduction for participating employe's monthly payment for health benefit plan; disbursal of moneys to benefit plan contractor. Upon receipt of the request in writing of an eligible or participating employe so to do, the payroll disbursing officer

may deduct from the salary or wages of such employe the amount of money indicated in such request for payment of the applicable amount set forth in contracts made by such employe or in their behalf for benefits under ORS 243.105 to 243.205, 243.215 and 292.051. The payroll disbursing officer may disburse funds in payment of premiums to the carrier or health service benefit plan contractor. [1971 c 527 §10]

243.205 Reports. The payroll disbursing officer shall submit reports to the State Employes' Benefit Board regarding health care coverage for eligible or participating employes as the board considers desirable. [1971 c 527 §11]

243.215 Certain eligible employes permitted to receive state contributions for health benefit plans of their choice. Any eligible employe unable to participate in one or more of the plans described in ORS 243.135 (1) solely because the employe is assigned to perform duties outside the state may be eligible to receive the monthly state contribution, less administrative expenses, as payment of all or part of the cost of a health benefit plan of choice, subject to the approval of the board and such rules as the board may adopt. [1971 c 527 §13]

243.220 [1977 c 675 §1, renumbered 243 345]

243.225 [1977 c 675 §2, renumbered 243 350]

(Employes Subject to Collective Bargaining Agreement)

243.230 Definitions for ORS 243.230 to 243.300. As used in ORS 243.230 to 243.300, unless the context requires otherwise:

(1) "Associate exclusive representative" means a labor organization, consisting of fewer than 5,000 members, which contracts with the board for coverage of its members under board-approved benefit plans.

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

(3) "Board" means the Bargaining Unit Benefits Board.

(4) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Insurance and Finance, or two or more companies or contractors acting together

pursuant to a joint venture, partnership or other joint means of operation, or a board-approved guarantor of benefit plan coverage and compensation.

(5) "Eligible employee" means an officer or employee of a state agency who is subject to the jurisdiction of a contract between the state and a qualified exclusive representative, or any retired state employee who, at the time of retirement for service or disability, was employed in a position within a bargaining unit represented by either a qualified exclusive representative or an associate exclusive representative, but not including individuals:

(a) Who are engaged as independent contractors;

(b) Whose periods of employment in emergency work are on an intermittent or irregular basis, or who are employed on less than a half-time basis;

(c) Who are appointed for fewer than 90 days;

(d) Who are provided sheltered employment or made-work by the state in an employment or industries program maintained for the benefit of such individuals; or

(e) Who are provided student health care services in conjunction with enrollment as students at the state institutions of higher education.

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

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

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

(9) "Qualified exclusive representative" means a labor organization which, as a result of certification by the Employment Relations Board or recognition by the employer, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit, if the organization represents 5,000 or more eligible employees of state agencies.

(10) "State agency" includes every state officer, board, commission, department or other activity of state government. [1979 c 469 §2, 1985 c.224 §5, 1987 c 158 §36]

243.232 **Employee eligible to participate under ORS 243.230 to 243.300.** A

person employed by a state institution of higher education shall be considered an eligible employee for participation in one of the benefit plans described in ORS 243.245 if the person is in a bargaining unit that has a benefit plan as part of its collective bargaining agreement and if:

(1) Notwithstanding ORS 243.230 (5)(e), the person is a student enrolled in an institution of higher education and is employed as a graduate teaching assistant, graduate research assistant or a fellow at the institution and elects individually to be considered an eligible employee; or

(2) Notwithstanding ORS 243.230 (5)(b), the person is employed on a less than half-time basis in an unclassified instructional or research support capacity and elects individually to be considered an eligible employee. [1983 c.266 §4]

243.235 Bargaining Unit Benefits Board; membership; terms of office. (1) There is created in the Personnel Division of the Executive Department the Bargaining Unit Benefits Board consisting of eight voting members to be appointed as follows:

(a) Four persons representing eligible employees who shall be appointed by the qualified exclusive representative. If there are two or more qualified exclusive representatives, each qualified exclusive representative shall mutually agree upon the appointment of the persons representing state employees.

(b) Four persons representing state management who shall be appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(2) In addition to voting members of the board, an associate exclusive representative may appoint one advisory member to the board, such advisory member to serve without voting rights.

(3) The board shall be appointed to carry out and implement the provisions of ORS 243.230 to 243.300 and 292.051 only upon receipt by the Governor of a written request so to do from qualified exclusive representatives.

(4) Terms of board members shall be four years from the date of expiration of the term for which the predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term.

(5) The board shall select a chairman from among its voting members.

(6) If the qualified exclusive representatives acting under paragraph (a) of subsection (1) of this section fail to agree to the appointment of

persons representing eligible employes within 45 days of the creation of a vacancy, each qualified exclusive representative shall appoint an arbitrator. If the appointments of arbitrators result in the appointment of an even number of arbitrators, the appointed arbitrators shall select one additional arbitrator. Upon final appointment or selection of the arbitrators, appointment of persons representing eligible employes shall be made by the arbitrators. [1979 c.469 §3]

243.240 Rules of procedure; compensation and expenses; dissolution of board. (1) The board shall adopt rules of procedure for the conduct of its business.

(2) Members of the board shall receive no compensation for their services, but shall be paid for their necessary and actual expenses while on official business.

(3) The board may elect, by a majority vote of voting members, to dissolve itself, upon a finding that such dissolution would be in the best interest and welfare of eligible employes and the state. [1979 c 469 §5]

243.245 Powers and duties to provide benefit plan coverage for eligible employes.

(1) The board shall study all matters connected with the providing of adequate benefit plan coverage for eligible employes on the best basis possible with relation both to the welfare of the employes and to the state.

(2) The board shall design benefits, devise specifications, analyze carrier responses to advertisements for bids and decide on the award of contracts. Contracts shall be signed by the chairperson on behalf of the board.

(3) Subject to the provisions of ORS 183.310 to 183.550, the board may adopt rules not inconsistent with the provisions of ORS 243.230 to 243.300 and 292.051 to determine the terms and conditions of eligible employe participation and coverage.

(4) The board shall prepare specifications, invite bids and do acts necessary to award contracts for benefit plans coverage of eligible employes for a one or two-year period.

(5) The board may retain consultants, brokers or other advisory personnel when it determines the necessity and, subject to the State Personnel Relations Law, shall employ such personnel as are required to perform the functions of the board. [1979 c 469 §6]

243.250 Contract for health benefit plans for eligible employes; terms and conditions. (1) Notwithstanding any other benefit plan contracted for and offered by the board, the

board shall contract for a health benefit plan or plans best designed to meet the needs and provide for the welfare of eligible employes and the state.

(2) The board may approve more than one carrier for each type of plan contracted for and offered but the number of carriers shall be held to a number consistent with adequate service to eligible employes and their family members.

(3) Where appropriate for contracted and offered health benefit plan, the board shall provide options under which an eligible employe may arrange coverage for family members.

(4) Payroll deductions for such costs as are not payable by the state may be made upon receipt of a signed authorization from the employe indicating an election to participate in the plan or plans selected and the deduction of a certain sum from the employe's pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employes and their family members at an additional cost or premium.

(6) Transfer of enrollment from one plan to another shall be open to all eligible employes for themselves and their family members under rules adopted by the board. Because of the special problems that may arise in individual instances under comprehensive group practice plan coverage involving acceptable physician-patient relations between a particular panel of physicians and particular eligible employes and their family members, the board shall provide a procedure under which any eligible employe may apply at any time to substitute a health service benefit plan for participation in a comprehensive group practice benefit plan. [1979 c.469 §7]

243.252 Payment of cost for retired employe. The state may pay none of the cost of making health benefit plan coverage available to a retired state employe who is an eligible employe and to family members or may agree, by collective bargaining agreement or otherwise, to pay part or all of that cost. [1985 c.224 §7]

243.253 Eligibility of retired state employe to participate in dental benefit plan. A retired state employe who is an eligible employe must participate in a benefit plan offering medical, hospital and surgical insurance in order to obtain dental benefit plan coverage. [1981 c.773, §2]

243.255 Authority with respect to benefit plans; termination of participation of state agency or bargaining unit. (1) The board shall have authority to employ whatever means are reasonably necessary to carry out the

purposes of ORS 243.230 to 243.300 and 292.051. Such authority shall include, but is not limited to, authority to seek clarification, amendment, modification, suspension or termination of any agreement or contract which in the board's judgment requires such action.

(2) Upon providing specific notice in writing to the carrier, the affected employe organization or organizations, Executive Department and affected, eligible employes, and after affording opportunity for a public hearing upon the issues which may be involved, the board may enter an order withdrawing approval of any health benefit plan. Thirty days after entry of the order, the board shall terminate all withholding authorizations of eligible employes and terminate all board-approved participation in the plan.

(3) The board by order may terminate the participation of any state agency or bargaining unit if within three months the state agency or bargaining unit fails to perform any action required by ORS 243.230 to 243.300 and 292.051 or by board rule. [1979 c 469 §8]

243.260 Bargaining Unit Benefits Board Account; continuing appropriation for account. (1) There is created in the General Fund an account to be known as the Bargaining Unit Benefits Board Account, the balances of which are continuously appropriated to cover administrative expenses incurred in connection with the administration of ORS 243.230 to 243.300 and 292.051.

(2) There is appropriated to the Bargaining Unit Benefits Board Account all refunds and dividends from any carrier or contractor because of any agreement or contract entered into between the carrier and the board and, subject to ORS 243.280, an amount not to exceed two percent of the monthly state and employe contributions for any benefit available under ORS 243.230 to 243.300 and 292.051. [1979 c 469 §9]

243.265 Computation of health benefit contributions by employe and state. (1) The monthly contribution of each eligible employe for health benefit plan coverage described in ORS 243.250 shall be the total cost per month of the benefit coverage afforded the employe under the plan or plans for which the employe exercises an option, including the administrative expenses therefor, less the portion contributed by the state.

(2) The state contribution shall be the amount necessary to pay the cost of the health benefit plan or plans, including the cost of enrollment of all family members and the eligible employes and the administrative expenses therefor, or the amount appropriated or otherwise

authorized therefor by the Legislative Assembly, whichever amount is the lesser. [1979 c 469 §10]

243.270 Computation of dental benefit contributions by employe and state. (1) The monthly contribution of each eligible employe for dental benefit plan coverage shall be the total cost per month of the benefit coverage afforded the employe under the plan or plans for which the employe exercises an option, including the administrative expenses therefor, less the portion thereof contributed by the state.

(2) The state contribution shall be the amount necessary to pay the cost of the dental benefit plan or plans, including the cost of enrollment of eligible employes and the administrative expenses therefor, or the amount appropriated or otherwise authorized therefor by the Legislative Assembly, whichever amount is the lesser.

(3) The board may withdraw approval of such dental benefit plan in the same manner as it withdraws approval of health benefit plans as described and authorized by ORS 243.255. [1979 c 469 §11]

243.275 Additional benefit plans authorized. (1) In addition to contracting for health and dental benefit plans, the board may contract with carriers to provide at the expense of participating eligible employes and with or without state participation for coverage, including but not limited to, insurance or other benefit based on life, supplemental medical, supplemental dental, optical, accidental death or disability insurance plans.

(2) The monthly contribution of each eligible employe for other benefit plan or plans coverage, as described in subsection (1) of this section, shall be the total cost per month of the benefit coverage afforded the employe under the plan or plans, for which the employe exercises an option, including the cost of enrollment of such eligible employes and administrative expenses therefor.

(3) For any benefit plan or plans described in subsection (1) of this section in which the state participates, the monthly contribution of each eligible employe for the benefit plan, for which the employe exercises an option and there is state participation, shall be reduced by an amount equal to the portion thereof contributed by the state, including the cost of enrollment of the eligible employe and the administrative expenses therefor.

(4) The board may withdraw approval of any such additional benefit plan coverage in the same manner as it withdraws approval of health benefit plans as described and authorized by ORS 243.255. [1979 c 469 §12]

243.280 Transfer of moneys for payment of costs of providing benefit plans. Subject to legislative or Emergency Board approval of budgetary authorization for operation of the board and its administration of benefit plans and other duties as described by ORS 243.230 to 243.300 and 292.051, an amount not to exceed two percent of the state and employe contributions, as described in ORS 243.265 to 243.275, shall be forwarded by each payroll disbursing officer to the board and deposited by it in the State Treasury to the credit of the Bargaining Unit Benefits Board Account to meet administrative and other costs authorized by ORS 243.230 to 243.300 and 292.051. However, no such assessment shall be required for any month in which the balance in the account exceeds five percent of the monthly total of state and employe contributions. [1979 c.469 §14]

243.285 Salary deductions; payment of moneys to benefit plan contractor. (1) Upon receipt of the request in writing of an eligible employe so to do, the payroll disbursing officer authorized to disburse funds in payment of the salary or wages of the eligible employe may deduct from the salary or wages of the employe an amount of money indicated in such request for payment of the applicable amount set forth in contracts made by the employe or made on the employe's behalf for:

(a) Group health and related services and supplies, including such insurance for family members of the eligible employe.

(b) Group life insurance, including life insurance for family members of the eligible employe.

(c) Group dental and related services and supplies, or any other remedial care recognized by state law and related services and supplies, recognized under state law, including such insurance for family members of the eligible employe.

(d) Group indemnity insurance for accidental death and dismemberment and for loss of income due to accident, sickness or other disability, including such insurance for family members of the eligible employe.

(e) Other benefit plans approved and provided by the board.

(2) No state disbursing officer authorized to disburse funds in payment of salaries and wages is required to make deductions as authorized by subsection (1) of this section for more than one contract of the type referred to in paragraphs (a) to (e) of subsection (1) of this section per eligible employe.

(3) Moneys deducted pursuant to subsection (1) of this section shall be paid over promptly to

the carriers or persons responsible for payment of premiums to carriers, in accordance with the terms of the contracts made by the eligible employes or on their behalf. [1979 c.469 §13]

243.290 Reports. The payroll disbursing officer shall submit reports to the Bargaining Unit Benefits Board regarding benefit plan coverage for eligible or participating employes as the board considers desirable. [1979 c.469 §15]

243.295 Certain eligible employes permitted to receive state contributions for benefit plans of their choice. Any eligible employe unable to participate in one or more of the benefit plans described in ORS 243.230 to 243.300 and 292.051 solely because the employe is assigned to perform duties outside the state may be eligible to receive the monthly state payment of all or part of the cost of a benefit plan of the employe's choice, subject to the approval of the board and such rules as the board may adopt. [1979 c.469 §16]

243.300 Powers and duties of each benefit board with respect to the other; assistance and cooperation. (1) The State Employes' Benefit Board shall continue to provide health benefit, dental benefit and other benefit plans and coverage to all state agency employes, as described in ORS 243.105 to 243.205, 243.215 and 292.051, until such time as the Bargaining Unit Benefits Board is organized and has contracted for and offered benefit plan or plans coverage to eligible employes, as described by ORS 243.230 to 243.300 and 292.051.

(2) The State Employes' Benefit Board shall resume providing health benefit, dental benefit and other benefit plans and coverage to eligible employes upon the Bargaining Unit Benefits Board's exercise of its authority as described in ORS 243.240 (3).

(3) The State Employes' Benefit Board, following the implementation and operation of the Bargaining Unit Benefits Board, shall continue to provide health benefit, dental benefit and other benefit plans and coverage to state agency employes, not covered under ORS 243.230 to 243.300, as described in ORS 243.105 to 243.205, 243.215 and 292.051.

(4) The State Employes' Benefit Board shall cooperate to every extent possible in the establishment, implementation and operation of the Bargaining Unit Benefits Board. After establishment of the Bargaining Unit Benefits Board, the boards shall provide each other with assistance whenever such assistance is reasonable and prudent in promoting the welfare of eligible employes, as defined in ORS 243.105 and 243.230, and the state. [1979 c.469 §17]

LOCAL GOVERNMENT HEALTH COVERAGE CONTRACTS

243.303 Local government authority to make health care insurance coverage available to retired officers and employes, spouses and children. (1) As used in this section:

(a) "Health care" means medical, surgical, hospital or any other remedial care recognized by state law and related services and supplies and includes comparable benefits for persons who rely on spiritual means of healing.

(b) "Local government" means any city, county, school district or other special district in this state.

(c) "Retired employe" means a former officer or employe of a local government who is retired for service or disability, and who received or is receiving retirement benefits, under the Public Employes' Retirement System or any other retirement system or plan applicable to officers and employes of the local government.

(2) The governing body of any local government that contracts for or otherwise makes available health care insurance coverage for officers and employes of the local government shall, insofar as and to the extent possible, make that coverage available for any retired employe of the local government who elects within 60 days after the effective date of retirement to participate in that coverage and, at the option of the retired employe, for the spouse of the retired employe and any unmarried children under 18 years of age. The health care insurance coverage shall be made available for a retired employe until the retired employe becomes eligible for federal Medicare coverage, for the spouse of a retired employe until the spouse becomes eligible for federal Medicare coverage and for a child until the child arrives at majority, and may, but need not, be made available thereafter. The governing body may prescribe reasonable terms and conditions of eligibility and coverage, not inconsistent with this section, for making the health care insurance coverage available. The local government may pay none of the cost of making that coverage available or may agree, by collective bargaining agreement or otherwise, to pay part or all of that cost. [1981 c 240 §1, 1985 c 224 §1]

Note: 243.303 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

AFFIRMATIVE ACTION

243.305 Policy of affirmative action and fair and equal employment opportunities and advancement. (1) It is declared to be the public policy of Oregon that all branches of state government shall be leaders among employing entities within the state in providing to its citizens and employes, through a program of affirmative action, fair and equal opportunities for employment and advancement in programs and services and in the awarding of contracts.

(2) "Affirmative action" means a method of eliminating the effects of past and present discrimination, intended or unintended, on the basis of race, religion, national origin, age, sex, marital status or physical or mental handicaps. [1975 c 529 §1, 1981 c 436 §1]

243.315 Director of Affirmative Action; duties; appointment; confirmation; legislative and judicial branches to monitor own programs. (1) There is hereby created in the office of the Governor the position of Director of Affirmative Action. The primary duty of the occupant of this position shall be to direct and monitor affirmative action programs in all state agencies to implement the public policy stated in ORS 243.305. The director shall be appointed by the Governor, subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

(2) The legislative and judicial branches shall each select a person to monitor the effectiveness of the branches' affirmative action programs. [1975 c 529 §2, 1981 c 436 §2]

LEAVES OF ABSENCE FOR ATHLETIC COMPETITION

243.325 "Public employe" defined. For the purposes of this section, "public employe" means officers or employes, classified, unclassified, exempt and nonexempt, of:

- (1) State agencies.
- (2) Community colleges.
- (3) School districts and educational service districts.
- (4) County governments.
- (5) City governments.
- (6) Districts as defined in ORS 255.012 and any other special district. [1979 c.830 §1]

243.330 Leaves of absence for athletic competition; requirements; maximum period; reinstatement. (1) To encourage amateur athletic competition at the world level, state

agencies and political subdivisions described in ORS 243.325 (2) to (6) may grant leaves of absence on request to any public employe who participates in world, Pan American or Olympic events as a group leader, coach, official or athlete of a United States amateur team for the purpose of preparing for and engaging in the competition and preliminary competitions.

(2) The leave shall be with regular pay and benefits for periods of official training camps and competitions. Paid leave shall not exceed 90 days per calendar year.

(3) Upon expiration of the leave, the public employe shall have the right to be reinstated to the position held before the leave was granted and at the salary rates prevailing for such positions on the date of resumption of duty without loss of seniority or other employment rights. Failure of the employe to report within 30 days after termination of official competition shall be cause for dismissal.

(4) In order to be eligible for the benefits authorized by ORS 243.325 to 243.335, the public employe shall be a resident of this state for a period of not less than five years and shall have been a public employe of the particular employer for a period of not less than one year prior to being granted the leave. [1979 c 830 §2]

243.335 Reimbursement to public employer. Employes eligible for the benefits authorized by ORS 243.325 to 243.335 are obligated to reimburse the employer in full through monetary payment, with no interest charge, or through hours worked equivalent to the number of hours spent on athletic leave, or a combination of both. Full reimbursement shall be accomplished at a time not later than 10 years following the last day the employe received benefits under ORS 243.325 to 243.335. [1979 c 830 §3]

SMOKING IN STATE OFFICES

243.345 Smoking in places of state employment; policy statement. The Legislative Assembly finds that because the smoking of tobacco creates a health hazard, it is necessary to protect the public health by restricting smoking in places of employment operated by the State of Oregon. [Formerly 243 220]

243.350 Personnel Division rules restricting smoking in places of state employment. (1) In accordance with the provisions of ORS 183.310 to 183.550, the Personnel Division shall adopt rules restricting smoking in places of employment operated by departments or agencies of the State of Oregon. The rules of the division shall:

(a) Set standards for the designation of areas in a place of employment where smoking is permitted, including standards for ventilation and physical barriers.

(b) Require departments or agencies to designate areas in the place of employment where smoking is permitted pursuant to the standards of the division.

(c) Require departments or agencies supplying employes with lounges to provide smoke-free lounge areas for nonsmoking employes.

(d) Prohibit smoking in a place of employment in any area not designated as an area where smoking is permitted.

(2) The rules adopted by the division pursuant to subsection (1) of this section shall not apply to inclosed offices occupied exclusively by smokers, even though the offices may be visited by nonsmokers.

(3) Nothing in this section is intended to prevent departments or agencies from prohibiting smoking in the entire area of the place of employment. [Formerly 243 225]

DEFERRED COMPENSATION PROGRAM

243.400 Definitions for ORS 243.400 to 243.495. As used in ORS 243.400 to 243.495, unless the context otherwise requires:

(1) "Council" means the Oregon Investment Council created by ORS 293.706.

(2) "Deferred compensation plan" means an agreement between the state and an eligible employe that provides for payment by the state at a future date for services currently rendered by the eligible employe, and under which the state promises to pay the eligible employe fixed or variable amounts for life or for a guaranteed number of years after retirement or termination of employment.

(3) "Deferred compensation program" means a program established by the State of Oregon and approved by the Emergency Board that has as its purposes the deferral of compensation to eligible employes and the deferral of income taxation on the deferred compensation.

(4) "Eligible employe" means an officer or employe of a state agency who elects to participate in one of the deferred compensation plans described in ORS 243.430, including state officials and officers and employes in the exempt, unclassified and classified service, but not including individuals:

(a) Engaged as independent contractors;

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

(c) Provided sheltered employment or make-work by the state in an employment or industries program maintained for the benefit of such individuals.

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

(6) "State agency" means every state officer, board, commission, department or other activity of state government. [1977 c 721 §2, 1979 c.468 §31]

243.410 Deferred compensation program for state employes; choice of plans. (1) The Executive Department shall provide, administer and maintain a deferred compensation program on behalf of the State of Oregon for the benefit of eligible employes. The council shall study all matters connected with the providing of a deferred compensation program on the best basis possible with relation both to the welfare of eligible employes and the State of Oregon. The deferred compensation program designed by the council shall allow an eligible employe to choose between at least two deferred compensation plans for each mode of investment or deposit included in the program.

(2) The council shall devise specifications for deferred compensation plans, advertise for responses and bids, analyze responses and decide on the award of contracts.

(3) The council shall assure that opportunity for bids from additional financial institutions shall occur at least once every four years. [1977 c.721 §3, 1983 c.789 §1]

243.420 Approval of plans by Emergency Board. When the council has designed a deferred compensation program under ORS 243.400 to 243.495, 295.022 and 723.184, it shall submit that program to the Emergency Board for its approval. The council shall not advertise for bids on deferred compensation plans unless the deferred compensation program is approved by the Emergency Board. The council shall advertise at least once every four years on approved programs. [1977 c 721 §10; 1983 c 789 §2]

243.430 Council to contract for deferred compensation plans. The council may enter into contracts with insurance companies, banks, mutual savings banks, credit unions, savings and loan institutions or other persons to accept deposits of money, to purchase fixed or variable life insurance or annuity contracts or to

invest in mutual funds or common trust fund for the purpose of establishing deferred compensation plans for eligible employes. For such purpose, the council may also enter into contracts to invest in trusts in which deferred compensation funds from other public employers are pooled, if:

(1) The trust is a public instrumentality of such public employers and described in section (2)(b) of the Investment Company Act of 1940, 15 U.S.C. §80a-2(b), in effect September 20, 1985, or on the date the trust is a common trust fund described in ORS 709.170;

(2) Under the terms of the plan the net income from or gain or loss due to fluctuation in value of the underlying assets of the trust, or other change in such assets, is reflected in an equal increase or decrease in the amount distributable to the employe or the beneficiary thereof and, therefore, does not ultimately result in a net increase or decrease in the worth of the public employer or the state; and

(3) The fidelity of the trustees and others with access to such assets, other than a trust company, as defined in ORS 706.005, is insured by a surety bond satisfactory to the council issued by a company authorized to do a surety business in this state. [1977 c 721 §4; 1985 c 256 §1, 1985 c.690 §1]

243.440 Salary deduction for deferred compensation plan; amount; payment. (1) The state may agree with an eligible employe that the employe's salary shall be reduced monthly by a stated amount for the purpose of funding a deferred compensation plan for the employe. In no event, however, shall the stated amount be less than \$25 per month, nor shall it exceed 25 percent of the eligible employe's gross monthly income.

(2) The payroll disbursing officer is authorized, upon written request of an eligible employe, to reduce each month the salary of the eligible employe by an amount of money designated by that employe in the contract with the state under this section. The payroll disbursing officer may pay that amount to the Executive Department for deposit in the revolving fund established by ORS 243.495. [1977 c.721 §5, 1983 c.789 §3]

243.445 Employe choice of plans; choice not binding. When an eligible employe agrees to participate in a deferred compensation plan under ORS 243.400 to 243.495, the employe may indicate a preference with respect to the mode of investment or deposit to be used by the state in investing or depositing the deferred income under the plan, but the employe's choice shall not be binding on the Executive Department. [1977 c 721 §11, 1983 c 789 §4]

243.450 Disclosure statement; contents. The Executive Department shall give each eligible employee who participates in a deferred compensation plan under the deferred compensation program, prior to the deferral of any part of that employee's salary, a disclosure statement in writing that contains for that plan all information, including the probable income and probable safety of the moneys deferred, that persons of reasonable prudence and discretion require when determining the permanent disposition of their funds. [1977 c.721 §12]

243.460 Effect of deferred compensation on current taxable income and on retirement programs. (1) The amount by which an eligible employee's salary is reduced under ORS 243.440 shall continue to be included as regular compensation for the purpose of computing the retirement, pension and social security benefits earned by the employee, but that amount shall not be considered current taxable income for the purpose of computing federal and state income taxes withheld on behalf of the employee.

(2) The deferred compensation program established by ORS 243.400 to 243.495, 295.022 and 723.184 exists and supplements retirement and pension systems established by the State of Oregon, and participation by an eligible employee in a deferred compensation plan shall not cause a reduction of any retirement or pension benefits provided to the employee by law. [1977 c 721 §6]

243.470 Administration of deferred compensation program; costs. (1) Subject to ORS 183.310 to 183.550, the Executive Department is authorized to adopt rules necessary to properly administer the provisions of ORS 243.400 to 243.495, 295.022 and 723.184 and determine the terms and conditions of eligible employee participation and coverage.

(2) The Executive Department shall maintain accounts and records necessary and appropriate to the efficient administration of ORS 243.400 to 243.495, 295.022 and 723.184 or which may be required by agencies of the State of Oregon or the United States.

(3) The Executive Department may contract with a private corporation or institution able and qualified to provide consolidated billing services, participant enrollment services, participant accounts, data processing, recordkeeping and other related services that are necessary or appropriate to the administration of ORS 243.400 to 243.495, 295.022 and 723.184.

(4) The council may retain consultants, who are not subject to the State Personnel Relations Law, as necessary to assist the council in devising

specifications for plans and bids and in analyzing responses under ORS 243.410 (2) and 243.430.

(5) It is the intent of this plan that it should not be implemented or administered to be an expense to the State of Oregon. The Executive Department may assess a charge to the participants not to exceed two percent on monthly amounts deferred. This assessment will be used to cover the costs incurred by the Executive Department to administer the program as authorized by ORS 243.410 to 243.495. [1977 c.721 §8; 1983 c.789 §5]

243.480 Accounting Division rules. The Accounting Division of the Executive Department shall adopt rules for enrollment of eligible employees in the deferred compensation program, for payroll deductions from those eligible employees and for transfer of the amounts so deducted. The Accounting Division shall adopt forms that the division considers necessary or appropriate for the performance of its duties under ORS 243.400 to 243.495, 295.022 and 723.184. [1977 c.721 §9; 1983 c.789 §6]

243.490 Deferred assets as assets of state; obligation to participating employees.

(1) All assets withheld or deferred by the state under ORS 243.400 to 243.495, 295.022 and 723.184 shall remain unrestricted assets of the State of Oregon until such time as the assets are distributed to the eligible employee or beneficiary in accordance with the terms of the agreement between the eligible employee and the state. The obligation of the state to the eligible employee shall be a contractual obligation only with no preferred or special interest in deferred funds to such eligible employee.

(2) If the state acquires any contracts or other assets in connection with the duties assumed by it under ORS 243.400 to 243.495, 295.022 and 723.184, an eligible employee or beneficiary has no right with respect to, or claim against, those contracts or other assets. The contracts or other assets shall not be held as collateral security for the fulfilling of obligations of the State of Oregon under a deferred compensation plan, and shall be subject to the claims of creditors of the state. [1977 c 721 §7]

243.495 State Employees' Deferred Compensation Revolving Fund; status of fund. (1) There is established the State Employees' Deferred Compensation Revolving Fund.

(2) All moneys withheld as deferred compensation from the salaries of eligible employees under ORS 243.400 to 243.495 and all interest income derived therefrom shall be deposited in the revolving fund.

(3) The revolving fund shall be deposited with the State Treasurer. The revolving fund is continuously appropriated to and at the disposal of the Executive Department for investment or deposit as provided in ORS 243.400 to 243.495.

(4) All moneys in the revolving fund established under this section remain the unrestricted assets of the State of Oregon and are subject to recovery by the general creditors of the State of Oregon until such time as the moneys are distributed to an eligible employe or the beneficiary of the employe in accordance with the terms of the agreement between the eligible employe and the state. [1977 c 721 §13; 1983 c.789 §7]

243.510 [1955 c 368 §1; repealed by 1975 c 609 §25]

243.520 [1955 c 368 §2; repealed by 1975 c.609 §25]

243.530 [1955 c.368 §3, repealed by 1975 c.609 §25]

243.540 [1955 c.368 §4; repealed by 1975 c.609 §25]

DEPENDENT CARE ASSISTANCE PLAN

243.550 Dependent care assistance plan. (1) The state or any agency thereof shall establish in its accounting system allowances for employes to dedicate part of their salary to a dependent care assistance plan.

(2) Upon application by a public employe, the state or any agency thereof shall allow the employe to participate in a dependent care assistance plan at that place of employment.

(3) Portions of a public employe's salary dedicated to a dependent care assistance plan shall be included in any computation of benefits under that employe's public employe retirement program. [1987 c.621 §1]

Note: 243 550 to 243 585 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

EXPENSE REIMBURSEMENT PLAN

243.555 Definitions for ORS 243.555 to 243.580. As used in ORS 243.555 to 243.580:

(1) "Benefit board" means the State Employes' Benefit Board and the Bargaining Unit Benefits Board.

(2) "Expense reimbursement plan" means a plan established by a benefit board in accordance with state and federal tax laws to reimburse qualified employe expenses.

(3) "Payroll disbursing officer" means the state officer or official authorized to disburse

moneys in payment of salaries and wages of employes of a state agency.

(4) "Qualified employe expenses" includes expenses for dependent care, medical expenses, insurance premiums and any other expenses qualified for tax free reimbursement under the federal Internal Revenue Code.

(5) "State agency" means every state officer, board, commission, department or other activity of state government. [1987 c.621 §2]

Note: See note under 243.550.

243.560 Rulemaking; charge for administration; records. (1) A benefit board may provide, administer and maintain an expense reimbursement plan for the benefit of eligible employes of this state.

(2) In providing an expense reimbursement plan, a benefit board shall adopt rules to:

(a) Determine the qualifications of eligible employes and the expenses eligible for reimbursement.

(b) Establish limits on the amount by which an eligible employe's compensation may be reduced.

(c) Establish procedures for enrollment of eligible employes in an expense reimbursement plan.

(d) Establish requirements for verification of reimbursable expenses.

(3) A benefit board may assess a charge to participating employes to pay the cost of administering the plan or may pay some or all of such cost from funds authorized to pay general administration expenses incurred by such board or from earnings on moneys deposited in the Compensation Reduction Revolving Fund established under ORS 243.580.

(4) The state shall maintain accounts and records necessary and appropriate to the efficient administration of ORS 243.550 to 243.585 and 418.817 or which may be required under federal or state law. [1987 c 621 §3]

Note: See note under 243 550.

243.565 Administration of plan. (1) A benefit board may enter into an agreement with another benefit board for joint administration of a single expense reimbursement plan for eligible employes.

(2) A benefit board may contract with a private organization for administration of an expense reimbursement program.

(3) An agreement or contract entered into pursuant to this section may provide that the

administering agency or organization shall exercise the authority and responsibility of a benefit board participating in the agreement or contract. [1987 c 621 §6]

Note: See note under 243.550

243.570 Compensation reduction agreement. (1) After the adoption of an expense reimbursement plan by a benefit board, and prior to the effective date of the plan, the state shall enter into a compensation reduction agreement with eligible employees electing to participate in the plan for the purpose of funding reimbursements under the plan.

(2) The payroll disbursing officer is authorized, upon the enrollment of an eligible employee in the plan, to reduce each pay period the compensation of the eligible employee by the amount specified in the compensation reduction agreement. The payroll disbursing officer may pay that amount to the State Treasurer for deposit in the Compensation Reduction Revolving Fund established by ORS 243.580. [1987 c.621 §4]

Note: See note under 243.550

243.575 Computation of retirement and pension benefits; taxable income. (1) The amount by which an eligible employee's compensation is reduced under ORS 243.570 shall continue to be included as regular salary for the purpose of computing the retirement and pension benefits earned by the employee, but that amount shall not be considered current taxable income for the purpose of computing social security benefits or federal and state income taxes withheld on behalf of the employee.

(2) All amounts by which compensation is reduced under ORS 243.570 shall remain assets of this state until such time as the amounts are disbursed to or on behalf of eligible employees in accordance with the terms of compensation reduction agreements between the employees and the state. [1987 c.621 §§5, 7]

Note: See note under 243.550

243.580 Compensation Reduction Revolving Fund. (1) There is established the Compensation Reduction Revolving Fund.

(2) All moneys withheld from the compensation of eligible employees under ORS 243.550 to 243.585 and 418.817 and all interest income therefrom shall be credited to and deposited in the revolving fund.

(3) The revolving fund shall be deposited with the State Treasurer. The revolving fund is continuously appropriated to and shall be at the disposal of the benefit boards for deposit and

disbursement as provided in ORS 243.550 to 243.585 and 418.817.

(4) All moneys in the revolving fund shall remain the unrestricted assets of this state and are subject to recovery by the general creditors of this state until such time as the moneys are disbursed in accordance with the terms of a compensation reduction agreement. [1987 c 621 §8]

Note: See note under 243.550.

243.585 Accounting system allowances for dedication of salary. (1) Any political subdivision in this state may establish in its accounting system allowances for employees to dedicate part of their salary to expenses for dependent care, medical expenses, insurance premiums and any other expenses qualified for tax-free reimbursement under the federal Internal Revenue Code.

(2) Upon application by a public employee, a political subdivision that has established allowances described in subsection (1) of this section may allow the employee to participate in an expense reimbursement plan qualified under the federal Internal Revenue Code at that place of employment.

(3) Portions of a public employee's salary dedicated to an expense reimbursement plan under this section shall be included in any computation of benefits under that employee's public employee retirement program.

(4) The amount by which an eligible employee's compensation is reduced under subsections (1) to (3) of this section shall continue to be included as regular salary for the purpose of computing the retirement and pension benefits earned by the employee, but that amount shall not be considered current taxable income for the purpose of computing social security benefits or federal and state income taxes withheld on behalf of the employee.

(5) All amounts by which compensation is reduced under subsection (4) of this section shall remain assets of the political subdivision until such time as the amounts are disbursed to or on behalf of eligible employees in accordance with the terms of compensation reduction agreements between the employees and the state. [1987 c.621 §§9, 10, 11]

Note: See note under 243.550.

243.610 [1955 c 382 §1; repealed by 1975 c 609 §25]

243.620 [1955 c.382 §2; 1961 c.507 §1; repealed by 1975 c 609 §25]

COLLECTIVE BARGAINING (Generally)

243.650 Definitions for ORS 243.650 to 243.782. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) "Appropriate bargaining unit" means the unit designated by the board to be appropriate for the purpose of collective bargaining.

(2) "Board" means the Employment Relations Board.

(3) "Certification" means official recognition by the board that a labor organization is the exclusive representative for all of the employes in the appropriate bargaining unit.

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its employes to meet at reasonable times and confer in good faith with respect to employment relations, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

(5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute are required by law to submit their differences to a third party for a final and binding decision.

(6) "Confidential employe" means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

(7) "Employment relations" includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.

(8) "Exclusive representative" means the labor organization which, as a result of certification by the board or recognition by the employer, has the right to be the collective bargaining agent of all employes in an appropriate bargaining unit.

(9) "Factfinding" means identification of the major issues in a particular labor dispute by one or more impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.

(10) "Fair-share agreement" means an agreement between the public employer and the recognized or certified bargaining representative of public employes whereby employes who are not members of the employe organization are

required to make an in-lieu-of-dues payment to an employe organization except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more of the employes in an appropriate bargaining unit covered by such union security agreement declaring they desire that such agreement be rescinded, the board shall take a secret ballot of the employes in such unit and certify the results thereof to the recognized or certified bargaining representative and to the public employer. Unless a majority of the votes cast in an election favor such union security agreement, the board shall certify deauthorization, thereof. A petition for deauthorization of a union security agreement must be filed not more than 90 calendar days after the collective bargaining agreement is executed. Only one such election shall be conducted in any appropriate bargaining unit during the term of a collective bargaining agreement between a public employer and the recognized or certified bargaining representative.

(11) "Labor dispute" means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employe.

(12) "Labor organization" means any organization which has as one of its purposes representing employes in their employment relations with public employers.

(13) "Legislative body" means the Legislative Assembly, the city council, the county commission and any other board or commission empowered to levy taxes.

(14) "Supervisory employe" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or having responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. However, the exercise of any function of authority enumerated in this subsection shall not necessarily require the conclusion that the individual so exercising that function is a supervisor within the meaning of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

(15) "Mediation" means assistance by an impartial third party in reconciling a labor dis-

pute between the public employer and the exclusive representative regarding employment relations.

(16) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employes. The payment shall be equivalent to regular union dues and assessments, if any, or shall be an amount agreed upon by the public employer and the exclusive representative of the employes.

(17) "Public employe" means an employe of a public employer but does not include elected officials, persons appointed to serve on boards or commissions or persons who are "confidential employes" or "supervisory employes."

(18) "Public employer" means the State of Oregon or any political subdivision therein, including cities, counties, community colleges, school districts, special districts and public and quasi-public corporations. "Public employer" includes any individual designated by the public employer to act in its interests in dealing with public employes.

(19) "Strike" means a public employe's refusal in concerted action with others to report for duty, or his or her wilful absence from his or her position, or his or her stoppage of work, or his or her absence in whole or in part from the full, faithful or proper performance of his or her duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employe to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

(20) "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672.

(21) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision. [Formerly 243.711; 1975 c.728 §1; 1978 c.5 §1; 1987 c.792 §1]

243.656 Policy statement. The Legislative Assembly finds and declares that:

(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employes;

(2) Recognition by public employers of the right of public employes to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employe organizations can alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employes;

(3) Experience in private and public employment has also proved that protection by law of the right of employes to organize and negotiate collectively safeguards employes and the public from injury, impairment and interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers and public employes;

(4) The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government; and

(5) It is the purpose of ORS 243.650 to 243.782 to obligate public employers, public employes and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employe relations within the various public employers by providing a uniform basis for recognizing the right of public employes to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers. [1973 c.536 §2]

243.662 Rights of public employes to join labor organizations. Public employes have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations. [Formerly 243.730]

243.666 Certified or recognized labor organization as exclusive employe group representative; protection of employe non-association rights. (1) A labor organization certified by the Employment Relations Board or

recognized by the public employer is the exclusive representative of the employes of a public employer for the purposes of collective bargaining with respect to employment relations. Nevertheless any agreements entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employes, based on bona fide religious tenets or teachings of a church or religious body of which such employe is a member. Such employe shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a non-religious charity or to another charitable organization mutually agreed upon by the employe affected and the representative of the labor organization to which such employe would otherwise be required to pay dues. The employe shall furnish written proof to the employer of the employe that this has been done.

(2) Notwithstanding the provisions of subsection (1) of this section, an individual employe or group of employes at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization, if:

(a) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.

(3) Nothing in this section prevents a public employer from recognizing a labor organization which represents at least a majority of employes as the exclusive representative of the employes of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative in accordance with ORS 243.686. [Formerly 243 735; 1983 c 740 §65]

(Unfair Labor Practices)

243.672 Unfair labor practices; filing complaints. (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employes in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employe organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging mem-

bership in an employe organization. Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employes. If such a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing shall prohibit the deduction of the payment-in-lieu-of-dues from the salaries or wages of such employes.

(d) Discharge or otherwise discriminate against an employe because the employe has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

(e) Refuse to bargain collectively in good faith with the exclusive representative.

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

(h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign such contract.

(i) Communicate directly or indirectly with employes in the bargaining unit other than the designated bargaining representative during the period of negotiations regarding employment relations, except for matters relating to the performance of the work involved.

(2) It is an unfair labor practice for a public employe or for a labor organization or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce any employe in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782.

(b) Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.

(c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(d) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

(e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(f) Communicate directly or indirectly during the period of negotiations with officials other than those designated to represent the employer regarding employment relations.

(3) No provision of ORS 243.650 to 243.782 makes an unfair labor practice any act that was performed before October 5, 1973.

(4) An injured party may file a written complaint with the board not later than 180 days following the occurrence of an unfair labor practice. [1973 c 536 §4]

243.676 Processing of unfair labor practice complaints. (1) Whenever a written complaint is filed alleging that any person has engaged in or is engaging in any unfair labor practice listed in ORS 243.672 (1) and (2) and 243.752, the board or its agent shall:

(a) Cause to be served upon such person a copy of the complaint;

(b) Investigate the complaint to determine if a hearing on the unfair labor practice charge is warranted. If the investigation reveals that no issue of fact or law exists, the board may dismiss the complaint; and

(c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or an agent of the board not more than 20 days after a copy of the complaint has been served on the person.

(2) Where, as a result of the hearing required pursuant to paragraph (c) of subsection (1) of this section, the board finds that any person named in the complaint has engaged in or is engaging in any unfair labor practice charged in the complaint, the board shall:

(a) State its findings of fact;

(b) Issue and cause to be served on such person an order that the person cease and desist from the unfair labor practice;

(c) Take such affirmative action, including but not limited to the reinstatement of employes with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785;

(d) Designate the amount and award representation costs, if any, to the prevailing party; and

(e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal, including proceedings for Supreme Court review, of a board order.

(3) Where the board finds that the person named in the complaint has not engaged in or is not engaging in an unfair labor practice, the board shall:

(a) Issue an order dismissing the complaint; and

(b) Designate the amount and award representation costs, if any, to the prevailing party.

(4) The board may award a civil penalty to any person as a result of an unfair labor practice complaint hearing, in the aggregate amount of up to \$1,000 per case, without regard to attorney fees, if:

(a) The complaint has been affirmed pursuant to subsection (2) of this section and the board finds that the person who has committed, or who is engaging, in an unfair labor practice has done so repetitively, knowing that the action taken was an unfair labor practice and took the action disregarding this knowledge, or that the action constituting the unfair labor practice was egregious; or

(b) The complaint has been dismissed pursuant to subsection (3) of this section, and that the complaint was frivolously filed, or filed with the intent to harass the other person, or both.

(5) As used in subsections (1) to (4) of this section, "person" includes but is not limited to individuals, labor organizations, associations and public employers. [1973 c.536 §5; 1979 c 219 §1; 1983 c 504 §1; 1983 c.559 §1]

(Representation Matters)

243.682 Representation questions; investigation and hearings on petitions; elections. If a question of representation exists, the board shall:

(1) Upon application of a public employer, public employe or a labor organization, designate the appropriate bargaining unit, and in making its determination shall consider such factors as community of interest, wages, hours and other working conditions of the employes involved, the history of collective bargaining, and the desires of the employes. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.

(2) Investigate and conduct a hearing on a petition that has been filed by:

(a) A labor organization alleging that 30 percent of the employes in an appropriate bargaining unit desire to be represented for collective bargaining by an exclusive representative;

(b) A labor organization alleging that 30 percent of the employees in an appropriate bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit;

(c) A public employer alleging that one or more labor organizations has presented a claim to the public employer requesting recognition as the exclusive representative in an appropriate bargaining unit; or

(d) An employe or group of employes alleging that 30 percent of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit.

(3) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to subsection (2) of this section that a question of representation exists, it shall conduct an election by secret ballot, at a time and place convenient for the employes of the jurisdiction and also within a reasonable period of time after the filing has taken place, and certify the results thereof. [1973 c.536 §7]

243.686 Representation elections; ballot form; determining organization to be certified; consent elections. (1) The board shall place on the ballot only those labor organizations designated to be placed on the ballot by more than 10 percent of the employees in an appropriate bargaining unit.

(2) The ballot shall contain a provision for marking no representation.

(3) The board shall determine who is eligible to vote in the election and require the employer to provide a complete list of all such eligible persons, their names, addresses and job classifications to each candidate organization on the ballot at least 20 days before the election is to occur.

(4) The labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

(5) In any election where there are more than two choices on the ballot and none of the choices receives a majority of the votes cast, a runoff election shall be conducted. The ballot in the runoff election shall contain the two choices on the original ballot that received the largest number of votes.

(6)(a) In conducting an election involving the faculty of a college or university administered by the State Board of Higher Education, the board shall place on the same ballot provisions for voting on two issues:

(A) For or against representation; and

(B) For those labor organizations designated to be placed on the ballot by more than 10 percent of the employees in an appropriate bargaining unit.

(b) If a majority of votes in subparagraph (A) of paragraph (a) of this subsection are cast in favor of no representation, the board shall not count the votes cast for labor organizations and shall certify no representative for the unit.

(c) If a majority of votes in subparagraph (A) of paragraph (a) of this subsection are cast in favor of representation, the board shall count the votes in subparagraph (B) of paragraph (a) of this subsection for the designated labor organizations and, if an organization receives a majority of those votes cast, shall certify that organization as the exclusive representative. If no labor organization receives a majority of the votes cast in subparagraph (B) of paragraph (a) of this subsection, a runoff election shall be conducted. The ballot in the runoff election shall contain only the two labor organizations that received the largest number of votes.

(7) Nothing in this section is intended to prohibit the waiving of hearings by stipulation for the purpose of a consent election, in conformity with the rules of the board. [1973 c.536 §8; 1983 c.83 §27]

243.692 Limitation on successive representation elections. (1) No election shall be conducted pursuant to ORS 243.682 (3) in any appropriate bargaining unit within which the preceding 12-month period an election was held nor during the term of any lawful collective bargaining agreement between a public employer and an employe representative. However, a contract with a term of more than two years shall be a bar for only the first two years of its term.

(2) Notwithstanding subsection (1) of this section, the board shall rule that a contract will not be given the effect of barring an election if it finds that:

(a) Unusual circumstances exist under which the contract is no longer a stabilizing force; and

(b) An election should be held to restore stability to the representation of employes in the unit.

(3) A petition for an election where a contract exists must be filed not more than 90 calendar days and not less than 60 calendar days before the end of the contract period. If the contract is for more than two years, a petition for election may be filed any time after two years from the effective date of the contract. [1973 c.536 §9]

(Bargaining; Mediation; Factfinding)

243.696 State agency representatives in bargaining; Chief Justice as representative of judicial branch. (1) The Executive Department of the State of Oregon shall represent all state agencies which have bargaining units in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of exempt, unclassified and classified employes, except those unclassified employes governed by the provisions of ORS 240.240. The Executive Department may delegate such collective bargaining responsibility to operating agencies as may be appropriate.

(2) The Chief Justice of the Supreme Court shall represent the judicial department in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of officers and employes of the courts of this state who are state officers or employes. The Chief Justice may delegate such collective bargaining responsibility to the state court administrator. [1973 c 536 §10, 1979 c.468 §25; 1983 c 763 §64]

243.702 Renegotiation of invalid agreements: (1) In the event any provision of a collective bargaining agreement is declared to be invalid by any court of competent jurisdiction, by ruling by the board or by inability of the employer or the employes to perform to the terms of the agreement, then upon request by either party all or any part of the entire collective bargaining agreement shall be reopened for negotiation.

(2) The public employer and the exclusive representative shall provide for and make every reasonable effort to conclude negotiations, including provisions for an effective date, a reopening date, and an expiration date, at a time to coincide, as nearly as possible, with the period during which the appropriate legislative bodies may act on the operating budget of the employers. [1973 c.536 §11]

243.706 Agreement may provide for grievance and other disputes to be resolved by binding arbitration. (1) A public employer may enter into a written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding arbitration.

(2) In addition to subsection (1) of this section, a public employer may enter into a written agreement with the exclusive representative of its employes providing that a labor dispute over conditions and terms of a contract may be

resolved through binding arbitration. [1973 c 536 §12]

243.710 [1963 c.579 §2; repealed by 1969 c 671 §1 (243.711 enacted in lieu of 243.710)]

243.711 [1969 c.671 §2 (enacted in lieu of 243 710), 1973 c 536 §1; renumbered 243.650]

243.712 Mediation upon failure to agree after reasonable time; factfinding; effect of subsequent arbitration decision.

(1) If after a reasonable period of negotiation over the terms of an agreement or after a reasonable time following certification or recognition of an exclusive representative no agreement has been signed, either or both of the parties shall notify the board of the status of negotiations. Such notification shall contain a statement of each issue on which the public employer and the exclusive representative have failed to achieve an agreement through negotiation; or the board on its own motion may determine that the public employer and the exclusive representative have failed to achieve an agreement on a labor dispute through negotiations. Upon receipt of such notification the board shall assign a mediator upon request of either party or upon its own motion.

(2) Where the board on the request of one of the parties or on its own motion has determined that the parties have failed to achieve agreement through negotiation, the board shall render assistance to resolve the labor dispute according to the following schedule:

(a) Mediation shall be provided by the State Conciliation Service as provided by ORS 662.405 to 662.455.

(b) When a party is the exclusive representative of public employes who are prohibited from striking under ORS 243.736, if the labor dispute has not been settled after 15 days of mediation and if all the parties to the dispute have not jointly petitioned the board in writing to initiate factfinding, the parties or the board shall initiate binding arbitration as provided in ORS 243.742 to 243.762. In such cases, within seven days of the conclusion of mediation, the mediator shall make public a list of the issues, including any proposed contract language dealing with those issues, on which the parties have failed to reach agreement. Arbitration shall not be requested until the expiration of 30 days following the conclusion of mediation. In all other cases, if the labor dispute has not been settled after 15 days of mediation, the parties jointly or individually may petition the board in writing to initiate factfinding. In lieu of a petition, the board on its own motion may initiate such factfinding if it deems it appropriate and in the public interest.

(c) Nothing in this section shall be construed to prohibit the parties at any time from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration, and if such agreement is reached said arbitration shall supersede the mediation and factfinding procedures set forth in this section. [1973 c.536 §13; 1987 c 84 §1]

243.720 [1963 c.579 §1; repealed by 1973 c.536 §39]

243.722 Factfinding procedure; costs; effect of subsequent arbitration decision.

(1) In carrying out the factfinding procedures authorized in ORS 243.712 (2)(b), the public employer and the exclusive representative may select their own factfinder.

(2) Where the parties have not selected their own factfinder within five days after notification by the board that factfinding is to be initiated, the board shall submit to the parties a list of five qualified, disinterested persons. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining individual shall be designated the "factfinder."

(a) When both parties desire a panel of three factfinders instead of one as provided in this subsection, the board shall submit to the parties a list of seven qualified, disinterested persons. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining three persons shall be designated "factfinders."

(b) When the parties have not designated the factfinder and notified the board of their choice within five days after receipt of the list, the board shall appoint the factfinder from the list. However, if one of the parties strikes the names as prescribed in this subsection and the other party fails to do so, the board shall appoint the factfinder only from the names remaining on the list.

(3) The factfinder shall establish dates and places of hearings. Upon the request of either party or the factfinder, the board shall issue subpoenas. The factfinder may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute. Not more than 30 days from the date of conclusion of the hearings, the factfinder shall make written findings of fact and recommendations for resolution of the dispute and shall serve such findings and recommendations upon the parties and upon the board. Service may be personal or by registered or certified mail. Not more than five working days after the findings and recommendations have been sent, the parties shall notify the

board and each other whether or not they accept the recommendations of the factfinder. If the parties do not accept them, the board, five days after receiving notice that one or both of the parties do not accept the findings, shall publicize the factfinder's findings of facts and recommendations.

(4) The parties may voluntarily agree at any time during or after factfinding to submit any or all of the issues in dispute to final and binding arbitration, and if such agreement is reached prior to the publication of the factfinder's findings of facts and recommendations, the board shall not publicize such findings and recommendations.

(5) The cost of factfinding shall be borne equally by the parties involved in the dispute. [1973 c 536 §14]

(Strikes)

243.726 Public employe strikes; equitable relief against certain strikes; effect of unfair labor practice charge on prohibited strike.

(1) Participation in a strike shall be unlawful for any public employe who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board or recognized by the employer; or is included in an appropriate bargaining unit which provides for resolution of a labor dispute by referral to final and binding arbitration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

(2) It shall be lawful for a public employe who is not prohibited from striking under subsection (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike after:

(a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes have been complied with in good faith;

(b) The proceedings for the prevention of any prohibited practice have been exhausted;

(c) Thirty days have elapsed since the board has made public the factfinder's findings of fact and recommendations; and

(d) The exclusive representative has given 10 days' notice by certified mail of its intent to strike and stating the reasons for its intent to strike to the board and the public employer.

(3)(a) Where the strike occurring or is about to occur creates a clear and present danger or

threat to the health, safety or welfare of the public, the public employer concerned may petition the circuit court of the county in which the strike has taken place or is to take place for equitable relief including but not limited to appropriate injunctive relief.

(b) If the strike is a strike of state employes the petition shall be filed in the Circuit Court of Marion County.

(c) If, after hearing, the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall include an order that the labor dispute be submitted to final and binding arbitration within 10 days of the court's order. The manner of selection of a board of arbitration shall be as set forth in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

(4)(a) No labor organization shall declare or authorize a strike of public employes which is or would be in violation of this section. When it is alleged in good faith by the public employer that a labor organization has declared or authorized a strike of public employes which is or would be in violation of this section, the employer may petition the board for a declaration that the strike is or would be unlawful. The board, after conducting an investigation and hearing, may make such declaration if it finds that such declaration or authorization of a strike is or would be unlawful.

(b) When a labor organization or individual disobeys an order of the appropriate circuit court issued pursuant to enforcing an order of the board involving this section and ORS 243.736, they shall be punished according to the provisions of ORS 33.010 to 33.150, 33.210 to 33.340, 33.410 to 33.430, 33.510, 33.520, 33.610, 33.710 and 33.720, except that the amount of the fine shall be at the discretion of the court.

(5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike. The board upon the filing of an unfair labor charge alleging that a public employer has committed an unfair labor practice during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the court of competent jurisdiction for appropriate relief or a restraining order.

(6) As used in this section, "danger or threat to the health, safety or welfare of the public" does not include an economic or financial inconvenience to the public or to the public employer that is normally incident to a strike by public employes. [1973 c.536 §16, 1979 c.257 §1]

243.730 [1963 c.579 §3; 1973 c.536 §3; renumbered 243.662]

243.732 Refusal to cross picket line as prohibited strike. Public employes, other than those engaged in a nonprohibited strike, who refuse to cross a picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of ORS 243.726, pertaining to prohibited strikes. [1973 c.536 §23]

243.735 [1969 c.671 §5, 1973 c.536 §6, renumbered 243.666]

243.736 Strikes by certain emergency and security personnel. (1) It shall be unlawful for any emergency telephone worker, police officer, firefighter or guard at a correctional institution or mental hospital to strike or recognize a picket line of a labor organization while in the performance of official duties.

(2) As used in this section, "emergency telephone worker" means a person whose official focal duties are receiving information through an emergency telephone system under ORS 401.710 to 401.790, relaying such information to public or private safety agencies or dispatching emergency equipment or personnel in response to such information. [1973 c.536 §17; 1985 c.232 §1]

273.740 [1963 c.579 §4, repealed by 1973 c.536 §39]

(Arbitration)

243.742 Binding arbitration where strike prohibited. (1) It is the public policy of the State of Oregon that where the right of employes to strike is by law prohibited, it is requisite to the high morale of such employes and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785, providing for compulsory arbitration, shall be liberally construed.

(2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation and factfinding of a labor dispute, have not culminated in a signed agreement between the parties who are prohibited from striking, the public employer or exclusive representative of its employes shall petition the board in writing to initiate binding arbitration. In lieu of a petition, the board on its own motion may initiate such arbitration if it deems it appropriate and in the public interest. [1973 c.536 §18]

243.745 [1969 c.671 §6; repealed by 1973 c.536 §39]

243.746 Selection of arbitrator; arbitration procedure; sharing arbitration

costs. (1) In carrying out the arbitration procedures authorized in subsection (2) of ORS 243.742, the public employer and the exclusive representative may select their own arbitrator.

(2) Where the parties have not selected their own arbitrator within five days after notification by the board that arbitration is to be initiated, the board shall submit to the parties a list of five qualified, disinterested persons. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining individual shall be designated the "arbitrator":

(a) When both parties desire a panel of three arbitrators instead of one as provided in this subsection, the board shall submit to the parties a list of seven qualified, disinterested persons. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining three persons shall be designated "arbitrators."

(b) When the parties have not designated the arbitrator and notified the board of their choice within five days after receipt of the list, the board shall appoint the arbitrator from the list. However, if one of the parties strikes the names as prescribed in this subsection and the other party fails to do so, the board shall appoint the arbitrator only from the names remaining on the list.

(3) The arbitrator shall establish dates and places of hearings. Upon the request of either party or the arbitrator, the board shall issue subpoenas. The arbitrator may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute.

(4) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(e) The average consumer prices for goods and services commonly known as the cost of living.

(f) The overall compensation presently received by the employes, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private service.

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, the arbitrator shall make written findings of fact and promulgate a written opinion and order upon the issues presented to the arbitrator and upon the record made before the arbitrator, and shall serve such findings, opinions and order upon the parties and upon the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be just and reasonable and based upon the factors prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute. [1973 c 536 §19]

243.750 [1963 c.579 §5, repealed by 1969 c.671 §3 (243 751 enacted in lieu of 243.750)]

243.751 [1969 c.671 §4 (enacted in lieu of 243 750); repealed by 1973 c.536 §39]

243.752 Arbitration decision final; enforcement; effective date of compensation increases; modifying award. (1) A majority decision of the arbitration panel, under ORS 243.706 and 243.726 and 243.736 to 243.746, if supported by competent, material and substantial evidence on the whole record, based upon the factors set forth in ORS 243.746 (4), shall be final and binding upon the parties. Refusal or failure to comply with any provision of a final and binding

arbitration award is an unfair labor practice. Any order issued by the board pursuant to this section may be enforced at the instance of either party or the board in the circuit court for the county in which the dispute arose.

(2) The arbitration panel may award increases retroactively to the first day after the expiration of the immediately preceding collective bargaining agreement. At any time the parties, by stipulation, may amend or modify an award of arbitration. [1973 c.536 §20; 1981 c 423 §1, 1983 c 504 §2]

243.756 Employment conditions to be unchanged during arbitration. During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to the rights or position of the party under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785. [1973 c.536 §21]

243.760 [1963 c.579 §6, repealed by 1973 c.536 §39]

243.762 Alternative arbitration procedure under collective bargaining agreement. Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785 is intended to prohibit a public employer and the exclusive representative of its employes from entering into a collective bargaining agreement which provides for a compulsory arbitration procedure which is substantially equivalent to ORS 243.742 to 243.756. [1973 c 536 §22]

(Miscellaneous)

243.766 Board duties in administration of collective bargaining laws. The board shall:

(1) Establish procedures for, investigate and resolve any disputes concerning the designation of an appropriate bargaining unit.

(2) Establish procedures for, resolve disputes with respect to, and supervise the conduct of elections for the determination of employe representation.

(3) Conduct proceedings on complaints of unfair labor practices by employers, employes and labor organizations and take such actions with respect thereto as it deems necessary and proper.

(4) Petition the appropriate circuit court for enforcement of any order issued by the board pursuant to ORS 243.650 to 243.782.

(5) Hold such hearings and make such inquiries as it deems necessary to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents and issue subpoenas.

(6) Conduct studies on problems relating to public employment relations and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and labor organizations necessary to carry out its functions and responsibilities; make available to public employers, labor organizations, mediators, members of factfinding boards, arbitrators and other concerned parties statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiation.

(7) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with ORS 183.310 to 183.550. [1973 c.536 §24]

243.770 [1965 c 390 §5, 1971 c 582 §10, repealed by 1973 c.536 §39]

243.772 Effect of collective bargaining laws on local charters and ordinances. Any provisions of local charters and ordinances adopted pursuant thereto in existence on October 5, 1973, and not in conflict with the rights and duties established in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785 may remain in full force and effect after the board has determined that no conflict exists. [1973 c.536 §15]

243.776 Rights and responsibilities of public employes. The rights and responsibilities prescribed for state officers and employes in ORS 292.055 shall accrue to employes of all public employers. [1973 c.536 §32]

243.778 Student representation when bargaining unit includes higher education faculty; duties of student representatives; confidentiality requirements. (1) When an appropriate bargaining unit includes members of the faculty of an institution of higher education, the duly organized and recognized entity of student government at that institution may designate three representatives to meet and confer with the public employer of those members of the faculty and the exclusive representative of that appropriate bargaining unit prior to collective bargaining.

(2) During the course of collective bargaining between the public employer and the exclusive

representative described in subsection (1) of this section, the representatives of student government designated under subsection (1) of this section shall:

(a) Be allowed to attend and observe all meetings between the public employer and the exclusive representative at which collective bargaining occurs;

(b) Have access to all written documents pertaining to the collective bargaining negotiations exchanged by the public employer and the exclusive representative, including copies of any prepared written transcripts of the bargaining session;

(c) Be allowed to comment in good faith during the bargaining sessions upon matters under consideration; and

(d) Be allowed to meet and confer with the exclusive representative and the public employer regarding the terms of an agreement between them prior to the execution of a written contract incorporating that agreement.

(3) Rules regarding confidentiality and release of information shall apply to student representatives in the same manner as employer and employe bargaining unit representatives.

(4) As used in this section:

(a) "Institution of higher education" means an institution under the control of the State Board of Higher Education.

(b) "Meet and confer" means the performance of the mutual obligation of the representatives of student government designated under subsection (1) of this section, the exclusive representative and the public employer, or any two of them, to meet at the request of one of them at reasonable times at a place convenient to all to conduct in good faith an interchange of views concerning the duties of each under this section, employment relations of the faculty, the negotiation of an agreement and the execution of a written agreement. [1975 c.679 §2]

243.780 [1965 c 543 §§2, 3, 4; 1969 c 80 §35b; repealed by 1973 c 536 §39]

243.782 Representation by counsel authorized. (1) For purposes of proceedings commenced pursuant to ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785, a person may be represented by counsel or any other agent authorized by such person.

(2) As used in subsection (1) of this section, "person" means any individual, a labor organization or a public employer. [1973 c 536 §33]

243.785 [1969 c 671 §7, repealed by 1973 c 536 §39]

243.787 [1969 c.671 §8, repealed by 1973 c 536 §39]

243.789 [1969 c.671 §11, repealed by 1973 c.536 §39]

243.791 [1969 c 671 §12; repealed by 1973 c 536 §39]

243.793 [1969 c 671 §9, repealed by 1973 c.536 §39]

243.795 [1969 c.671 §10; repealed by 1973 c 536 §39]

TAX-SHELTERED ANNUITIES FOR EDUCATIONAL EMPLOYEES

243.810 Definitions for ORS 243.810 to 243.830. As used in ORS 243.810 to 243.830, unless the context requires otherwise:

(1) "Educational institution" means an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on or an education service district.

(2) "Employer" means the State Board of Higher Education, any other state agency, a community college district, a school district or education service district employing an individual who performs services for an educational institution. [1965 c 606 §1; 1979 c.227 §1; 1981 c 407 §2]

243.820 Agreement for payment of annuity premium or investment company share contribution. (1) In order to obtain the advantages of section 403(b) of title 26, United States Code, or any equivalent provision of federal law, an employer subject to ORS 243.810 to 243.830 may agree with an individual employed by it, who performs services for an educational institution, that:

(a) The employe's salary will be reduced monthly by a stated amount, or the employe will forego monthly a salary increase of a stated amount; and

(b) The employer will contribute monthly an amount equal to the stated amount determined under paragraph (a) of this subsection for such month, as premiums for an annuity contract or for shares of an investment company registered under the federal Investment Act of 1940 for such employe. The amount contributed by the employer shall not exceed the stated amount.

(2) Notwithstanding any other provision of law, pursuant to an agreement under subsection (1) of this section, the stated amounts shall be forwarded by the employer as annuity premiums to the company or association with which it has entered into an annuity contract or to the investment company or its transfer agent for the benefit of such employe. [1965 c.606 §2; 1981 c.407 §1]

243.830 Effect of agreement on retirement contributions and benefits. An agreement executed pursuant to ORS 243.820 by an employe who is subject to ORS 237.001 to 237.315, 239.002 to 239.263 or a similar retirement program for public employes, in no way affects the contributions to be made or the benefits to be provided for such employe under ORS 237.001 to 237.315, 239.002 to 239.263 or other program. Reduction of salary or foregoing a salary increase by a stated amount under ORS 243.820 shall not be deemed a reduction in salary for the purpose of such contributions and benefits. [1965 c.606 §3]

HIGHER EDUCATION SUPPLEMENTAL RETIREMENT BENEFITS

243.910 Definitions for ORS 243.910 to 243.940. As used in ORS 243.910 to 243.940:

(1) "Board" means the State Board of Higher Education.

(2) "Employes" means the persons appointed or employed by or under the authority of the board who hold academic rank as determined by the board.

(3) "System" means the Public Employes' Retirement System established by ORS 237.005. [1965 c.297 §1]

243.920 Assisting employes to obtain supplemental benefits; employe contribution. (1) The board may, in its discretion, assist its employes who are members of the system and who elect to be so assisted by filing an election as provided in ORS 243.940, in the purchase of retirement benefits supplementing the benefits to which those employes are entitled under the system. For this purpose the board and its employes may enter into contracts with one or more life insurance or annuity companies.

(2) Each employe who elects to be assisted under subsection (1) of this section shall, as a condition to such election, either:

(a) Agree to contribute through payroll deductions toward the purchase of the supplementary retirement benefits a percentage of the annual salary of the employe in excess of \$4,800 equal to the percentage rate applicable to contributions made by the employe under the system, the amounts deducted from payrolls as employe contributions to be paid promptly by the board to the life insurance or annuity company in accordance with the terms of the applicable contract; or

(b) Agree either to a reduction in salary or to the foregoing of a salary increase in accordance

with ORS 243.820, in an amount not less than the amount otherwise required to be contributed under paragraph (a) of this subsection. [1965 c.297 §2(1), (2); 1969 c.626 §1]

243.930 Board contributions; investment; purchase of benefits. (1) If an employe assisted under ORS 243.920 (1) has made contributions to the Public Employes' Retirement Fund during each of five calendar years as provided in ORS 237.001 to 237.315, the board shall contribute an amount toward the purchase of the supplemental retirement benefits equal to the contributions toward the purchase made by the employe on annual salary in excess of \$4,800. The amounts of those contributions by the board shall be paid promptly by the board to the life insurance or annuity company in accordance with the terms of the applicable contract.

(2) If an employe assisted under ORS 243.920 (1) has not made contributions to the Public Employes' Retirement Fund during each of five calendar years as provided in ORS 237.001 to 237.315, the board shall contribute an amount toward the purchase of the supplemental retirement benefits equal to that which it would contribute for current service under the system with respect to the annual salary in excess of \$4,800 of the employe if the employe contributed under the system on that part of the salary.

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

(4) When an employe, with respect to whose annual salary in excess of \$4,800 the board has contributed under subsection (2) of this section, has made contributions to the Public Employes' Retirement Fund during each of five calendar years as provided in ORS 237.001 to 237.315, an amount equal to the contributions made under ORS 243.920 (2) shall be paid promptly to the life insurance or annuity company out of the separate account referred to in subsection (3) of this section, which hereby is appropriated for that purpose, for the purchase of additional supplemental retirement benefits for the employe. If the moneys in the separate account are not sufficient

for that purpose, the amount of the deficiency shall be paid promptly by the board to the life insurance or annuity company for that purchase.

(5) If an employe is separated from the service of the board before the employe has made contributions to the Public Employes' Retirement Fund during each of five calendar years as provided in ORS 237.001 to 237.315, the amounts of contributions by the board paid into the Public Employes' Retirement Fund under subsection (3) of this section and prorated earnings thereof shall remain in the separate account referred to in subsection (3) of this section for the purpose described in subsection (4) of this section, and the employe is not entitled to any part thereof or any benefit derived therefrom. [1965 c 297 §2(3), (4), 1969 c 626 §2]

243.940 Employe election; cancellation of election. (1) Employes may elect to be assisted by the board under ORS 243.920 (1), or may cancel that election, only as provided in this section.

(2) An employe who is a member of the system before the board commences to assist its employes under ORS 243.920 (1) may elect to be so assisted by the board not later than one month before that commencement.

(3) An employe who becomes a member of the system after the board commences to assist its employes under ORS 243.920 (1) may elect to be so assisted by the board not later than one month before the employe becomes a member of the system.

(4) An employe who is a member of the system and who has not filed an election under subsection (2) or (3) of this section, or who has filed that election but thereafter canceled it, thereafter may elect to be assisted by the board under ORS 243.920 (1) only within the first 60 days of any calendar year commencing after the board commences to assist its employes under ORS 243.920 (1).

(5) An employe who has filed an election under subsection (2), (3) or (4) of this section may cancel that election only within the first 60 days of any calendar year commencing after the board commences to assist its employes under ORS 243.920 (1).

(6) An election or cancellation thereof under this section shall be filed in writing with the board. The board shall inform the Public Employes' Retirement Board in writing of all elections or cancellations so filed. [1965 c.297 §3]