

# Chapter 237

1993 EDITION

## Public Employees' Retirement Generally

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**PUBLIC OFFICERS AND EMPLOYEES**

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**PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM**

**(Generally)**

**237.001 Short title.** ORS 237.001 to 237.315 shall be known as the Public Employees' Retirement Act of 1953. [1953 c.200 §1]

**237.002** [Repealed by 1953 c.180 §18]

**237.003 Definitions for ORS 237.001 to 237.315.** For purposes of ORS 237.001 to 237.315:

(1) The term "annuity" means payments for life derived from contributions made by a member as provided in ORS 237.001 to 237.315.

(2) The term "calendar year" means 12 calendar months commencing on January 1 and ending on December 31 following.

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

(a) An employee who had returned to the service of the employer as of January 1, 1945, and who remained in that employment until having established membership in the Public Employees' Retirement System.

(b) An employee who was in the armed services on January 1, 1945, and returned to the service of the employer within one year of the date of being otherwise than dishonorably discharged and remained in that employment until having established membership in the Public Employees' Retirement System.

(4) The term "creditable service" means any period of time during which an active member is being paid a salary by a participating public employer and contributions are being made to the system either by or on behalf of the member. For purposes of computing years of "creditable service," full months and major fractions of a month shall be considered to be one-twelfth of a year and shall be added to all full years. "Creditable service" includes all retirement credit received by a member.

(5) The term "employee" includes, in addition to employees, public officers, but does not include:

(a) Persons engaged as independent contractors.

(b) Seasonal, emergency or casual workers whose periods of employment with any public employer or public employers do not total 600 hours in any calendar year.

(c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, provided sheltered employment or

made-work by a public employer in an employment or industries program maintained for the benefit of such persons.

(d) Persons employed and paid from federal funds received under the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other federal program intended primarily to alleviate unemployment. However, any such person shall be considered an "employee" if not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects to have the person so considered by an irrevocable written notice to the board.

(e) Persons who are employees of a railroad, as defined in ORS 760.005, and who, as such employees, are included in a retirement plan under federal railroad retirement statutes. This paragraph shall be deemed to have been in effect since the inception of the system.

(6) The term "fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 following.

(7)(a) The term "member" means a person who has established membership in the system and whose membership has not been terminated as described in ORS 237.109. "Member" includes active, inactive and retired members.

(b) "Active member" means a member who is presently employed by a participating public employer in a position that meets the requirements of ORS 237.011 (4), and who has completed the six-month period of service required by ORS 237.011.

(c) "Inactive member" means a member who is absent from the service of all employers participating in the system, whose membership has not been terminated in the manner described by ORS 237.109, and who is not retired for service or disability. "Inactive member" includes a member who would be an active member except that the person's only employment with a participating public employer is in a position that does not meet the requirements of ORS 237.011 (4).

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

(8) The term "pension" means annual payments for life derived from contributions by one or more public employers.

(9) The term "public employer" means the state, one of its agencies, any city, county, municipal or public corporation, any political subdivision of the state or any instrumentality thereof, or an agency created by two or more such political subdivisions to provide themselves governmental services. For purposes of ORS 237.001 to 237.315, such

agency created by two or more political subdivisions is a governmental instrumentality and a legal entity with power to enter into contracts, hold property and sue and be sued.

(10) The term "retirement credit" means a period of time that is treated as creditable service for the purposes of ORS 237.001 to 237.315.

(11)(a) The term "salary" means the remuneration paid an employee in cash out of the funds of a public employer in return for services to the employer, plus the monetary value, as determined by the Public Employees' Retirement Board, of whatever living quarters, board, lodging, fuel, laundry and other advantages the employer furnishes the employee in return for services.

(b) "Salary" includes but is not limited to:

(A) Payments of employee and employer money into a deferred compensation plan, which are deemed salary paid in each month of deferral;

(B) The amount of participation in a tax-sheltered or deferred annuity, which is deemed salary paid in each month of participation; and

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

(c) "Salary" or "other advantages" does not include:

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

(B) Payments for insurance coverage by an employer on behalf of employee or employee and dependents, for which the employee has no cash option;

(C) Payments made on account of an employee's death;

(D) Any lump sum payment for accumulated unused sick leave;

(E) Any accelerated payment of an employment contract for a future period or an advance against future wages;

(F) Any retirement incentive, retirement severance pay, retirement bonus or retirement gratuitous payment;

(G) Payments for periods of leave of absence after the date the employer and employee have agreed that no future services qualifying pursuant to ORS 237.011 (3) will

be performed, except for sick leave and vacation; or

(H) Payments for instructional services rendered to institutions of the Department of Higher Education when such services are in excess of full-time employment subject to ORS 237.001 to 237.315. A person employed under a contract for less than 12 months is subject to this subparagraph only for the months to which the contract pertains.

(12) The term "volunteer fire fighter" means a fire fighter whose position normally requires less than 600 hours of service per year.

(13) The term "school year" means the period beginning July 1 and ending June 30 next following.

(14) The term "police officer" includes:

(a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions, whose duties, as assigned by the director, include the custody of persons committed to the custody of or transferred to the Department of Corrections and any other employee of the Department of Corrections who was classified as a police officer on or before July 27, 1989, whether or not such classification was authorized by law.

(b) Employees of the Department of State Police who are classified as police officers by the Superintendent of State Police.

(c) Employees of the Oregon Liquor Control Commission who are classified as enforcement officers by the administrator of the commission.

(d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified by the sheriff, are the regular duties of police officers or corrections officers.

(e) Police chiefs and police personnel of a city who are classified as police officers by the council or other governing body of the city.

(f) Parole and probation officers employed by the Department of Corrections and parole and probation officers who are transferred to county employment under ORS 423.550.

(g) Police officers appointed under ORS 276.021 or 276.023.

(h) Employees of the Port of Portland who are classified as airport police by the Board of Commissioners of the Port of Portland.

(i) Employees of the State Department of Agriculture who are classified as livestock police officers by the Director of Agriculture.

(j) Employees of the Board on Public Safety Standards and Training who are classified by the board as other than secretarial or clerical personnel.

(k) Investigators of the Criminal Justice Division of the Department of Justice.

(L) Corrections officers as defined in ORS 181.610.

(m) Employees of the Oregon State Lottery Commission who are classified by the Director of the Oregon State Lottery as enforcement agents pursuant to ORS 461.110 (3).

(n) The Director of the Department of Corrections.

(o) An employee who for seven consecutive years has been classified as a police officer as defined by this section, and who is employed or transferred by the Department of Corrections to fill a position designated by the director as being eligible for police officer status.

(p) An employee of the Department of Corrections classified as a police officer on or prior to July 27, 1989, whether or not that classification was authorized by law, so long as the employee remains in the position held on July 27, 1989. The initial classification of an employee under a system implemented pursuant to ORS 240.190 will not affect police officer status.

(q) Employees of a school district who are appointed and duly sworn members of a law enforcement agency of the district as provided in ORS 332.531 or otherwise employed full time as police officers commissioned by the district.

(r) Employees at the MacLaren School for Boys, Hillcrest School of Oregon and other juvenile training schools and juvenile detention facilities under ORS 419A.050, 419A.052 and 420.005 to 420.915, who are required to hold valid Oregon teaching licenses and who have supervisory, control or teaching responsibilities over juveniles committed to the custody of the Department of Corrections or Children's Services Division.

(s) Employees at juvenile training schools as defined in ORS 420.005 whose primary job description involves the custody, control, treatment, investigation or supervision of juveniles placed in such schools.

(t) Employees of the Children's Services Division of the Department of Human Resources who are classified as juvenile parole and probation officers.

(15) The term "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year paid by a public employer to an employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee, in which three years the employee was paid the highest salary; or if the number

of calendar years of active membership before the effective date of retirement of the employee is three or less, in all of those years.

(b) One-third of the total salary paid by a public employer to an employee who is an active member of the system in the last 36 calendar months of membership before the effective date of retirement of the employee.

(16) The term "fire fighter" does not include a volunteer fire fighter as defined in subsection (12) of this section, but does include the State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals.

(17) "Earliest service retirement age" means the age attained by a member when the member could first make application for retirement under the provisions of ORS 237.121.

(18) The term "normal retirement age" means 55 years of age for an employee who retires at that age as a police officer or fire fighter or 58 years of age for an employee who retires at that age as other than a police officer or fire fighter. [1953 c.200 §2; 1955 c.131 §3; 1957 c.630 §5; 1959 c.333 §1; 1961 c.430 §1; 1963 c.608 §11; 1967 c.160 §1; 1967 c.622 §1; 1969 c.240 §1; 1971 c.738 §1; 1973 c.19 §1; 1974 s.s. c.28 §3; 1975 c.289 §1; 1977 c.425 §1; 1979 c.446 §2; 1979 c.656 §5; 1979 c.741 §1; 1981 c.479 §2; 1981 c.760 §1; 1983 c.740 §59; 1983 c.830 §1; 1985 c.118 §13; 1985 c.302 §10; 1985 c.565 §37; 1985 c.823 §1; 1987 c.320 §147; 1987 c.617 §1; 1987 c.898 §13; 1989 c.606 §1; 1989 c.614 §1; 1989 c.888 §1; 1990 c.4 §1; 1990 c.5 §1; 1991 c.675 §5; 1993 c.33 §320; 1993 c.118 §1; 1993 c.177 §1; 1993 c.185 §23; 1993 c.623 §5; 1993 c.766 §7]

Note: Section 35, chapter 185, Oregon Laws 1993, provides:

Sec. 35. The amendments to ORS 237.003 by section 23 of this Act do not affect any rights that may have accrued to the employees of the Fire Standards and Accreditation Board before the effective date of this Act [July 1, 1993]. [1993 c.185 §35]

237.004 [Repealed by 1953 c.180 §18]

**237.005 Public Employees' Retirement System.** A system of retirement and of benefits at retirement or death for employees of public employers hereby is established and shall be known as the Public Employees' Retirement System. Any similar system being operated by a public employer on April 8, 1953, may be integrated into this system as hereinafter provided. [1953 c.200 §3]

237.006 [Repealed by 1953 c.180 §18]

237.007 [1989 c.906 §9; see note following]

Note: Chapter 906, Oregon Laws 1989 [enacting 237.007 and amending 237.201 and 237.233], was referred by the electors to the November 1990 General Election, at which it was defeated.

237.008 [Repealed by 1953 c.180 §18]

237.010 [Repealed by 1953 c.180 §18]

**237.011 Membership generally.** No person may become a member of the system unless that person is in the service of a public

employer and has completed six months' service uninterrupted by more than 30 consecutive working days during the six months' period. Every employee of a participating employer shall become a member of the system at the beginning of the first full pay period of the employee following the six months' period. All public employers participating in the Public Employees' Retirement System established by chapter 401, Oregon Laws 1945, as amended, at the time of repeal of that chapter, and all school districts of the state, shall participate in, and their employees shall be members of, the system, except as follows:

(1)(a) An employee who is a member of, or eligible for membership in, a retirement system established by a public employer prior to April 8, 1953, or who is a member of, or eligible to membership in, an association established pursuant to ORS chapter 239, may not become a member of the system established by this chapter until the previously established system or the system of the association is integrated with the system established by this chapter pursuant to the procedure provided by ORS 237.051. As a member of the system established by this chapter an employee shall receive no retirement credit during such time as the employee heretofore excluded or hereafter excludes the employee from the previously established system or from the association, and shall receive only such retirement credit during the time the employee is a member of the previously established system or of the association as the contract of integration provides, except that any teacher who has been continuously employed by a school district of this state from July 1, 1929, to July 1, 1951, in which an association has been established pursuant to ORS chapter 239, and who has not been a member of such association at any time from July 1, 1929, to September 1, 1953, shall receive credit for prior service as provided by ORS 237.081 upon payment prior to December 1, 1953, to the board by such teacher of such contributions as would have been deducted from the salary of the teacher from July 1, 1946, to the date of becoming a member of this system if the teacher had become a member of this system on July 1, 1946, and the school district by which said teacher is employed shall transmit to the board, at such time as the board designates, such sums as the school district would have been required to transmit under the provisions of ORS 237.081 if such teacher had become a member of this system on July 1, 1946, and, upon such payments, such teacher shall be deemed to have been a member of the system established by this chapter for the purposes of ORS 237.001 to 237.315 continuously from July 1, 1946.

(b) Notwithstanding paragraph (a) of this subsection, an employee who is a member of, or eligible for membership in, an association established pursuant to ORS chapter 239 shall become a member of the system established by this chapter if the employee has separated, for any reason other than death or disability, from all service entitling the employee to membership in the system of the association, and the employee shall receive retirement credit under ORS 237.001 to 237.315 for the period of time the employee was a member of an association established pursuant to ORS chapter 239 upon payment to the Public Employees' Retirement Board of all amounts in the individual account of the employee established pursuant to ORS chapter 239. The payment by the employee shall be deposited in the individual account of the employee in the Public Employees' Retirement Fund. Upon such payment by the employee, the school board which previously employed the employee shall pay to the retirement board such sums as may be determined by actuarial computation to fund the retirement credit received by the employee. The school board may, with the consent of the board, make payment in three equal annual installments.

(c) Notwithstanding paragraph (a) of this subsection, an employee who is a member of a retirement system established by a public employer prior to April 8, 1953, shall become a member of the system established by this chapter if the employee has separated from all service entitling the employee to membership in the retirement system established prior to April 8, 1953; but the employee shall receive no retirement credit under ORS 237.001 to 237.315 for the time the employee is a member of, or eligible for membership in, the retirement system established prior to April 8, 1953. Furthermore, if the employee has been separated for disability from service entitling the employee to membership in a retirement system established prior to April 8, 1953, and is receiving a disability benefit under such retirement system at the time the employee becomes a member of the system established by this chapter, the employee shall not receive any benefit under ORS 237.001 to 237.315 for such disability.

(2) Any active member of the Public Employees' Retirement System who, through the annexation of a political subdivision employing the member or by change of employment, becomes the employee of another political subdivision which is participating in the Public Employees' Retirement System and has also a separate retirement system for its employees, shall remain an active member of the Public Employees' Retirement System unless, within 60 days after the effective date

of the annexation or change of employment or April 8, 1953, the member shall by written notice to the Public Employes' Retirement Board and to the administrative body of the new public employer elect to relinquish membership in the Public Employes' Retirement System and become a member of the separate retirement system of the employer, if eligible for membership in that retirement system, and the member shall be so carried by the new employer. Immediately upon such annexation of any political subdivision or such change of employment, the new public employer shall inform such employee in writing of the right of the employee to exercise an election as in this section provided.

(3) A political subdivision (other than a school district) not participating in the retirement system established by chapter 401, Oregon Laws 1945, as amended, which employs one or more employees, each of whose position requires 600 hours of service per year, or an agency created by two or more political subdivisions to provide themselves governmental services, which employs one or more employees, each of whose position requires 600 hours of service per year, may, through its governing body, notify the board in writing, that it elects to include its employees in the system hereby established. Such public employer may request the board to make a study and estimate of the cost of including it and its eligible employees, other than volunteer fire fighters, in the system, which the board thereupon shall cause to be made and the cost of which the employer shall bear. Upon completion of the study and estimate the employer may apply for admission to the system, whereupon it shall begin to participate therein and its eligible employees other than volunteer fire fighters shall become members of the system. If the employer is an agency created by two or more political subdivisions to provide themselves governmental services and ceases thereafter to transmit to the board current service contributions for any of its eligible employees, the benefits based upon employer current service contributions to which such employees would otherwise be entitled shall be reduced accordingly.

(4) Except as subsection (7) of this section provides otherwise with reference to volunteer fire fighters, no employee whose position with one public employer or concurrent positions with two or more public employers normally require less than 600 hours of service per year may become a member of the system.

(5) No inmate of a state institution or an alien on a training or educational visa working for any participating employer, even though the inmate or alien received compen-

sation from a participating employer, shall be eligible to become a member of the system. No person employed by a participating employer and defined by such employer as a student employee is eligible to become a member of the system for such student employment.

(6) A person holding an elective office or an appointive office with a fixed term or an office as head of a department to which the person is appointed by the Governor may become a member of the system by giving the board written notice of desire to do so within 30 days after taking the office or, in the event that the officer is not eligible to become a member of the system at the time of taking the office, within 30 days after becoming so eligible. Membership so established shall not be discontinued during the appointive or elective term of the officer except upon separation of the officer from service.

(7) A public employer employing volunteer fire fighters may apply to the board at any time for them to become members of the system. Upon receiving the application the board shall fix a wage at which, for purposes of ORS 237.001 to 237.315 only, they shall be considered to be employed and which shall be the basis for computing the amounts of the contributions which they pay into, and of the benefits which they and their beneficiaries receive from, the fund; and if the wage so fixed is satisfactory to the employer, shall include the fire fighters in the system.

(8)(a) In the event that an employee enters the service of a public employer which is participating in or later begins to participate in the system and in the event that at the time of entering that service or at the time that the employer begins to participate in the system the employee has commenced to purchase and is continuing to purchase a retirement annuity, if the employer deems the annuity adequate for the purposes of ORS 237.001 to 237.315 it may enter into an agreement with the employee and the board pursuant to which the employee may be exempted from contributing to the Public Employes' Retirement Fund, and, if no public funds are being used to purchase the annuity or a corresponding pension, the employer, in lieu of the contributions which it otherwise would make to the fund on account of the employee, may make contributions toward the cost of purchasing the annuity. Such employee otherwise shall be subject to the provisions of ORS 237.001 to 237.315, except that neither the employee nor any person claiming under the employee shall receive any payments from the retirement fund as service or disability allowance.

(b) An employee who enters into an agreement under paragraph (a) of this subsection may elect at any time thereafter to start to participate in the system by giving written notice of desire to participate to the board and to the employer. The employee shall receive no retirement credit for the period during which the employee was exempted from contributing to the fund under the agreement, but the employee shall be considered to have completed the six months' service required for membership in the system. When the employee starts to participate in the system the employer shall start to contribute to the fund on the account of the employee in the same manner as the employer contributes on the account of other employees who are active members of the system and the employer shall stop making contributions toward the cost of purchasing the retirement annuity.

(9)(a) All new appointees in the Federal Cooperative Extension Service or in any other service in which participation in the Federal Civil Service retirement program is mandatory, who receive a federal appointment on or after July 1, 1955, may participate in the Public Employees' Retirement System only by giving written notice of their election to so participate to the Public Employees' Retirement Board within six months after the effective date of their appointment.

(b) All persons employed by the Federal Cooperative Extension Service or by any other service in which participation in the Federal Civil Service retirement program is mandatory, who are under federal appointment as of July 1, 1955, and who are members of the state retirement system, shall continue such membership unless, prior to February 1, 1956, they give written notice to the Public Employees' Retirement Board of their desire to cancel their membership.

(c) Any person who is an active member of the Public Employees' Retirement System, who, on or after July 1, 1955, is employed by the Federal Cooperative Extension Service or by any other service in which participation in the Federal Civil Service retirement program is mandatory, and who is given a federal appointment, shall continue such membership in the Public Employees' Retirement System unless, within six months after the effective date of the appointment, the person gives written notice to the Public Employees' Retirement Board of the desire to cancel membership.

(d) A cancellation of membership under paragraph (b) or (c) of this subsection terminates membership in the Public Employees' Retirement System and cancels the right to any benefits from, or claims against, that

system. Such cancellation prevents the withdrawing member from claiming thereafter any retirement credit for any period of employment before the cancellation. Upon receipt of a notice of cancellation, the Public Employees' Retirement Board shall refund to the withdrawing member, regardless of age, the account balance of the employee in the retirement fund.

(10) Managers and other employees of foreign trade offices of the Economic Development Department who live and perform services in foreign countries under the provisions of ORS 285.050 (14) shall not be members of the system. However, any person who is an active member of the system immediately before becoming a manager or employee of a foreign trade office shall continue to be a member of the system during the period of time the person serves as a manager or employee of the foreign trade office. [1953 c.200 §8; 1955 c.131 §4; 1961 c.331 §1; 1963 c.608 §12; 1967 c.622 §2; 1969 c.435 §1; 1971 c.270 §1; 1975 c.744 §1; 1979 c.861 §1; 1983 c.830 §3; 1987 c.617 §2; 1987 c.898 §14; 1989 c.799 §1; 1991 c.149 §5; 1993 c.177 §2]

237.012 [Repealed by 1953 c.180 §18]

**237.013 Membership of certain district judges.** Each district court judge who is a member of the Public Employees' Retirement System shall be governed by the provisions of ORS 237.001 to 237.315 applicable to other persons holding elective offices who may become members of the system. [1959 c.559 §8; 1969 c.332 §16; 1991 c.815 §4]

237.014 [Repealed by 1953 c.180 §18]

237.015 [1969 c.54 §1; repealed by 1989 c.888 §3 and 1991 c.776 §3]

237.016 [Repealed by 1953 c.180 §18]

**237.017 Community college employees' use of accumulated unused sick leave to increase benefits.** (1) Notwithstanding ORS 237.153 (2)(a), unused sick leave for community college employees shall accumulate for an unlimited number of days and shall accumulate at the rate of 10 days per school year or one day per month employed, whichever is greater. Except as provided in ORS 237.153 (1)(b), unused sick leave accumulated by community college employees shall be computed in the same manner as for employees in state classified service for computation of retirement benefits.

(2) Subject to ORS 237.081 (4)(a) and 237.147 (2)(c), community college district employers shall be regarded with the state as constituting one employer.

(3) An academic employee of a community college who is employed .375 full-time equivalent (FTE) on a 12-month basis or .50 FTE on a nine-month basis shall be deemed to be employed for 600 hours or more in a year for purposes of ORS 237.001 to 237.315. The combination of duties that comprises a

1.0 FTE in any given discipline or academic activity shall be determined by the governing body of the institution in which the academic employee is employed. Nothing in this subsection is intended to affect the rights of academic employees at institutions of higher learning or academic employees employed in public secondary or elementary schools. [1969 c.458 §2; 1977 c.860 §1; 1981 c.772 §2; 1987 c.617 §3; 1991 c.813 §14]

**237.018** [Repealed by 1953 c.180 §18]

**237.019 Membership of certain legislative employees.** An employee shall not be considered to have ceased to be a member of the system under ORS 237.109 (2) by reason of any year in which the employee is employed by the Legislative Assembly or either house thereof, or by a committee of the Legislative Assembly or either house thereof, for periods aggregating eight months or more during the year, whether or not contributions are made to the fund by or on behalf of the employee for those periods of employment, unless the employee withdraws the amount credited to the account of the employee in the fund. [1969 c.92 §2]

**237.020** [Repealed by 1953 c.180 §18]

**237.021 Membership of persons retired from other system for disability.** (1) An employee who was separated from the service of a retirement system described in ORS 237.011 (1)(a) by reason of disability and who was required to withdraw membership from or was not permitted to become a member of the Public Employees' Retirement System because of such separation, shall be permitted to become members of the system upon June 11, 1969, and shall be permitted to establish membership in the system retroactively as if the amendments contained in ORS 237.011 and 237.021 had been in effect at the time such a person was first eligible for membership in the system by paying into the system the contributions which would have been required from such an employee since that date.

(2) The payments permitted from the employee under subsection (1) of this section must be made before January 1, 1971.

(3) Upon the payments being received under subsection (1) of this section, the Public Employees' Retirement Board shall adjust the amounts required by ORS 237.081 (1) from a public employer of an employee described in subsection (1) of this section to reflect the additional pension requirements made upon the system by the establishment of the retroactive membership provided in this section. [1969 c.435 §2]

**237.022** [Repealed by 1953 c.180 §18]

**237.024** [Repealed by 1953 c.180 §18]

**237.025 Membership of deputy district attorneys.** Any deputy district attorney receiving any compensation from the state or from a county participating in the Public Employees' Retirement System shall establish membership in the system after service for six months without having been absent 30 working days. Contributions by any such deputy district attorney shall be due from salary paid by the state, by a county participating in the system or by both. The application of ORS 237.001 to 237.315 to any such deputy district attorney made prior to the effective date of this section by the Public Employees' Retirement Board hereby is confirmed and ratified. [1957 c.630 §2]

**237.026** [Repealed by 1953 c.180 §18]

**237.027** [1963 c.153 §10; 1983 c.338 §904; repealed by 1985 c.62 §1]

**237.028** [Repealed by 1953 c.180 §18]

**237.029 Membership of legislators.** (1) Notwithstanding ORS 237.011, any person who is a member of the Legislative Assembly at any time on or after September 13, 1975, and before January 1, 1988, regardless of whether the person has reached the age of 65 years, may become a member of the Public Employees' Retirement System by giving the Public Employees' Retirement Board, before January 1, 1990, written notice of desire to do so. The written notice shall take effect on the first day of the month following the date of receipt thereof by the board or upon the person's completion of six months' service, whichever occurs last.

(2) Notwithstanding any other provision of ORS 237.001 to 237.315, any person who is a member of the Legislative Assembly and a member of the system, and any person who is not a member of the Legislative Assembly but was a member thereof before January 11, 1987, upon payment to the board before July 1, 1991, of the total amount of the employee contributions the person would have made to the Public Employees' Retirement Fund for all periods of service as a member of the Legislative Assembly before the date of that payment for which the person was not a member of the system, is entitled to retirement credit for those periods served as a member of the Legislative Assembly, including those periods after reaching the age of 65 years, that the person would have been entitled to had the person been a member of the system for those periods. Employee contributions to be paid by a person under this subsection may be paid at the option of the person in a lump sum or in installments. If the person is a member of the Legislative Assembly, upon request by the person in writing to the state official authorized to disburse funds in payment of the salary of the person as a member of the Legislative Assembly, the state official

shall deduct monthly from that salary the amount of money indicated in the request for payment of employment contributions under this subsection and shall pay amounts so deducted to the board.

(3) Notwithstanding any other provision of ORS 237.001 to 237.315, any person who is a member of the Legislative Assembly and a member of the system, and any person who is not a member of the Legislative Assembly but was a member thereof before January 9, 1989, who previously had been employed by an employer participating in the system, but had separated from all service with that employer entitling the employee to membership in the system and withdrawn the amount credited to the employee's account, may have all of the rights in the system which were forfeited by the withdrawal restored by repaying to the board by July 1, 1991, the full amount so withdrawn together with the interest that would have accumulated on the sum had the amount not been withdrawn. [1975 c.137 §2; 1975 c.449 §15; 1979 c.658 §3; 1981 c.762 §7; 1987 c.617 §16; 1989 c.871 §2; 1993 c.177 §3]

237.030 [Repealed by 1953 c.180 §18]

**237.031 Membership of part but not all employees of a public employer; application; contract between board and employer; effect of contract.** (1) A public employer that is not participating in the system may, by application to the board, designate any class of employees of the public employer to become members of the system at the time of entering the system.

(2) The board shall consider an application received under this section to be an application to become a participating employer under ORS 237.001 to 237.315, but only to the extent of providing membership for the class of employees designated in the application.

(3) The board, upon such terms as are set forth in a contract between the board and the employer, shall allow every employee in the designated class to become members of the Public Employees' Retirement System in accordance with ORS 237.001 to 237.315. A contract entered into under this section shall require the public employer to agree to eventually contract to provide membership to all of the employees who do not become members of the system at the time that the employer becomes a participating employer.

(4) All employees who have completed the period of service with the public employer that is required under ORS 237.011 shall become members of the system on a date specified by the board. All other employees in the designated class shall become members upon completion of the required period of service.

(5) The contract provided for in subsection (3) of this section may be in addition to or in lieu of a contract of integration under ORS 237.051.

(6) An employer entering into a contract under subsection (3) of this section may at any time thereafter enter into a contract with the board to provide membership to all or part of the employees who do not become members of the system at the time that the employer becomes a participating employer. Except as may be provided for prior service under ORS 237.081, or under a contract of integration under ORS 237.051, employees shall receive no retirement credit for the period during which the employee was exempted from contributing to the fund under the agreement, but the employee shall be considered to have completed the six months' service required for membership in the system if the employee has served with the employer for at least six months. When the employee starts to participate in the system the employer shall start to contribute to the fund on the account of the employee in the same manner as the employer contributes on the account of other employees who are members of the system. [1991 c.767 §2; 1993 c.177 §4]

237.032 [Repealed by 1953 c.180 §18]

237.033 [1961 c.189 §2; repealed by 1969 c.367 §3]

237.034 [Repealed by 1953 c.180 §18]

237.035 [1961 c.189 §3; repealed by 1969 c.367 §3]

237.036 [Repealed by 1953 c.180 §18]

**237.037 Integration of retirement plan of mass transit district.** (1) A retirement plan which has been adopted by a mass transit district organized under ORS 267.010 to 267.390 situated in a standard metropolitan statistical area with a population exceeding 400,000, may be integrated with, or the district may become a participant in, the Public Employees' Retirement System in the manner prescribed in subsection (2) of this section.

(2)(a) A proposed form of contract setting forth all the terms, conditions and provisions of the integration or participation shall be a mandatory subject of bargaining subject to the provisions of ORS 243.650 to 243.782.

(b) The proposed contract shall be submitted to a vote of the employees of the mass transit district, or the members of the affected bargaining unit of the applicable labor organization, and the board of directors of the mass transit district. In submitting a proposed contract to its members, the labor organization shall follow the procedure provided in its bylaws for the promulgation and adoption of bylaws.

(c) Adoption by the employees or members of the affected bargaining unit of the

applicable labor organization of the proposed contract of integration or participation shall be by an affirmative vote of not less than two-thirds of the affected employees or active members of the affected bargaining unit of the applicable labor organization at the time of the election.

(d) The proposed contract so formulated, approved and adopted shall be submitted to the Public Employees' Retirement Board. The board may exercise its authority to negotiate and enter into a contract with the mass transit district that would accomplish the integration or participation without adversely affecting the current operational and capital requirements of the mass transit district. The board shall not enter into any contract that prevents those adverse effects by adjusting the level of benefits received by any of the employees of the mass transit district.

(e) No contract of prospective participation shall in any way alter, impair or adversely affect any rights, benefits or privileges which have vested under the provisions of law or collective bargaining agreement in an employee of a mass transit district by virtue of retirement, either on account of disability or on account of having attained the retirement age, prior to the effective date of the contract of integration or participation.

(f) When a public employer enters into a contract with the board under this section, the public employer shall agree to eventually extend coverage under ORS 237.001 to 237.315 to all eligible employees of the employer through subsequent contracts with the board.

(3) For the purposes of this section, "standard metropolitan statistical area" has that meaning given in ORS 267.010. [1991 c.776 §2]

237.038 [Repealed by 1953 c.180 §18]

**237.039 Membership of judges and judges' spouses previously receiving retirement pay or pension from the Judges' Retirement Fund; qualifications on membership; termination of Judges' Retirement Fund.** (1) On August 1, 1991, all judges receiving retirement pay from the Judges' Retirement Fund and all surviving spouses of judges receiving a pension from the Judges' Retirement Fund shall be retired members of the Public Employees' Retirement System, except that:

(a) The amount of retirement pay or pension payable to the judge or surviving spouse of a judge and the terms and conditions of eligibility to receive retirement pay or a pension shall be as established by ORS 1.314 to 1.380 (1989 Edition); and

(b) The right of any person to receive any benefit as a result of the death of a judge by reason of the provisions of ORS 1.314 to 1.380 (1989 Edition) shall solely be as provided by ORS 1.314 to 1.380 (1989 Edition).

(2) After August 1, 1991, any judge who would have become eligible to receive retirement pay from the Judges' Retirement Fund shall, upon retirement, be a retired member of the Public Employees' Retirement System, except that:

(a) The amount of retirement pay or pension payable to the judge or the surviving spouse of the judge and the terms and conditions of eligibility to receive retirement pay or a pension shall be as established by ORS 1.314 to 1.380 (1989 Edition); and

(b) The right of any person to receive any benefit as a result of the death of the judge by reason of the provisions of ORS 1.314 to 1.380 (1989 Edition) shall solely be as provided by ORS 1.314 to 1.380 (1989 Edition).

(3) On August 1, 1991, the Judges' Retirement Fund shall cease to exist as a separate fund and the assets and earnings of the Judges' Retirement Fund shall be paid into the employer reserves for judge members of the Public Employees' Retirement Fund. The Public Employees' Retirement Board shall continue to keep a separate member account for any person who may become eligible to receive a retirement benefit under subsection (2) of this section and for any person whose child or children may become entitled to a benefit under ORS 1.346 (1989 Edition).

(4) Upon deposit of the assets and earnings of the Judge's Retirement Fund as provided under subsection (3) of this section, the Public Employees' Retirement Board shall cause to be deposited from the employer reserves for judge members to the retired reserves of the Public Employees' Retirement Fund, the amount actuarially determined to be necessary to fund the retirement pay and pensions of those judges and surviving spouses of judges who were receiving retirement pay or a pension from the Judges' Retirement Fund on August 1, 1991.

(5) The amount of retirement pay or pension payable to a judge or spouse of a retired judge who previously received retirement pay or a pension from the Judges' Retirement Fund, or who would have received retirement pay or a pension from the Judges' Retirement Fund, shall not be recalculated or affected in any way based on the provisions of ORS 237.001 to 237.315, nor shall the eligibility of a judge or surviving spouse of a judge to receive retirement pay or a pension be affected by ORS 237.001 to 237.315.

(6) The provisions of ORS 237.165, 237.167, 237.169 and 237.211 to 237.233 do not

apply to a judge or surviving spouse of a judge who received retirement pay or a pension from the Judges' Retirement Fund prior to August 1, 1991, or to a judge who retires as a member of the Public Employees' Retirement System under subsection (2) of this section. [1991 c.815 §1]

**Note:** 237.039 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 237 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**237.040** [Repealed by 1953 c.180 §18]

**237.041** [Formerly 237.056; repealed by 1967 c.622 §25]

**237.042** [Repealed by 1953 c.180 §18]

**237.044** [Repealed by 1953 c.180 §18]

**237.046** [Repealed by 1953 c.180 §18]

**237.048** [Repealed by 1953 c.180 §18]

**237.050** [Repealed by 1953 c.180 §18]

**237.051 Integration of other retirement systems.** (1) Employees, other than licensed teachers employed by a school district in which an association has been organized pursuant to ORS chapter 239, whose membership in a previously established retirement system excludes them from membership in the system established by this chapter may apply to the board in writing for the former system to be integrated into the latter and for them to be allowed to become members of the latter. Whenever two-thirds of them and their employer, through its governing body, so apply, the board:

(a) May cause a financial and actuarial investigation of the proposed integration to be made, the cost of which shall be borne by the previously established system; and

(b) May upon such terms as are set forth in a contract between the board and the employer, integrate the previously established system into the system established by this chapter.

(2) Nothing in ORS 237.001 to 237.315 nor any action taken pursuant thereto shall reduce or impair the benefits which employees who are receiving benefits from a retirement system integrated with the system provided by this chapter would have received had the integration not been effected.

(3) A retirement plan which has been adopted by an association organized pursuant to the provisions of ORS chapter 239, prior to April 8, 1953, and which exists on April 8, 1953, may be integrated into the retirement system established by this chapter in the manner prescribed in this subsection and not otherwise:

(a) A proposed form of contract setting forth all the terms, conditions and provisions of the integration shall be prepared by, and

adopted by a majority vote of, the board of trustees of the association and approved by the board of directors of the school district in which the association is organized.

(b) The proposed contract so adopted and approved shall be submitted to a vote of the active members of the association. In submitting a proposed contract, an association shall follow the procedure provided in its bylaws for the promulgation and adoption of bylaws.

(c) Adoption by the membership of an association of a proposed contract of integration shall be by an affirmative vote of not less than two-thirds of the active members of the association at the time of the election.

(d) The proposed contract so formulated, approved and adopted shall be submitted to the retirement board created by ORS 237.251 for acceptance or rejection. In the event that the proposed contract is accepted by the board, then the integration shall proceed in accordance with the provisions of the contract.

(e) No contract of integration shall in any way alter, impair or adversely affect any rights, benefits or privileges which have vested under the provisions of law in a member of an association by virtue of retirement, either on account of disability or on account of having attained the retirement age, prior to the effective date of the contract of integration.

(f) A contract of integration formulated, approved and adopted as provided in this subsection shall contain provisions whereby there will be provided to each active member of the association who becomes a member of the retirement system created by this chapter pursuant to a contract of integration, retirement benefits, in addition to the retirement benefits accruing for subsequent service under the Public Employees' Retirement Act of 1953, determined in compliance with sound actuarial practice and with the findings of an accredited actuary on the basis of the reserves of the members at the time of the integration.

(g) A contract of integration shall likewise provide that any active member of an association which integrates with the retirement system may elect at the time of the integration as to whether the member shall obtain a refund of the amount standing to the credit of the member on the books of the association at the time of the integration. In the event that a member so elects, then the amount standing to the credit of the member shall be refunded and the additional benefits provided under paragraph (f) of this subsection shall not be available to the member to whom the refund is made.

(4) If a public employer applies for inclusion of a class of employees under ORS 237.031, application for integration under subsection (1) of this section shall be made by the employer and by two-thirds of the class of employees who are to become members of the system, or if the class designated under ORS 237.031 is covered by a collective bargaining agreement, application for the class shall be approved under the terms of the collective bargaining agreement. [1953 c.200 §9; 1985 c.823 §2; 1991 c.767 §3]

237.052 [Repealed by 1953 c.180 §18]

**237.053 Method of payment of unfunded obligation under integration contract.** (1) The school district, which is or expects to become a party to a contract of integration described in ORS 237.051 (3), may provide for payment of all or any part of its unfunded obligation for prior service costs with respect to the association by any one or a combination of the following methods:

(a) By agreeing to pay such portion of the obligation to the Public Employees' Retirement System over a period of not to exceed 30 years, together with an appropriate rate of interest as determined by the Public Employees' Retirement Board and the board of directors of the school district.

(b) By issuing one or more series of general obligation bonds for the estimated amount of such portion of the obligation and paying it from the proceeds or interest thereon. Except as provided in subsection (2) of this section, the initial authorization for the original issue of such bonds shall require approval of the electors of the district and shall otherwise conform to all requirements of law governing the issuance, sale, redemption, refunding and refinancing of bonds by the school district, the retention, segregation and use of bond proceeds and the levy of taxes for their payment.

(c) By issuing other notes, contracts or evidences of indebtedness for the estimated amount of such portion of the obligation and paying it therewith or from the proceeds or interest thereon. The interest rate on such notes, contracts or evidences of indebtedness shall be such as the board of directors of the school district finds is reasonably competitive with interest rates on bonds which could be issued pursuant to paragraph (b) of this subsection.

(d) By contracting with an insurance company authorized to write annuity contracts in this state to assume and pay the pensions of retired, active or former members of the association.

(2) Such agreement, bonds, notes, contracts or evidences of indebtedness, or any

part of them, may be issued or entered into without an election, but in such case:

(a) To the extent the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness are paid from a levy within the school district tax base or other levying authority for operating purposes, the school district shall each year divide its levy into two portions, both within its tax base and other levying authority for operating purposes, and one of such portions shall be an amount equal to the levy to pay the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness for such year and the proceeds of such portion shall not be used for other purposes; and

(b) To the extent the principal and interest on such agreement, bonds, notes, contracts or evidences of indebtedness are paid from revenues other than the proceeds of a levy within the school district tax base or other levying authority for operating purposes, the school district need not divide its levy as provided in paragraph (a) of this subsection and the principal and interest may be paid out of such other revenues.

(3) Part or all of the agreement, bonds, notes, contracts or evidences of indebtedness authorized by this section may be issued prior to or after the execution of the contract of integration. The validity or enforceability thereof shall not be affected by the terms of the contract of integration or by whether a levy is properly apportioned as provided in paragraph (a) of subsection (2) of this section. [1981 c.689 §2; 1983 c.589 §3; 1985 c.784 §1]

237.054 [Repealed by 1953 c.180 §18]

237.056 [Amended by 1953 c.522 §3; renumbered 237.041]

237.058 [Repealed by 1953 c.180 §18]

**237.060 Monthly retirement allowances to be adjusted to reflect fluctuations in cost of living; board to prescribe rate; adjustment amount limited.** (1) As soon as practicable after January 1 each year, the Public Employees' Retirement Board shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on the Consumer Price Index (Portland area—all items) as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the Portland, Oregon area. Prior to July 1 each year the allowance which the member or the member's beneficiary is receiving or is entitled to receive on August 1 for the month of July shall be multiplied by the percentage figure determined, and the allowance for the next 12 months beginning July 1 adjusted to the resultant amount.

(2) Such increase or decrease shall not exceed two percent of any monthly retirement allowance in any year and no allowance shall be adjusted to an amount less than the amount to which the recipient would be entitled if no cost of living adjustment were authorized.

(3) The amount of any cost of living increase or decrease in any year in excess of the maximum annual retirement allowance adjustment of two percent shall be accumulated from year to year and included in the computation of increases or decreases in succeeding years.

(4) Any increase in the allowance shall be paid from current service contributions of the public employer under ORS 237.081. Any decrease in the allowance shall be returned to the employer in the form of a credit against current service contributions of the employer under ORS 237.081. [1971 c.738 §11; 1973 c.695 §1; 1989 c.799 §2]

**Note:** 237.060 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 237 but was not added to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

237.061 [1953 c.200 §8; repealed by 1955 c.131 §21]

237.062 [Repealed by 1953 c.180 §18]

237.064 [Repealed by 1953 c.180 §18]

237.065 [1957 c.630 §4; 1967 c.622 §3; 1981 c.541 §3; repealed by 1981 c.761 §12]

237.066 [Repealed by 1953 c.180 §18]

237.068 [Repealed by 1953 c.180 §18]

237.070 [Repealed by 1953 c.180 §18]

**237.071 Contributions of employees; rate and payment; additional units for police and fire fighters.** (1)(a) Each employee who is an active member of the system shall contribute to the fund and there shall be withheld from salary of the employee six percent of that salary.

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

first month that payment is actually made under the terms of the salary agreement.

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

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

(4)(a) A police officer or fire fighter who is a member of the system may elect to make additional contributions to the fund to purchase increased benefits between the date of retirement and age 65. The rate of additional contribution shall be determined by the actuary, dependent upon the age of the police officer or fire fighter at the date of election, so as to provide monthly payments on the basis of \$10 per unit of benefits purchased. No police officer or fire fighter may elect to purchase more than eight units. For each \$10 unit purchased by the police officer or fire fighter, the employer shall purchase an equal \$10 unit. A police officer or fire fighter who is retained until age 65 shall receive a lump sum refund of the additional contributions made toward units purchased, plus interest thereon, but shall receive no benefits from the additional contributions by the employer for such units. If a police officer or fire fighter retires after age 60 but prior to age 65, the units purchased by additional contributions shall provide increased monthly benefits based on life expectancy, but the matching units purchased by the employer shall not, regardless of age, exceed \$10 per month per unit purchased by the police officer or fire fighter. If a police officer or fire fighter is absent from the employment of a participating employer for any reason and because of such absence is unable to make monthly additional contributions, the benefits provided under this subsection shall be actuarially reduced upon the retirement of the police officer or fire fighter.

(b) Notwithstanding paragraph (a) of this subsection, a police officer or fire fighter who retires prior to age 60 may apply for and receive an actuarially reduced unit income commencing at any date between the date of early retirement and age 60, with monthly benefits payable for at least 60 months or

any other monthly formula in excess of 60 months but always terminating by age 65. Such a police officer or fire fighter may elect to pay in a lump sum within the 60 days immediately preceding early retirement the contribution that the police officer or fire fighter would have made to the unit income account had the police officer or fire fighter worked to age 60.

(c) Any police officer or fire fighter who elects to make additional contributions to purchase increased benefits may elect at any time before termination to cancel such election, and upon such cancellation shall withdraw all additional contributions made. Having once canceled such election, no police officer or fire fighter shall be again permitted to make additional contributions.

(d) A police officer or fire fighter who has elected to make additional contributions under this subsection and who transfers to employment in which not entitled to make such additional contributions may retain the account established under paragraph (a) of this subsection for five years immediately following such transfer by not requesting a withdrawal. If, at the end of the five-year period, the police officer or fire fighter has not reached age 50, or has not returned to employment in which entitled to make additional contributions under this subsection, the election shall be canceled and the amount of the account established under paragraph (a) of this subsection shall be refunded to the police officer or fire fighter.

(e) Any election to make additional contributions under this subsection and any cancellation of such election shall be submitted to the employer and to the board in writing. [1953 c.200 §13; 1955 c.131 §5; 1957 c.630 §6; 1959 c.334 §1; 1963 c.608 §1; 1967 c.622 §4; 1969 c.107 §1; 1973 c.695 §2; 1981 c.541 §5; 1981 c.761 §1; 1993 c.177 §5]

237.072 [Repealed by 1953 c.180 §18]

**237.073 Contributions and current service pension of certain higher education employees.** Notwithstanding any other provision of ORS 237.001 to 237.315:

(1) An employee, as defined in ORS 243.910 (2), who is an active member of the system and who has elected, and not canceled that election, to be assisted by the State Board of Higher Education under ORS 243.920 (1), shall not contribute to the fund on any part of the annual salary of the employee in excess of \$4,800 at any time during which the State Board of Higher Education assists the employee under ORS 243.920 (1).

(2) The current service pension, whether for service or disability retirement, under ORS 237.001 to 237.315 provided by the contributions of the employers of such employee shall be:

(a) If the State Board of Higher Education is assisting such employee under ORS 243.920 (1) at the time of retirement, a pension equal to the annuity provided by the employee's accumulated contributions to the fund.

(b) If the State Board of Higher Education is not assisting such employee under ORS 243.920 (1) at the time of retirement, but previously so assisted the employee:

(A) For service before the date the State Board of Higher Education last ceased to assist the employee, a pension equal to the annuity provided by the employee's accumulated contributions to the fund before that date.

(B) For service on and after the date the State Board of Higher Education last ceased to so assist the employee, a pension computed as provided in ORS 237.147 (2), but if the employee retires before reaching the normal retirement age, actuarially reduced and computed on the then attained age. For the purpose of computing the pension under this subparagraph, only the number of years of membership of the employee after the day before that date and only the salary of the employee on which the employee contributes to the fund for those years shall be considered.

(3) Subsection (2) of this section does not apply to an employee, as defined in ORS 243.910 (2), who is an active member of the system, who elected to be assisted by the State Board of Higher Education under ORS 243.920 (1) before January 1, 1968, who canceled that election within the first 60 days of the calendar year 1968 as provided in ORS 243.940 (5) and who does not thereafter elect to be assisted by the State Board of Higher Education under ORS 243.920 (1).

(4) Subsection (2) of this section does not apply to an employee, as defined in ORS 243.910 (2), who is an active member of the system and has been an active member of the system continuously since any date before January 1, 1968; who elected to be assisted by the State Board of Higher Education under ORS 243.920 (1) before January 1, 1968; and who cancels that election in any calendar year after 1968, but before the calendar year in which the employee retires, as provided in ORS 243.940 (5) and does not thereafter elect to be assisted by the State Board of Higher Education under ORS 243.920 (1). In this case the benefit, whether for service or disability retirement, shall be computed as under ORS 237.147; however, for service during periods in which the employee was assisted by the State Board of Higher Education under ORS 243.920 (1), a year of membership as used in ORS 237.147 (2) shall be a portion of a year which is represented

by a fraction the numerator of which is \$4,800 and the denominator of which is the salary earned by the employee in that year. However, in no case shall the fraction be greater than one. [1965 c.297 §5; 1967 c.622 §5; 1969 c.640 §3; 1977 c.624 §1; 1987 c.617 §4; 1987 c.898 §15; 1993 c.177 §6]

237.074 [Repealed by 1953 c.180 §18]

**237.075 Payment of employee contribution by employer.** Notwithstanding any other provision of ORS 237.001 to 237.315, and subject to the provisions of this section, a public employer participating in the system may agree, by a written employment policy or agreement in effect on or after July 1, 1979, to "pick-up," assume or pay the full amount of contributions to the fund required of all or less than all active members of the system employed by the employer. If a public employer so agrees:

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

(2) The full amount of required employee contributions "picked-up," assumed or paid by the employer on behalf of its employees shall be considered "salary" within the meaning of ORS 237.003 (11) only for the purpose of computing a member's "final average salary" within the meaning of ORS 237.003 (15), and shall not constitute additional "salary" or "other advantages" within the meaning of ORS 237.003 (11) for any other purpose.

(3) The full amount of required employee contributions "picked-up," assumed or paid by the employer on behalf of its employees shall be added to the individual account balances of the employees for their annuities and shall be considered employee contributions for all other purposes of ORS 237.001 to 237.315. [1979 c.538 §3; 1981 c.373 §1; 1993 c.177 §7]

237.076 [Repealed by 1953 c.180 §18]

237.078 [Repealed by 1953 c.180 §18]

**237.079 Payment of employee contribution for district court judges.** The state shall "pick-up," assume or pay the full amount of contributions to the fund required of district court judges who are members of the system, but not judge members under ORS 237.211 to 237.233. The full amount of those contributions "picked-up," assumed or paid by the state shall be treated as provided in ORS 237.075 (2) and (3). [1987 c.625 §8]

**237.081 Employer contributions for current and prior service; amount of prior service credit.** (1) A public employer that is participating in the system shall, at

intervals designated by the board, transmit to it such amounts as are actuarially computed to be necessary, as determined by the board, to adequately provide the benefits to be provided by the contributions of the employer under ORS 237.001 to 237.315, including such amounts as are actuarially determined to be necessary to amortize within not less than 30 years after December 31, 1968, all liabilities estimated by the actuary to accrue to the system on account of the pensions to be provided by the contributions of the employer, except as otherwise provided in this section. For the purpose of such actuarial computation only, the school districts of the state shall be regarded as constituting one employer.

(2) In addition each such employer shall transmit to the board, at intervals which it designates, such amounts as are actuarially determined, on the basis of an amount per month equal to \$6 for each year of prior service or major fraction thereof for a period not exceeding 20 years for employees who last retired prior to April 8, 1953, and prior to becoming eligible for participation in the Old Age, Survivors and Disability Insurance program and on the basis of an amount per month equal to \$4 for each year of prior service or major fraction thereof for a period not exceeding 20 years for all other employees, except as provided in subsection (4) of this section, to be necessary to amortize within not less than 30 years after the employer commences participating in the system or after December 31, 1968, whichever occurs last, all liabilities estimated by the actuary to accrue to the system on account of service by the employer's employees prior to the time it commences participating in the system, and all prior service pension included in retirement allowances shall be computed on the basis hereby established; provided, however, that a political subdivision other than a school district may elect not to alter the basis of \$2.50 or \$4 per month established by its agreement made when it began to participate in the system established by chapter 401, Oregon Laws 1945, as amended. The 1961 amendment to this subsection does not apply with respect to employees receiving prior service pension on the basis of \$6 per month for each year of prior service credit allowed under the amendment to this subsection by section 3, chapter 623, Oregon Laws 1959.

(3) A political subdivision which had withdrawn prior to January 1, 1956, from the Public Employees' Retirement System may elect to increase the benefits payable for prior service to it from \$2.50 to \$4 per month for each year of prior service allowed; provided, that the administrative head of the

withdrawn employer enters into an agreement with the Public Employees' Retirement Board, binding such political subdivision to (a) transmit to the board, as hereinabove provided, payments including the cost of increased benefits, (b) pay for such increase of benefits for all its current employees with prior service credit who have maintained membership in the Public Employees' Retirement System and for all its past employees who have maintained such membership and who have prior service credit for service to such withdrawn public employer, and (c) pay for such increase of benefits for all annuitants who on the effective date of the agreement are receiving payment for prior service to such employer, the increase to be effective from and after the date of executing the agreement. An agreement so executed shall be irrevocable by the political subdivision, which shall be liable thereon and subject to legal action therefor by the board until all obligations of such agreement are fully discharged.

(4) Subject to the rules of the board and except as ORS 237.001 to 237.315 otherwise provide, credit shall be granted:

(a) An employee of the state who is a member of the system for continuous service, for a period not exceeding 20 years, to the state prior to July 1, 1946.

(b) A school district employee who is a member of the system for continuous service to all school districts of the state as provided in subsection (6) of this section.

(c) An employee of a public employer other than the state or a school district who is a member of the system for continuous service, on the basis of the formula agreed upon as provided in this subsection, to that public employer prior to the time it commences to participate in the system.

Within 60 days after an employer becomes a participant in the system the board shall issue the member entitled to such credit a certificate of the aggregate of such credit to which the member is entitled. The certificate shall be final unless the board, for cause upon the motion of the member or board, modifies the certificate. The board may arrange with a political subdivision other than a school district, or with an agency created by two or more such political subdivisions to provide themselves governmental services, for determining, on the basis of a formula agreed upon by the board and the governing body of the subdivision or agency, the years of credit which an employee of the subdivision or agency is to receive for service to it prior to the time that it commences to participate in the system, without limitation as to the number of years of such prior service,

and any such employee may be given credit for accumulated seasonal employment for such subdivision or agency if the employee has become a regular employee thereof. The amendments to this subsection and to subsection (5) of this section by section 5, chapter 640, Oregon Laws 1969, shall be deemed to have been in effect since the inception of the system.

(5) When the formula referred to in subsection (4) of this section has been agreed upon and the years of prior service credit have been determined, a political subdivision or agency created by two or more political subdivisions to provide themselves governmental services which desires to increase such credit to its employees may apply to the retirement board for a revision of the formula within the limitations of ORS 237.001 to 237.315. If the board agrees to such revision, the cost incurred in reviewing the records of such employer's employees and making any actuarial computation required to effect an increase of prior service credit shall be borne by the political subdivision or agency.

(6) Each school district employee who is a member of the system shall be granted full credit, for a period not exceeding 20 years, for continuous service to all school districts of the state prior to July 1, 1946. Each school district shall transmit to the board, at intervals which it designates, such amounts as are actuarially determined, on the basis stated in subsection (2) of this section, to be necessary to amortize, within not less than 30 years after December 31, 1968, all liabilities estimated by the actuary to accrue to the system on account of service by school district employees prior to July 1, 1946. [1953 c.200 §14; 1955 c.131 §6; 1957 c.299 §1; 1959 c.334 §2; 1959 c.623 §3; 1961 c.331 §2; 1963 c.608 §13; 1967 c.622 §6; 1969 c.640 §5; 1993 c.177 §8]

237.082 [Repealed by 1953 c.180 §18]

237.084 [Repealed by 1953 c.180 §18]

**237.085 Credit for service rendered before employer participated in system, when service interrupted for more than five years.** A member of the system who was not granted credit for service which the member rendered to the state or to the employer prior to the time it commenced to participate in the system, because the member's service had been interrupted for more than five years, shall upon retirement after December 31, 1947, be granted one year of prior service credit for each year of service rendered before the employer commenced to participate in the system for each full calendar year during which the employee was employed by an employer participating in the system and during which the employee made contribution to the system; but the total

number of years of prior service credit allowed may not exceed the maximum number of years of prior service credit which the employer has agreed to grant to its employees. An employee who, after establishing membership in the system, withdrew contributions to the fund, shall not be granted the prior service credit described in this section for any year for which any part of the contributions are withdrawn, unless such withdrawn contributions are repaid under ORS 237.111 (3). Prior service pension based upon prior service credit granted under this section to a member of the system who retired after December 31, 1947, and before January 1, 1961, is not payable for the period before September 1, 1965. [1961 c.342 §2; 1965 c.533 §1]

237.086 [Repealed by 1953 c.180 §18]

237.088 [Repealed by 1953 c.180 §18]

237.090 [Repealed by 1953 c.180 §18]

**237.091 Effect of service interruptions on membership.** Within the limits hereinafter specified regarding absence from service, no leave of absence, sabbatical leave, illness, accident or emergency preventing or interrupting service by an employee to an employer participating in the system shall be deemed to break the continuity of the employee's membership in the system. [1953 c.200 §16]

**237.093 Retirement credit for service in Armed Forces.** (1) Any employee of an employer participating in the system who was employed in a position normally requiring 600 hours or more of service per year and who entered or reenlisted in the Armed Forces of the United States after January 1, 1940, and prior to July 1, 1947, and who, after being otherwise than dishonorably discharged therefrom, returned or returns to the service of the employer in a position normally requiring 600 hours or more of service per year shall be entitled, subject to the limitations of ORS 237.001 to 237.315, to retirement credit for the period of employment prior to July 1, 1946, and to retirement credit for the period of military service in the Armed Forces after January 1, 1940, as though the employee had been an employee of the employer throughout military service in the Armed Forces after that date.

(2) Any employee of an employer participating in the system who was employed in a position normally requiring 600 hours or more of service per year and who entered or reenlisted in the Armed Forces of the United States during World War I and who, within one year after being otherwise than dishonorably discharged therefrom, returned to the service of the employer in a position normally requiring 600 hours or more of service per year, shall be entitled, subject to the limitations of ORS 237.001 to 237.315, to

retirement credit for the period of military service in the Armed Forces during World War I, as though the employee had been an employee of the employer throughout the period of military service in the Armed Forces.

(3) Any veteran who was an employee of an employer participating in the system who was employed in a position normally requiring 600 hours or more of service per year and who entered or reentered active service with the Armed Forces of the United States after July 1, 1947, and who, within one year after being otherwise than dishonorably discharged therefrom, returned or returns to the service of the employer in a position normally requiring 600 hours or more of service per year, may, after the date of such return and before retirement, pay to the retirement board in a lump sum the total amount of contributions the employee would have made throughout the period of military service in the Armed Forces based on the salary rate at the time of taking military leave, as though the employee had remained in the employment of the employer. Any lump sum contribution so made shall be added to the employee's account in the retirement fund and in all respects shall be considered as though made by payroll deduction.

(4) This section does not apply to an employee who does not return to the service of the employer within five years after July 1, 1946, or within five years after the date of entering or reentering active service with the Armed Forces of the United States, whichever is later. [1953 c.200 §16; 1957 c.630 §13; 1967 c.140 §1; 1975 c.200 §2; 1981 c.762 §8; 1987 c.617 §6; 1991 c.813 §1; 1993 c.177 §9]

237.094 [Repealed by 1953 c.180 §18]

**237.095 Service credit and repayment of withdrawn contributions for certain legislative employees.** (1) As used in this section, "legislative employee" means any person employed by the Legislative Assembly, either of its houses or any of its committees prior or subsequent to July 22, 1973, during any period or periods of such employment qualifying the person for membership and participation in the Public Employees' Retirement System under the provisions of this chapter then in effect. "Legislative employee" does not include any member of the legislature.

(2) A person shall not receive retirement credit in the Public Employees' Retirement System for any period in which the person was a legislative employee, during which the person did not pay the employee contributions required by law, except as provided under this section and ORS 173.210.

(3) Nothing in this section shall be considered to change any requirements of this

chapter for membership in the Public Employees' Retirement System, or to grant any membership or other rights to persons whose employment by the Legislative Assembly, either of its houses or any of its committees was not of a character or duration qualifying them under then applicable provisions of this chapter for membership in the system.

(4) Any person who is a legislative employee on July 22, 1973, who did not pay the employee contributions required by law during employment as a legislative employee prior to July 22, 1973, may obtain retirement credit for the period of such employment in the following manner:

(a) No later than one year after July 22, 1973, the employee shall give written notice to the board that the employee elects to pay to the fund the unpaid employee contributions attributable to legislative employment.

(b) The employee shall then pay to the board the entire amount of the unpaid employee contributions without interest, in a lump sum or at the option of the employee in installments, within five years after the date of making the election but prior to reaching compulsory retirement age.

(c) If a person has reached compulsory retirement age on or before July 22, 1973, or will reach compulsory retirement age no later than one year after July 22, 1973, the time in which the employee may pay the contributions to the system is extended to one year after July 22, 1973.

(5) Any person who was a legislative employee prior to July 22, 1973, and who is not so employed on July 22, 1973, but who becomes a legislative employee once again after July 22, 1973, may elect to pay employee contributions and obtain retirement credit for service prior to July 22, 1973, as a legislative employee. The election shall be made by giving written notice to the board no later than one year after the first day of the subsequent employment, in the same manner and subject to the same conditions as set forth in subsection (4) of this section.

(6) Subject to subsection (8) of this section, any person who makes the election under subsection (4) or (5) of this section and pays to the system the entire amount of employee contributions required thereunder, and who during other qualifying employment by a participating public employer contributed to the fund and subsequently but prior to July 22, 1973, withdrew contributions under ORS 237.111 (2), may, in the same manner and subject to the same conditions as set forth in subsection (4) of this section, repay to the fund the full amount of the contributions withdrawn by the employee, and

rights in the system forfeited by the withdrawal shall thereupon be restored.

(7) If a person who has reached or will reach compulsory retirement age within one year after July 22, 1973, the time for repayment under this section of the full amount of withdrawn contributions in order to restore rights in the system is extended to one year after July 22, 1973.

(8) A restoration of forfeited rights in the system shall not be available under subsections (6) and (7) of this section if a person withdrew contributions before the commencement of the employment in the course of which the person was or became a legislative employee, if the covered employment in the course of which the withdrawn contributions were made terminated more than five years before the commencement of employment.

(9) Any person who, on July 22, 1973, is an employee of the Legislative Counsel, or the Legislative Counsel, and who would have been eligible for retirement credit in the system for such employment prior to July 22, 1973, but for failure to exercise the option to become a member of the system under provisions of ORS 173.210 prior to its amendment by chapter 735, Oregon Laws 1973, may nevertheless obtain retirement credit in the system for such employment by making the election and paying employee contributions as provided in and subject to the conditions of subsection (4) of this section. The person shall not be eligible to make any election under subsection (5) or subsections (6) and (7) of this section. [1973 c.735 §§2,3,4,5,6,7]

237.096 [Repealed by 1953 c.180 §18]

**237.097 Retirement credit for service while on loan to Federal Government.** Any employee of an employer participating in the system shall receive retirement credit, subject to the limitations of ORS 237.001 to 237.315, for the period of employment with the participating employer prior to July 1, 1946, and for employment in any branch or department of the United States Government, and for military service in the Armed Forces of the United States, as though the person had been an employee of the participating employer throughout such period of employment or service, if within 40 days from and after separation from such civilian employment with the United States Government, or within one year after being otherwise than dishonorably discharged from military service in the Armed Forces of the United States, the person returned to the employment of the participating employer from which the person was transferred or loaned, provided that such employee comes within either of the following descriptions:

(1) Prior to employment with the United States Government, the person was employed by the participating employer and was transferred or loaned to a branch or department of the United States Government pursuant to an agreement between such participating employer and such branch or department of the United States Government for the transfer or loan of any departmental unit of such participating employer to the Federal Government during the war emergency.

(2) Served in any branch of the Armed Forces of the United States while on military leave of absence from a position in Federal Government employment as set forth in subsection (1) of this section. [1953 c.200 §16; 1993 c.177 §10]

**237.098** [Repealed by 1953 c.180 §18]

**237.099 Retirement credit for service as police officer or fire fighter with public employer not participating in system; maximum credit; application procedure.**

(1) A member of the system employed as a police officer or fire fighter shall be entitled to receive retirement credit as provided in subsection (2) of this section if:

(a) The member was employed by a public employer as a police officer or fire fighter prior to becoming a member of the system;

(b) The public employer that had previously employed the member was not a participant in the system at the time the member was in the service of that public employer; and

(c) The public employer that had previously employed the member was located in this state.

(2) A member of the system employed as a police officer or fire fighter who meets the requirements of subsection (1) of this section shall be entitled to receive retirement credit for the period of employment with a previous public employer as described in subsection (1) of this section up to a maximum of 10 years' retirement credit if the member:

(a) Applies in writing to the Public Employes' Retirement Board for such retirement credit; and

(b) Pays to the board, in a lump sum, an amount representing the contributions the member and the member's employer would have made for the years for which the member seeks retirement credit calculated as though the member had received a salary for each of those years equal to the salary received by the member in the first full calendar year of employment as a police officer or fire fighter within the system. In addition, the member shall pay the interest that would have accrued had the contributions been paid in the years for which the member seeks retirement credit, compounded annually. The

interest shall be computed at the annual rate of eight percent. Payment of the lump sum shall be made on or before the effective date of retirement for the member. The amounts representing the contributions the member would have made and the interest on those amounts shall be credited to the account of the employee in the fund. The amounts representing the contributions the employer would have made and the interest on those amounts shall be credits to the account of the member's current participating employer. [1991 c.675 §2; 1993 c.177 §11]

**Note:** 237.099 was added to and made a part of 237.003 to 237.315 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**237.101 Effect of transfer to other participating employer on accrued rights and credits.** No transfer after July 1, 1946, by a member of the system from the service of one employer participating in the system to the service of another such employer shall impair any rights or deprive the member of any credits accruing to the member as a result of membership in the system after July 1, 1946, and prior to the transfer. [1953 c.200 §15]

**237.102** [Repealed by 1953 c.180 §18]

**237.103 Effect of member acting as independent contractor for public employer.** Notwithstanding any other provision of ORS 237.001 to 237.315, if an employee who is a member of the system and employed by a public employer participating in the system is also engaged as an independent contractor by another public employer participating in the system, and the combined periods of that employment and engagement total 600 hours or more in any calendar year, the engagement as an independent contractor shall be considered as employment subject to, and for the purpose of determining contributions and benefits under, ORS 237.001 to 237.315, but shall not be so considered for the purpose of granting the member prior service credit. [1969 c.640 §2]

**237.104** [Repealed by 1953 c.180 §18]

**237.105** [1953 c.200 §15; repealed by 1967 c.622 §25]

**237.106** [Repealed by 1953 c.180 §18]

**237.107 Prior contributions and service credit not affected by change to calendar year basis.** All contributions made and all service credit earned under the Public Employes' Retirement Act of 1953 prior to January 1, 1956, on the basis of a fiscal year shall not be affected by the change from fiscal year basis to calendar year basis on January 1, 1956, under the 1955 amendments of the Public Employes' Retirement Act of 1953, and such contributions and credit are recognized as if no such change had been made. [1955 c.131 §2]

**237.108 Restoration of creditable service upon reentry.** (1)(a) A member of the system who, after separation from all service entitling the employee to membership in the system and withdrawal of the amount credited to the account of the employee in the fund, reenters the service of an employer participating in the system and serves as an active member of the system for 10 years after that reentry, and who has not otherwise obtained restoration of creditable service forfeited by the withdrawal, shall obtain restoration of one full month of creditable service forfeited by the withdrawal for each three full months of service as an active member after that reentry if the member, within 90 days before the effective date of retirement of the employee:

(A) Applies in writing to the board for restoration of creditable service; and

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

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

(c) An employee who obtains restoration of creditable service as provided in this subsection is not entitled to elect to receive the service retirement benefit described in ORS 237.155 (2).

(2) An employee who is a member of the system, who forfeited creditable service rendered to a public employer before March 27, 1953, because under ORS 237.976 (2) the employee withdrew contributions of the employee to the Public Employees' Retirement System established by chapter 401, Oregon Laws 1945, and who did not obtain restoration of creditable service so forfeited as provided in chapter 857, Oregon Laws 1977, shall, upon retirement, receive restoration of creditable service so forfeited; if the employee, before the effective date of retirement of the employee:

(a) Applies in writing to the board for the restoration of the creditable service; and

(b) Pays to the board in a lump sum for credit to the account of the employee in the fund an amount determined by the board to be equal to the full amount of contributions

so withdrawn and the interest that would have accumulated to the account of the employee in the fund had those contributions not been withdrawn.

(3)(a) A member of the Public Employees' Retirement System who was a member of an association established pursuant to ORS chapter 239, but separated from all service entitling the employee to membership in the system of the association and withdrew the amount credited to the account of the employee in the retirement fund of the association, and who, after that separation, entered the service of an employer in the field of education participating in the Public Employees' Retirement System and served as an active member of that system for 10 years after that entry, and who has not otherwise obtained restoration of all creditable service forfeited by the withdrawal, shall obtain creditable service as a member of the Public Employees' Retirement System equal to all creditable service forfeited by the withdrawal if the member within 90 days before the effective date of retirement of the member:

(A) Applies in writing to the Public Employees' Retirement Board for that creditable service; and

(B) Pays to the board in a lump sum for credit to the account of the member in the Public Employees' Retirement Fund the amount withdrawn and interest on the amount withdrawn compounded annually for each year or portion of a year after the date of the withdrawal and before the effective date of retirement or effective date of application of the member. The interest shall be computed at the rate actually credited to member accounts for that period.

(b) This subsection provides a method of obtaining creditable service for forfeited creditable service described in this subsection that is in lieu of any application of subsection (1) of this section for that purpose. [1983 c.647 §2; 1987 c.617 §7; 1991 c.917 §1; 1993 c.177 §12]

**Note:** Section 1, chapter 783, Oregon Laws 1993, provides:

**Sec. 1.** (1) Notwithstanding section 2, chapter 917, Oregon Laws 1991, a retired member of the Public Employees' Retirement System may obtain restoration of creditable service in the manner specified by ORS 237.108 (3) if:

(a) The member retired on or after January 1, 1982, and before July 1, 1985; and

(b) Within 90 days after the effective date of this Act [November 4, 1993], the retired member makes the application and payment required by ORS 237.108 (3).

(2) The increased benefit payable as a result of the recalculation of a retired member's retirement allowance under this section is first effective for the first full month after the retired member makes the payment required by ORS 237.108 (3), payable the first day of the month immediately following. No retroactive payment

shall be made to a retired member under the provisions of this section. [1993 c.783 §1]

**237.109 Termination of membership.**

An employee shall cease to be a member of the system:

(1) In the event that during any absence from such service the employee withdraws the amount credited to the account of the employee in the fund; or

(2) In the event that the employee is absent from the service of all employers participating in the system for a total of more than five consecutive years after the employee becomes a member of the system, except that any school district employee who completes a school year, who is then absent the next five school years but returns to school employment at the beginning of the sixth school year, or reaches earliest service retirement age prior to the beginning of the sixth school year, is deemed to have retained membership in the system. This subsection shall be deemed to have been in effect since the inception of the system. [1953 c.200 §15; 1955 c.131 §7; 1957 c.630 §7]

237.110 [Repealed by 1953 c.180 §18]

**237.111 Separation prior to retirement; withdrawal of credits; reinstatement upon reemployment.** (1) In the event that an employee who is a member of the system, who has made contributions to the fund during each of five calendar years as established by ORS 237.001 to 237.315, and who has not attained earliest service retirement age, is separated, for any reason other than death or disability, from all service entitling the employee to membership in the system, the account shall remain to the employee's credit in the fund unless the employee elects to withdraw it and there shall be paid such death benefits as ORS 237.001 to 237.315 provide; or a disability retirement allowance or, after attaining earliest service retirement age, a service retirement allowance, either of which shall consist of:

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

(b) A pension provided by the contributions of employers as provided in ORS 237.147 (2), but actuarially reduced and computed on the employee's then attained age; and

(c) An additional life pension (nonrefund) for prior service, including military service, credited to the employee at the time the employee first becomes a member of the system, as elsewhere provided in ORS 237.001 to 237.315, which pension shall be provided by the prior service contributions of the employer or, in case the employee is an em-

ployee of a school district, by a uniform rate of contribution by all school districts; except that an employee who is entitled to benefits under ORS 1.310 to 1.390 (1989 Edition) shall not also be entitled to the prior service pension provided by this paragraph.

(2) In the event that an employee who is a member of the system and has not attained earliest service retirement age, is separated, for any reason other than death or disability, from all service entitling the employee to membership in the system, the employee may withdraw from the fund the amount credited to the employee's account; provided that the notice of separation, withdrawal request, and notice of employment, if applicable, shall be transmitted forthwith to the Public Employees' Retirement System by the employer or employee, and the Public Employees' Retirement System may deny or shall recover such withdrawal in favor of the employee unless the employee continues to remain absent from the payroll of any participating employer for a calendar month following the month in which the employee separates from service. Such withdrawal shall cancel all membership rights in the Public Employees' Retirement System, including the right to claim credit for any employments prior to withdrawal. If such employee has contributed to the fund in each of five calendar years and terminates before reaching earliest service retirement age, the employee may, before reaching earliest service retirement age, elect to withdraw the employee's account balance in the fund. Failing to make such election, there shall be paid the benefits or retirement allowances described in subsection (1) of this section.

(3) Whenever, within five years after the employee is separated from all service entitling the employee to membership in the system, an employee who has withdrawn the amount credited to the employee's account reenters the service of an employer participating in the system, the employee's rights in the system which were forfeited by the withdrawal shall be restored upon repaying to the board within one year after reentering the service of the employer, the full amount so withdrawn together with the interest that would have been accumulated on the sum had the amount not been withdrawn. [1953 c.200 §15; 1955 c.131 §8; 1957 c.630 §8; 1959 c.225 §1; 1963 c.608 §2; 1967 c.622 §7; 1969 c.640 §6; 1971 c.160 §1; 1973 c.704 §4; 1975 c.449 §1; 1983 c.830 §4; 1991 c.815 §5; 1993 c.118 §2]

237.112 [Repealed by 1953 c.180 §18]

237.113 [1959 c.663 §2; 1971 c.496 §1; 1979 c.727 §2; 1987 c.898 §16; repealed by 1991 c.815 §21]

237.114 [Repealed by 1953 c.180 §18]

**237.115 Transfer of employee's account balance to another public employees' retirement system.** Whenever an

employee who is past the earliest service retirement age separates from the service of a public employer participating in the Public Employees' Retirement System and who thereafter, but before applying to the Public Employees' Retirement Board for retirement benefits, is employed in a position which entitles the employee to membership in another public employees' retirement system, either within or without this state, the board, upon the written request of the employee and if in conformance with the provisions of law governing the other public employees' retirement system, may transfer the account balance of the employee under the Public Employees' Retirement System to the other public employees' retirement system. Such transfer shall cancel the right of the employee to claim any future benefits under the Public Employees' Retirement System for service rendered to a public employer in this state prior to the date of the transfer. [1957 c.630 §3]

237.116 [Repealed by 1953 c.180 §18]

**237.117 Retirement credit for probationary period of employment.** A member of the system who has a combined total of 10 years or more of creditable service in the system and prior service credit under ORS 237.081 at the time of retirement, and who was required to complete one or more periods of six months or less in the service of an employer participating in the system before becoming a member of the system, shall receive retirement credit for those periods of six months or less if the member, within 90 days before the effective date of retirement of the member, applies in writing to the board for that retirement credit and pays to the board in a lump sum an amount determined by the board to be equal to:

(1) The total amount of employee contributions to the fund by or on behalf of the employee that would have been required for the six months' period if the employee had been a member of the system during that period, which amount shall be credited to the account of the employee in the fund; and

(2) The total amount of employer contributions to the fund the employer of the employee would have been required to make in respect to the employee if the employee had been a member of the system during the six months' period, which amount shall be credited to the reserve for pension accounts in the fund. [1985 c.625 §2; 1987 c.617 §8; 1993 c.177 §13]

237.118 [Repealed by 1953 c.180 §18]

**237.119 Retirement credit for probationary periods in seasonal positions.** (1) A member of the system who has 10 years or more of creditable service in the system at the time of retirement, and who

served for less than six months working full-time in a seasonal position with a public employer participating in the system before becoming a member of the system, shall receive retirement credit for those periods of less than six months if the member, within 90 days before the effective date of retirement of the member, applies in writing to the board for that retirement credit and pays to the board in a lump sum an amount determined by the board to be equal to:

(a) The total amount of employee contributions to the fund by or on behalf of the employee that would have been required for the six months' period if the employee had been a member of the system during that period, plus interest at the rate of eight percent per annum from the date the contributions would have been made, which amount shall be credited to the account of the employee in the fund; and

(b) The total amount of employer contributions to the fund the employer of the employee would have been required to make in respect to the employee if the employee had been a member of the system during the six months' period, plus interest at the rate of eight percent per annum from the date the contributions would have been made, which amount shall be credited to the reserve for pension accounts in the fund.

(2) As used in this section, "seasonal position" means an apprenticeship, internship or entry level role in the employ of a participating public employer that is served by a person before being employed in a technical or professional position with that public employer.

(3) No retirement credit shall be allowed under this section for any period of employment for which retirement credit is acquired under ORS 237.117. [1991 c.917 §5; 1993 c.177 §14]

237.120 [Repealed by 1953 c.180 §18]

**237.121 Voluntary retirement.** (1) A police officer or fire fighter who is a member of the system and attains the age of 50 or any other employee who is a member of the system and attains the age of 55 shall be retired upon written application by the member to the board on a reduced service retirement allowance which shall be the actuarial equivalent of the service retirement allowance provided for in ORS 237.147 at the normal retirement age.

(2) Notwithstanding subsection (1) of this section and ORS 237.073 (2)(b)(B):

(a) A police officer or fire fighter who is a member of the system, attains the age of 50 and has a combined total of 25 years or more of creditable service in the system and prior service credit under ORS 237.081 shall be retired upon written application by the

member to the board on a service retirement allowance including, without actuarial reduction, the same current service pension and prior service pension provided for in ORS 237.147 at the normal retirement age.

(b) An employee who is a member of the system, has a combined total of 30 years or more of creditable service in the system and prior service credit under ORS 237.081, and is not eligible to retire under paragraph (a) of this subsection shall be retired upon written application by the member to the board on a service retirement allowance including, without actuarial reduction, the same current service pension and prior service pension provided for in ORS 237.147 at the normal retirement age. [1953 c.200 §17; 1967 c.622 §8; 1973 c.695 §3; 1975 c.449 §2; 1979 c.812 §1; 1981 c.768 §1; 1987 c.617 §9; 1987 c.898 §17a; 1989 c.871 §1; 1993 c.177 §15]

**237.122** [Repealed by 1953 c.180 §18]

**237.124** [Repealed by 1953 c.180 §18]

**237.125 Reemployment of members who have voluntarily retired.** (1)(a) Any member of the system who is retired at any time after having reached earliest service retirement age, and who has been retired for more than six consecutive calendar months, may be reemployed by any public employer even though such retired member has been receiving retirement benefits.

(b) Any person reemployed as provided in this subsection shall resume making contributions to the retirement fund, and the employer shall make contributions on behalf of the person as provided in ORS 237.081. Payments of retirement allowance received by such person during separation from the service shall not be repaid into the retirement fund after the person reenters public employment except as provided in paragraph (c) of this subsection; but the amount of such payment shall be deducted from such employee's reserve in the retirement fund and the remainder shall be credited pro rata to the funds from which it was derived.

(c) Upon reentering public employment as provided in this subsection, the former retirement of such person and any election of option for payment of retirement benefits theretofore made by the person shall be canceled; and thereafter upon retiring such person may elect any option for payment of retirement benefits authorized by ORS 237.001 to 237.315, except that a person who elected to receive lump sum payment of benefits pursuant to ORS 237.155 (2) at the time of former retirement may not elect any other option at the time of subsequent retirement unless an amount equal to the lump sum and the interest that would have accumulated on the sum has been repaid by the employee to the fund. Upon such subsequent retirement any

prior service pension due the employee shall be derived from the unused portion of the prior service credit reserve and shall be calculated on the basis of then attained age.

(2) Any member of the system who is retired at any time after having reached earliest service retirement age, and who has been retired for less than six consecutive calendar months, may be reemployed by any public employer even though such retired member has been receiving retirement benefits, only upon immediate repayment in a lump sum by the member of the amount of retirement benefits drawn, after which repayment the account of the member shall be reestablished just as it was at the time of earlier retirement.

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

(a) For service before August 21, 1981, an allowance including a current service pension computed on the basis of ORS 237.147 (2) (1979 Replacement Part).

(b) For service on or after August 21, 1981, an allowance including a current service pension computed on the basis of ORS 237.147 (2). [1953 c.200 §17; 1955 c.131 §9; 1967 c.622 §9; 1979 c.861 §2; 1981 c.761 §3; 1983 c.830 §5; 1987 c.898 §§11,18]

**237.126** [Repealed by 1953 c.180 §18]

**237.128** [Repealed by 1953 c.108 §18]

**237.129** [1953 c.200 §17; 1957 c.630 §9; 1967 c.622 §10; 1979 c.861 §3; 1983 c.641 §1; 1987 c.898 §19; repealed by 1993 c.120 §1]

**237.130** [Repealed by 1953 c.180 §18]

**237.131** [1969 c.226 §2; 1975 c.473 §1; 1979 c.861 §4; repealed by 1987 c.898 §28]

**237.132** [Repealed by 1953 c.180 §18]

**237.133 Nonforfeiture of benefits by elected, full-time salaried officers.** No person who is elected to a full-time salaried office of the state or one of the participating political subdivisions thereof, or who is appointed to a full-time salaried office having a term fixed by statute or charter, whether or not the person has been retired, shall forfeit any rights accrued or accruing to the person under ORS 237.001 to 237.315. However, for the period that such person holds such office the person shall not be entitled to any pension or annuity provided by ORS 237.001 to 237.315. Upon ceasing to hold such office, benefits shall be computed or recomputed on the basis of age then attained. [1953 c.200 §17; 1955 c.131 §10; 1957 c.630 §10; 1959 c.333 §3; 1961 c.331 §3; 1967 c.622 §11; 1969 c.650 §1; 1971 c.317 §1; 1975 c.137 §4; 1975 c.200 §3; 1979 c.214 §1; 1987 c.898 §20]

**237.134** [Repealed by 1953 c.180 §18]

**237.135** [1955 c.283 §2; repealed by 1987 c.898 §28]

237.136 [Repealed by 1953 c.180 §18]

237.137 [1963 c.387 §2; 1967 c.622 §12; repealed by 1969 c.597 §281]

237.138 [Repealed by 1953 c.180 §18]

237.139 [1957 c.366 §2; repealed by 1993 c.120 §1]

237.140 [Repealed by 1953 c.180 §18]

237.141 [1953 c.200 §17; 1955 c.131 §11; repealed by 1959 c.400 §1 (237.143 enacted in lieu of 237.141)]

237.142 [Repealed by 1953 c.180 §18]

**237.143 Reemployment of retired employees.** (1) Subject to the limitations in subsection (2) of this section, any public employer may employ any person receiving a service retirement allowance, if the administrative head of such employer is satisfied that such employment is in the public interest.

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

(b) The period or periods of employment by one or more public employers of any person receiving a service retirement allowance in a management service position as described in ORS 240.212, in the unclassified service as described in ORS 240.205 (1) to (5), or as a school superintendent shall not total 1,040 hours or more in any calendar year; but if the person is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the person may be employed for the number of hours for which the salary equals the maximum allowed for receipt of the full amount of those benefits to which the person is entitled.

(3) Employment under this section shall not affect the status of a person as a retired member of the system and a recipient of retirement benefits under ORS 237.001 to 237.315.

(4) For the purposes of this section, "school superintendent" means the highest ranking administrative officer in a school district, as described in ORS 330.005, or the superintendent of an education service district who is employed under ORS 334.225. [1959 c.400 §2 (enacted in lieu of 237.141); 1973 c.704 §5; 1979 c.214 §2; 1991 c.917 §3]

237.144 [Repealed by 1953 c.180 §18]

**237.145 Option of legislators to receive certain benefits; employment of persons as legislative employees or state police**

**officer beyond 65 years of age.** (1) Notwithstanding any other provision of ORS 237.001 to 237.315:

(a) A retired member of the system who has retired as other than a member of the Legislative Assembly and who thereafter becomes a member of the Legislative Assembly and elects to become an active member of the system as a member of the Legislative Assembly may also elect, by giving the board written notice of desire to do so, to receive the pension and annuity provided by ORS 237.001 to 237.315 for service as other than a member of the Legislative Assembly, and be an active member of the system as a member of the Legislative Assembly for the period the member holds office as a member of the Legislative Assembly. The notice provided for in this paragraph shall be given within 30 days after the retired member takes office as a member of the Legislative Assembly.

(b) A member of the Legislative Assembly who is a member of the system as a member of the Legislative Assembly and who becomes eligible to retire by reason of service as other than a member of the Legislative Assembly, without regard to when that service was performed, may elect, by giving the board written notice of desire to do so, to retire and receive the pension and annuity provided by ORS 237.001 to 237.315 for service as other than a member of the Legislative Assembly, and to continue, for the period the member holds office as a member of the Legislative Assembly, as an active member of the system as a member of the Legislative Assembly.

(c) Upon receipt of the notice provided for in paragraphs (a) and (b) of this subsection, the board shall determine that portion of the accumulated contributions of the member and interest thereon attributable to service as other than a member of the Legislative Assembly, which shall be used in determining the amount of the annuity the member shall receive for that service. The portion of the accumulated contributions of the member and interest thereon attributable to service as a member of the Legislative Assembly shall remain in the individual account of the member and, together with subsequent contributions and interest thereon, be used in determining the amount of the additional annuity the member shall receive for that service upon ceasing to hold office as a member of the Legislative Assembly.

(2) Notwithstanding any other provision of ORS 237.001 to 237.315, a person who has reached the age of 65 years, whether or not previously employed by a public employer and whether or not a retired member of the system, may be employed by the Legislative

Assembly, either house thereof or the Oregon State Police for all or any part of a regular or special session of the Legislative Assembly. A person employed under this subsection:

(a) Unless an active member of the system continuing in employment past the age of 65 years, shall not be permitted to make contributions to the retirement fund, nor shall the employer make contributions on behalf of the person.

(b) If a retired member of the system, is entitled, during the period of such employment, to any pension or annuity provided by ORS 237.001 to 237.315. [1967 c.214 §2; 1973 c.30 §1; 1975 c.200 §4; 1977 c.548 §1; 1981 c.541 §8; 1991 c.813 §15; 1993 c.177 §16]

237.146 [Repealed by 1953 c.180 §18]

**237.147 Service retirement allowance at retirement.** Upon retiring from service at normal retirement age or thereafter a person who is a member of the system shall receive a service retirement allowance which shall consist of the following annuity and pensions:

(1) A refund annuity which shall be the actuarial equivalent of accumulated contributions by the member and interest thereon credited at the time of retirement, which annuity shall provide an allowance payable during the life of the member and at death a lump sum equal in amount to the difference between accumulated contributions at the time of retirement and the sum of the annuity payments actually made to the member during life shall be paid to such person, if any, as the member nominates by written designation duly acknowledged and filed with the board or shall otherwise be paid according to the provisions of ORS 237.001 to 237.315 for disposal of an amount credited to the account of a member at the time of death in the event the member designates no beneficiary to receive the amount or no such beneficiary is able to receive the amount. If death of the member occurs before the first payment is due, the account of the member shall be treated as though death had occurred before retirement.

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

(A) For service as a police officer or fire fighter, two percent of final average salary multiplied by the number of years of mem-

bership in the system as a police officer or fire fighter before the effective date of retirement.

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

(C) For service as other than a police officer, fire fighter or member of the Legislative Assembly, 1.67 percent of final average salary multiplied by the number of years of membership in the system as other than a police officer, fire fighter or member of the Legislative Assembly before the effective date of retirement.

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

(A) The actuarial equivalent of the annuity provided by the accumulated contributions of the member.

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

(c) As used in this subsection, "number of years of membership" means the number of full years plus any remaining fraction of a year for which salary was paid and contributions to the Public Employees' Retirement System made. Except as otherwise provided in this paragraph, in determining a remaining fraction a full month shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as a full month. Membership of a school district employee, an employee of the State Board of Higher Education engaged in teaching or other school activity at an institution of higher education or an employee of the Children's Services Division, the Department of Corrections, the Mental Health and Developmental Disability Services Division or the State Board of Education engaged in teaching or other school activity at an institution supervised by the board, department or division, for all portions of a school year in a calendar year in which the district school, institution of higher education or school activity at an institution so supervised in which the member is employed is normally in session shall be considered as a full one-half year of membership. The number of years of membership of a member who received a refund of contributions as provided in ORS 237.976 (2) is limited to the number of years after the day before the date on which the refund was received. The number of years of membership of a member who is separated, for any reason other than death

or disability, from all service entitling the member to membership in the system, who withdraws the amount credited to the account of the member in the fund during absence from such service and who thereafter reenters the service of an employer participating in the system but does not repay the amount so withdrawn as provided in ORS 237.001 to 237.315, is limited to the number of years after the day before the date of so reentering.

(3) An additional life pension (nonrefund) for prior service, including military service, credited to the member at the time of first becoming a member of the system, as elsewhere provided in ORS 237.001 to 237.315, which pension shall be provided by the prior service contributions of the employer or, in case the member is an employee of a school district, by a uniform rate of contribution by all school districts. [1953 c.200 §18; 1955 c.131 §12; 1967 c.622 §13; 1969 c.597 §140; 1969 c.640 §7; 1971 c.738 §2; 1973 c.695 §4; 1975 c.137 §3; 1975 c.200 §5; 1975 c.449 §3; 1981 c.541 §6; 1981 c.761 §4; 1987 c.320 §148; 1987 c.617 §10; 1987 c.898 §21]

237.148 [Repealed by 1953 c.180 §18]

237.149 [1967 c.622 §23; 1969 c.640 §14; 1977 c.740 §2; repealed by 1981 c.761 §12]

237.150 [Repealed by 1953 c.180 §18]

**237.151 Option of certain separated or retired members to receive lump sum payment of benefits.** A member of the system who has separated from the service of all participating employers, who retires for service and whose total service retirement allowance on the effective date of retirement, as computed by the board in accordance with the nonrefund plan, is less than \$30 per month, shall receive, in lieu of any and all retirement allowance or other benefits under the system, a retirement benefit in the form of a lump sum amount equal to the actuarial value, on the effective date of retirement, of the retirement allowance computed by the board in accordance with the nonrefund plan. A member who receives a retirement benefit as provided in this section is eligible to participate in insurance coverage under ORS 237.320, and the board shall determine the manner in which the cost of that coverage payable by the member shall be paid. [1953 c.200 §15; 1963 c.608 §16; 1967 c.622 §14; 1987 c.898 §§9, 22]

237.152 [Repealed by 1953 c.180 §18]

**237.153 Use of accumulated unused sick leave to increase benefits.** (1)(a) Upon the request by a public employer that its employees be compensated for accumulated unused sick leave with pay in the form of increased retirement benefits upon service or disability retirement, the board shall establish a procedure for adding to the gross amount of salary used in determining final average salary the monetary value of one-

half of the accumulated unused sick leave with pay of each retiring employee of the requesting public employer and shall establish benefits of the retiring employee on the basis of a final average salary reflecting that addition.

(b) For employees of a common school district, a union high school district, an education service district or a community college, or employees of the State Board of Higher Education engaged in teaching or other school activity at an institution of higher education, or employees of MacLaren School for Boys or Hillcrest School of Oregon or state schools for the deaf or blind engaged in teaching or other school activity, who are employed under contract for a period of less than 12 consecutive months and who are entitled to sick leave with pay of less than 96 hours for a year, each hour of accumulated unused sick leave with pay shall be valued on the basis of the actual number of contract hours of employment during the last year of contributing membership of an employee before retiring and the salary of the employee during the same period. This paragraph does not apply to any employee who is employed under contract for 12 consecutive months in any of the three or less years used in determining the final average salary of the employee.

(c) For the purpose of this subsection, accumulated unused sick leave with pay includes unused sick leave with pay accumulated by an active member of the system while in the service of any public employer participating in the system that has the request described in paragraph (a) of this subsection in effect at the time of the member's separation from the service of the employer, whether that employer is or is not the employer of the member at the time of the member's retirement.

(d) The board shall establish rules requiring all public employers participating in the system to transmit to the board reports of unused sick leave with pay accumulated by their employees who are members of the system and to provide timely notification to each of those employees of unused sick leave with pay accumulated by the employee and reported to the board.

(2) Accumulated unused sick leave with pay may be considered for the purpose of subsection (1) of this section only in accordance with the following requirements:

(a) Sick leave not credited at the rate actually provided by the public employer may not be considered. The amount of sick leave exceeding an amount credited at the lowest rate in effect for any employee of the public employer who is normally entitled to sick leave, and in any event exceeding an amount

credited at a rate of eight hours for each full month worked, may not be considered.

(b) Sick leave credited for periods when an employee was absent from employment on sabbatical leave, educational leave or any leave without pay may not be considered.

(c) Any period during which an employee was absent from employment for illness or injury that was charged against sick leave not qualified for consideration shall be deducted from sick leave qualified for consideration.

(d) Sick leave for any period for which the public employer provides no sick leave with pay for its employees may not be considered.

(e) Sick leave accumulated on and after July 1, 1973, may be considered only to the extent it is supported by records of accumulation and use pursuant to a plan adopted formally by the public employer.

(f) Accumulated unused sick leave for periods before July 1, 1973, may be considered as follows:

(A) If any department, bureau or other organizational unit of a public employer maintained formal records of accumulation and use even though the public employer did not require that those records be maintained, the accumulated unused sick leave shall be considered according to those records.

(B) Where the public employer provided sick leave before July 1, 1973, but formal records of accumulation and use were not required or if required, are unavailable or incomplete, or the sick leave was subject to administrative limitations on total accumulation or transfer between public employers, accumulated unused sick leave for periods before July 1, 1973, may be considered as equal to 2.675 hours for each full month worked or an amount per month equal to the average monthly accumulation by an employee during the period beginning July 1, 1973, and ending at the time of retirement, whichever amount is greater, but reduced by the amount of any accumulated unused sick leave credited to the employee on July 1, 1973.

(g) The written certification of a member or former member of the Legislative Assembly shall constitute a formal record of accumulation and use in determining the amount of accumulated unused sick leave of an employee of the Legislative Assembly, either of its houses or any of its committees or officers for periods of employment before July 1, 1981. Sick leave accumulated on and after July 1, 1981, by employees of the Legislative Assembly, either of its houses or any of its committees or officers may be considered only to the extent it is supported by records

of accumulation and use maintained by the Legislative Administration Committee, or any statutory, standing, special or interim committee of the Legislative Assembly or either house thereof, or any constitutional or statutory office of the Legislative Assembly or either house thereof, pursuant to a plan adopted formally by the committee or officer.

(3)(a) As used in this subsection, "legislative employee" means any person employed by the Legislative Assembly, either of its houses or any of its committees or officers, but does not include a regular employee of a statutory committee or statutory office of the Legislative Assembly described in ORS 173.005 (1).

(b) Upon the request of a retiring legislative employee who is a member of the system, and the request of the public employer of the legislative employee, that the legislative employee be compensated for accumulated unused vacation with pay for periods of legislative employment in the form of increased retirement benefits upon service or disability retirement, the board shall add to the gross amount of salary used in determining final average salary of the legislative employee the monetary value of one-half of the accumulated unused vacation with pay of the legislative employee and shall establish the benefits of the legislative employee on the basis of a final average salary reflecting that addition.

(c) Accumulated unused vacation with pay may be considered for the purposes of paragraph (b) of this subsection only in accordance with the following requirements:

(A) Vacation not credited at the rate actually provided by the public employer may not be considered.

(B) Amounts of vacation exceeding amounts creditable to employees in the classified service of the state service pursuant to ORS 240.515 (1), and rules adopted pursuant thereto, in effect on June 30, 1981, shall not be considered.

(C) Vacation accumulated before, on and after July 1, 1981, may be considered only to the extent it is supported by records of accumulation and use pursuant to a plan adopted formally by the public employer. However, the written certification of a member or former member of the Legislative Assembly shall constitute a formal record of accumulation and use in determining the amount of accumulated unused vacation of a legislative employee for periods of legislative employment before July 1, 1981.

(4) Employers with plans providing payments on account of sickness in lieu of sick leave with pay may request the board to consider the monetary value of accumulated

unused payments on account of sickness as if such payments were an equivalent amount of accumulated unused sick leave with pay under the same terms and conditions specified in subsections (1) and (2) of this section. [1973 c.646 §2; 1975 c.203 §1; 1981 c.772 §1; 1981 c.567 §10; 1981 c.849 §2; 1983 c.830 §6; 1987 c.819 §1; 1989 c.799 §3; 1993 c.177 §17]

237.154 [Repealed by 1953 c.180 §18]

**237.155 Optional forms of service retirement allowance.** (1) At any time after establishing membership, but within 60 days after the date of the first benefit payment, a person who is a member of the system may elect to convert the allowance described by ORS 237.147 as payable after retirement into a service retirement annuity of equivalent actuarial value of one of the optional forms named below. The election of Option 2, 2A, 3 or 3A shall be effective immediately upon the member's retirement.

Option 1. (a) A life annuity (nonrefund) payable during the member's life only, which shall be the actuarial equivalent of accumulated contributions by the member and interest thereon credited at the time of retirement (if death occurs before the first payment is due, the account shall be treated as though death had occurred before retirement); (b) a life pension (nonrefund) provided by the contributions of employers as provided in ORS 237.147 (2); (c) an additional nonrefund pension for prior service, including military service, credited to the member at the time of first becoming a member of the system, as elsewhere provided in ORS 237.001 to 237.315, which pension shall be provided by the prior service contributions of the employer or, in case the member is an employee of a school district, by a uniform rate of contribution by all school districts; or

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

Option 2A. A reduced service retirement allowance payable during the member's life which, unless modified under subsection (5) of this section, continues after death for the life of the beneficiary the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 3. A reduced service retirement allowance payable during the member's life, with the provision that it continue after death at one-half the rate paid to the member and be paid for the life of the beneficiary the

member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 3A. A reduced service retirement allowance payable during the member's life which, unless modified under subsection (5) of this section, continues after death at one-half the rate paid to the member and is paid for the life of the beneficiary the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 4. A reduced service retirement allowance payable during the member's life, with the provisions that if the member dies before a total of 180 monthly payments is made, the remainder of the 180 monthly payments shall be paid monthly to the beneficiary the member nominates by written designation duly acknowledged and filed with the board at any time before the member's death; and that if the member designates no beneficiary to receive the monthly payments or no such beneficiary is able to receive the monthly payments, an amount equal to the actuarial value, on the date of the member's death, of the total of the monthly payments not made to the member shall be paid according to ORS 237.165 for disposal of an amount credited to the account of a member at the time of death; and that if the beneficiary receiving monthly payments dies before the total number of monthly payments to which the beneficiary is entitled is made, an amount equal to the actuarial value, on the date of the beneficiary's death, of the total of the monthly payments not made to the member and beneficiary shall be paid according to ORS 237.165 for disposal of an amount credited to the account of a member at the time of death and as if the beneficiary had been a member.

(2) At any time after establishing membership, but within 60 days after the date of the first benefit payment, a person who is a member of the system may elect, in lieu of the allowance described by ORS 237.147 as payable after retirement, a service retirement benefit consisting of:

(a) A refund of accumulated contributions by the member and interest thereon credited at the time of refund; and

(b) A life pension (nonrefund) provided by the contributions of employers as provided in ORS 237.147 (2) (1979 Replacement Part), and an additional life pension (nonrefund) for prior service as provided in ORS 237.147 (3). At the same time as making the election under this subsection, the member may elect to convert the pensions described by this paragraph into a service retirement annuity of

equivalent actuarial value of one of the optional forms named as Option 2, 2A, 3 or 3A under subsection (1) of this section.

(3) If the member elects to receive the service retirement benefit described in subsection (2) of this section, the member shall elect at the same time to receive the refund described in paragraph (a) of subsection (2) of this section in one lump sum payment or in more than one but not more than five installment payments. If the member elects installment payments:

(a) The installment payments shall be paid once each year for the number of consecutive years equal to the number of installment payments elected.

(b) The amount of each installment payment shall be designated by the member at the time of making the election, but the last installment payment shall be the unrefunded balance remaining in the individual account of the member in the Public Employees' Retirement Fund.

(c) The individual account of the member in the fund shall be maintained until the last installment payment is paid. The board shall establish procedures for computing and crediting interest annually on the unrefunded balance of the account.

(d) A yearly installment payment shall be paid on the anniversary of the date of the first installment payment.

(e) The member is considered to have elected to transfer any balance in the account of the member in the Variable Annuity Account to the individual account of the member in the fund.

(f) If the member dies before payment of all installment payments, the unrefunded balance in the individual account of the member in the fund plus interest to date of disbursement is payable as provided in ORS 237.165 (5).

(4) The designation of a beneficiary, the election of an option or any other election or designation under subsection (1), (2) or (3) of this section may be changed by the member within 60 days after the date of the first benefit payment, except that the designation of a beneficiary under Option 4 may be changed by the member at any time before the member's death.

(5) If a retired member has elected to receive a service retirement allowance under Option 2A or Option 3A as provided in subsection (1) of this section, and if the beneficiary under that option dies after the expiration of the time within which the member could change the election of an option or if the beneficiary is the spouse of the member and the marriage relationship is ter-

minated as provided by law after the expiration of the time within which the member could change the election of an option, the member may elect to receive, in lieu of the optional form of allowance previously elected, the allowance that the member would have received on the effective date of retirement under Option 1 as provided in subsection (1) of this section and adjusted by the actual amount of any cost of living or other post-retirement adjustments made to the original allowance since the effective date of retirement. Notice of election under this subsection shall be in a form approved by the board. Payment under Option 1 shall be effective for months beginning on or after the date the board receives the election.

(6) Notwithstanding any other provision of this section, any member of the system who retired before October 3, 1989, and elected to receive a service retirement allowance under either Option 2 or 3 as provided in subsection (1) of this section shall be entitled to receive a service retirement allowance equal to that which the member would have received on the effective date of retirement under Option 1 as provided in subsection (1) of this section and adjusted by the actual amount of any cost of living or other post-retirement adjustments made to the original allowance since the effective date of retirement if:

(a) The member has attained 80 years of age;

(b) The member designated the member's spouse as beneficiary under the option selected;

(c) The member's spouse has predeceased the member; and

(d) The member gives written notice to the board of the member's election to convert to the service retirement allowance provided in this subsection.

(7) The service retirement allowance provided in subsection (6) of this section shall be applicable to the first full month after October 3, 1989, or the first full month after the death of the member's spouse allowing the member to convert to the service retirement allowance provided for in subsection (6) of this section, whichever is later. [1953 c.200 §19; 1955 c.131 §13; 1967 c.622 §15; 1971 c.738 §3; 1973 c.704 §6; 1977 c.740 §1; 1979 c.658 §5; 1981 c.761 §5; 1985 c.692 §1; 1987 c.898 §3; 1989 c.799 §4; 1989 c.900 §1; 1991 c.813 §3; 1993 c.121 §1]

**Note:** Section 6, chapter 121, Oregon Laws 1993, provides:

**Sec. 6.** The amendments to ORS 237.155 by section 1 of this Act apply only to members of the Public Employees' Retirement System who retire on or after the effective date of this Act [November 4, 1993], [1993 c.121 §6]

237.156 [Repealed by 1953 c.180 §18]

**237.157 Waiver of retirement allowance payments.** (1) If receipt in full by a person of a retirement allowance under ORS 237.001 to 237.315 would prevent such person from receiving in full any other governmental pension to which the person is entitled, such person may waive for a calendar year sufficient monthly payments, or portions thereof, of retirement allowance under ORS 237.001 to 237.315 to permit the person to receive in full the other governmental pension. The waiver shall be made in writing and filed with the Public Employees' Retirement Board not less than 15 days before the first day of the month to which the waiver applies.

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

(3) The waiver may be revoked at any time, but no retirement allowance waived for the period of time in which the waiver is in effect shall be paid. The revocation shall be made in writing and filed with the board. If a person dies during the period of time in which the waiver is in effect, the waiver is considered revoked on the date of such death. [1959 c.256 §2]

**237.158** [Repealed by 1953 c.180 §18]

**237.159 Estimated benefit payments.**

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

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

the member's disability benefit, the date the board receives the member's election of one of the optional forms of disability retirement allowance or the date the first monthly payment is due, whichever is later.

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

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

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

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

(6) No member shall have any right to any allowance or other benefit other than that provided for in ORS 237.001 to 237.315 based on the board's estimate under this section or based on any other estimate made by the board for any other purpose under ORS 237.001 to 237.315. [1989 c.995 §2; 1991 c.813 §2]

**237.160** [Repealed by 1953 c.180 §18]

**237.162** [Repealed by 1953 c.180 §18]

**237.163 Benefits payable to surviving spouse or child of police officer or fire fighter under system.** (1) The surviving spouse or child of a police officer or fire fighter, who died a member of the Public Employees' Retirement System while retired either for service or disability and while receiving or being entitled to receive a benefit under ORS 237.173 or under ORS 237.001 to 237.315, is entitled to a benefit under this

section. The benefit shall be equal to 25 percent of the unmodified retirement allowance the police officer or fire fighter was receiving or was entitled to receive at the time of death under ORS 237.173 or under ORS 237.001 to 237.315. The benefit authorized by this section is in addition to any other benefit the surviving spouse or child is entitled to and is available to the child until the child attains 18 years of age.

(2) For the purpose of this section, the unmodified retirement allowance is that allowance described in ORS 237.147, or if election to receive the benefits authorized under ORS 237.173 has been made, the unmodified retirement allowance is 50 percent of the final average salary of the police officer or fire fighter as determined on the date of the injury causing disability.

(3) The board shall pay to a surviving spouse or child entitled to a benefit under this section a lump sum amount equal to the actuarial value of the allowance provided under this section if the allowance is less than \$30 per month. The lump sum amount shall be in lieu of the allowance provided for under this section. [Formerly 237.640]

**Note:** 237.163 was added to and made a part of 237.001 to 237.315 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

237.164 [Repealed by 1953 c.180 §18]

**237.165 Payment of credits or accrued benefits on death of member.** (1) In the event that a person who is a member of the system dies before retiring, the amount of money credited at the time of death to the account of the member in the fund shall be paid to the beneficiaries designated by the member. For this purpose a member may designate as a beneficiary any person or the executor or administrator of the estate of the member or a trustee named by the member to execute an express trust in regard to such amount. The withdrawal from the fund of the amount in the account of a member pursuant to ORS 237.111 (2) shall not invalidate a prior designation of beneficiary in the event a member returns to covered employment, regardless of whether the sum is repaid to the fund pursuant to ORS 237.111 (3).

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

ment to be made to survivors in the following groups in the order listed:

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

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

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

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

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

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

(5) Accrued benefits due a retired member at the time of death are payable to the designated beneficiary and, if none, to the administrator or executor of the estate of the member. If the estate will not be probated, they may be paid, upon receipt by the board of the affidavit referred to in subsection (2) of this section, to the next of kin in the order listed in subsection (2) of this section. If the estate will not be probated and if there is no beneficiary or next of kin, accrued benefits or a balance due under a refund annuity option shall be paid or credited for the purposes and in the manner provided in subsection (4) of this section. For the purpose of determining accrued benefits due a retired member at the time of death, accrued benefits are considered to have ceased as of the last day of the month preceding the month in which the retired member dies; but if Option 2 or Option 3 under ORS 237.155 has been elected as provided in ORS 237.001 to 237.315 and the beneficiary survives the retired member, the benefits to the beneficiary shall commence as of the first day of the month in which the retired member dies, and payment of benefits under Option 2 or Option 3 shall cease with the payment for the month preceding the month in which the beneficiary dies.

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

(7) Payments by the Public Employees' Retirement Board of credits or accrued benefits pursuant to the beneficiary designation on file with the board or any affidavit referred to in subsection (2) of this section shall completely discharge the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment. [1953 c.200 §20; 1963 c.608 §18; 1969 c.640 §9; 1971 c.738 §4; 1981 c.541 §7; 1983 c.830 §7; 1985 c.823 §3; 1987 c.898 §1; 1989 c.799 §5; 1993 c.121 §2]

**Note:** Section 7, chapter 121, Oregon Laws 1993, provides:

**Sec. 7.** The amendments to ORS 237.165 and 237.169 by sections 2 and 3 of this Act apply only to benefits paid under ORS 237.165 and 237.169 on or after the effective date of this Act [November 4, 1993]. [1993 c.121 §7]

**237.166** [Repealed by 1953 c.180 §18]

**237.167 Payment upon death of retired member who dies before making election**

**of retirement benefits.** If a person who is a member of the system, who has attained normal retirement age and who has retired from service, dies without making an election under ORS 237.155 and prior to the expiration of the time within which such an election could be made by the person, and the records of the Public Employees' Retirement Board indicate that the person has designated the surviving spouse as the beneficiary under ORS 237.165 (1), such surviving spouse may, not more than 60 days after the date of the death of such deceased member, elect to receive the amount referred to in ORS 237.165 (1), or elect Option 2 or Option 3 under ORS 237.155 and designate self as the beneficiary thereunder with the same force and effect as if the election and designation had been properly made by the deceased member. [1957 c.367 §2; 1987 c.898 §23]

**237.168** [Repealed by 1953 c.180 §18]

**237.169 Additional death benefit.** (1) In addition to any other benefits under ORS 237.001 to 237.315, a death benefit, provided by current service contributions of the public employer under ORS 237.081, shall be paid to the beneficiaries designated under ORS 237.165 (1) of a person who is an active or inactive member of the system and who dies as a result of injuries received while employed in the service of the public employer or within 120 days after termination from service with a participating public employer. A member who is on a leave of absence without pay from employment with a participating public employer has not terminated service with that participating public employer for the purposes of this section.

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

(3) In the event that a beneficiary has not been named as provided in subsection (1) of this section and ORS 237.165 (1), the death benefit referred to in subsection (1) of this section shall be paid to the same person or persons and in the same manner as provided for payment of money credited to the account of the member in ORS 237.165 (2).

(4) In the event that a beneficiary has not been designated and the deceased member has no surviving next of kin referred to in ORS 237.165 (2), the death benefit referred to in subsection (1) of this section shall be used for the same purpose and in the same manner as provided for the use of money credited to the account of the member in ORS 237.165 (4).

(5) The beneficiary designated under subsection (1) of this section and ORS 237.165 (1) may elect to receive the amount payable

in actuarially determined monthly payments for the life of such beneficiary so long as such monthly payments, plus the monthly amount if elected under ORS 237.165 (3), are at least \$30.

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

(7) Payments by the Public Employees' Retirement Board of additional death benefits pursuant to the beneficiary designation on file with the board or any affidavit referred to in ORS 237.165 (2) shall completely discharge the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment. [1959 c.623 §2; 1961 c.331 §4; 1963 c.608 §3; 1969 c.621 §1; 1971 c.738 §5; 1973 c.704 §8; 1983 c.740 §61; 1983 c.830 §8; 1985 c.823 §4; 1987 c.898 §2; 1989 c.799 §6; 1993 c.121 §3; 1993 c.177 §18]

Note: See note under 237.165.

237.170 [Repealed by 1953 c.180 §18]

**237.171 Disability retirement allowance.** (1) Whenever an employee who is a member of the system is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, the member shall receive a disability retirement allowance consisting of:

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

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

(A) For a police officer or fire fighter, the pension to which the member would have been entitled if the member had worked continuously until attaining the age of 55, or if the member has attained the age of 55, the pension which the member would receive were the member to retire for service, as provided in ORS 237.001 to 237.315.

(B) For an employee other than a police officer or fire fighter, the pension to which the member would have been entitled if the member had worked continuously until attaining the age of 58, or if the member has attained the age of 58, the pension which the member would receive were the member to retire for service, as provided in ORS 237.001 to 237.315.

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

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

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

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

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

(6) In computing years of employment for the purpose of subsection (3) of this section, the following schedule shall be used: For employment before the employee established membership in the Public Employees' Retirement System, a member shall be considered to have been employed for one year for each year of prior service credit allowed, and for any minor fraction of a year of continuous service as certified by the employer for which no prior service credit was granted. After having established membership in the Public Employees' Retirement System a member shall be considered to have been employed one year for each 12-month period or major fraction thereof during which time the member received compensation for employment which entitled the member to membership in the system, as evidenced by payroll records. For the purpose of determining a member's eligibility for disability benefits, no leave of absence after an employee ceases to work for any participating employer shall be considered other than accumulated sick

leave not in excess of 90 days. The effective date of the disability shall not in any event be determined by the board as prior to the last day for which the disabled member performed services for a participating employer. No benefits may be paid for any month in which the employee received salary or sick leave benefits from the participating employer.

(7) For the purposes of subsections (1) and (3) of this section, a member of the system shall be considered to be mentally or physically incapacitated for an extended duration if the mental or physical incapacity can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 90 days. [1953 c.200 §21; 1955 c.131 §14; 1959 c.334 §4; 1963 c.608 §4; 1967 c.622 §16; 1975 c.449 §5; 1983 c.641 §2; 1987 c.898 §24; 1991 c.60 §1; 1993 c.177 §19]

237.172 [Amended by 1953 c.523 §6; renumbered 237.305]

**237.173 Service-connected disability retirement allowance for police officers and fire fighters; election to receive; conversion to annuity.** (1) A police officer or fire fighter, other than a volunteer fire fighter, who would be entitled to receive disability benefits as a member of the Public Employees' Retirement System under ORS 237.171 (1), may elect to receive the service-connected disability retirement allowance authorized under this section. The allowance authorized under this section is an amount equal to 50 percent of the police officer's or fire fighter's final average salary as determined at the date of the injury causing the disability. If elected, the allowance authorized under this section is in lieu of any service-connected disability retirement benefit available under ORS 237.001 to 237.315.

(2) The election to receive the benefits authorized under subsection (1) of this section shall be made within 90 days after the board makes its decision that the police officer or fire fighter is disabled. The election once made shall not be changed.

(3) A police officer or fire fighter electing to receive the benefits authorized under subsection (1) of this section may elect to convert those benefits to a service-connected disability retirement annuity of equivalent actuarial value as provided in ORS 237.181.

(4) Nothing in this section shall interfere with the right of a police officer or fire fighter to receive a disability retirement allowance under ORS 237.001 to 237.315 for disability not incurred in the line of duty. [Formerly 237.630]

**Note:** 237.173 was added to and made a part of 237.001 to 237.315 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

237.174 [Renumbered 237.311]

237.176 [Renumbered 237.315]

**237.181 Optional forms of disability retirement allowance.** (1) At any time after establishing membership, but before the expiration of 90 days after the board makes its finding that the employee is disabled, an employee who is a member of the system may elect to convert the disability retirement allowance otherwise payable on the account of the employee into a disability retirement annuity of equivalent actuarial value, by selecting one of the optional forms named below. The election of Option 2, 2A, 3 or 3A shall be effective immediately upon the effective date of the member's disability, and in the event of death within the first 90-day period of incapacity, payment to the beneficiary of the member shall be made in accordance with the option selected.

Option 1. (a) A life annuity (nonrefund) payable during the member's life only, which shall be the actuarial equivalent of the accumulated contributions and interest thereon credited to the member at the time the member retires (if death occurs before the first payment is due, the account shall be treated as though death had occurred before retirement); (b) a life pension (nonrefund) provided by the contributions of employers as provided in ORS 237.171 (1)(b); (c) an additional nonrefund pension for prior service, including military service, credited to the member at the time the member first becomes a member of the system, as elsewhere provided in ORS 237.001 to 237.315, which pension shall be provided by the prior service contributions of the employer or, in case the member is an employee of a school district, by a uniform rate of contribution by all school districts; or

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

Option 2A. A reduced disability retirement allowance payable during the period of incapacity which, unless modified under subsection (3) of this section, continues after death, if death shall occur after the effective date of the disability and during the period of incapacity, for the life of the beneficiary whom the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

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

Option 3A. A reduced disability retirement allowance payable during the period of incapacity which, unless modified under subsection (3) of this section, continues after death, if death shall occur after the effective date of the disability and during the period of incapacity, at one-half the rate paid to the member and is paid for the life of the beneficiary whom the member nominates by written designation duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member; or

Option 4. A reduced disability retirement allowance payable during the period of incapacity, with the provisions that if the member dies during the period of incapacity and before a total of 180 monthly payments is made, the remainder of the 180 monthly payments shall be paid monthly to the beneficiary the member nominates by written designation duly acknowledged and filed with the board at any time before the member's death; and that if the member designates no beneficiary to receive the monthly payments or no such beneficiary is able to receive the monthly payments, an amount equal to the actuarial value, on the date of the member's death, of the total of the monthly payments not made to the member shall be paid according to ORS 237.165 for disposal of an amount credited to the account of a member at the time of death; and that if the beneficiary receiving monthly payments dies before the total number of monthly payments to which the beneficiary is entitled is made, an amount equal to the actuarial value, on the date of the beneficiary's death, of the total of the monthly payments not made to the member and beneficiary shall be paid according to ORS 237.165 for disposal of an amount credited to the account of a member at the time of death and as if the beneficiary had been a member.

(2) The beneficiary designated by a member to receive any benefit under this section shall be the same as designated under ORS 237.165 (1). The designation of a beneficiary or the election of an option may be changed by a member within 60 days after the date of the first benefit payment, except that the designation of a beneficiary under Option 4

may be changed by the member at any time before the member's death.

(3) If a retired member has elected to receive a service retirement allowance under Option 2A or Option 3A as provided in subsection (1) of this section, and if the beneficiary under that option dies after the expiration of the time within which the member could change the election of an option or if the beneficiary is the spouse of the member and the marriage relationship is terminated as provided by law after the expiration of the time within which the member could change the election of an option, the member may elect to receive, in lieu of the optional form of allowance previously elected, the allowance that the member would have received on the effective date of retirement under Option 1 as provided in subsection (1) of this section and adjusted by the actual amount of any cost of living or other post-retirement adjustments made to the original allowance since the effective date of retirement. Notice of election under this subsection shall be in a form approved by the board. Payment under Option 1 shall be effective for months beginning on or after the date the board receives the election.

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

(5) The obligation for payment of any benefit in force prior to April 8, 1953, shall not be altered by subsections (1) to (4) of this section. However, the beneficiary of a retired member who prior to July 1, 1953, elected an option but died prior to the effective date of such election, shall have a right to repay, before December 31, 1953, the amount of the lump sum refund made in lieu of the monthly life benefit elected and receive payment of such benefit, computed as of the date of the member's death and payable from such date.

(6) If a member who would have qualified for disability benefits makes preliminary application for such benefits but dies prior to being found by the board to be disabled or prior to electing a plan of benefit payments, and the records of the board indicate that the member had designated the surviving spouse as beneficiary under ORS 237.165 (1), such surviving spouse may, not more than 90 days after the board makes its finding that the member would have qualified for disability benefits if living:

(a) Elect to receive the amount referred to in ORS 237.169 if such benefit would have been available if the member had not applied for disability benefits; or

(b) If not eligible for benefits under ORS 237.169, elect to receive benefits under ORS 237.165 (1); or

(c) Elect Option 2 or 3 under subsection (1) of this section and designate the surviving spouse as beneficiary thereunder with the same force and effect as if the election and designation had been properly made by the deceased member. [1953 c.200 §21; 1955 c.131 §15; 1957 c.630 §11; 1961 c.27 §1; 1967 c.622 §17; 1969 c.640 §10; 1971 c.738 §6; 1975 c.449 §6; 1987 c.898 §4; 1989 c.799 §7]

**237.187 Minimum disability benefits; reduction.** (1) Whenever an active or inactive member of the system has been found to be entitled to a disability retirement allowance as provided in ORS 237.171, the member shall receive not less than an aggregate of \$100 a month under the nonrefund plan, subject to reduction to equivalent actuarial value in the event of the member's exercising any option provided by ORS 237.181.

(2) Notwithstanding ORS 237.171, 237.181 and subsection (1) of this section, if an active or inactive member of the system has been found to be entitled to a disability retirement allowance as provided in ORS 237.171 after the member has passed earliest service retirement age, the amount of monthly disability retirement allowance shall not be less than the amount which the member would have received had the member retired for service and elected the same option.

(3) Notwithstanding ORS 237.171, 237.181 and subsection (1) of this section, the amount of a monthly disability retirement allowance shall be reduced by the amount by which the combined total of the disability retirement allowance to which the retired member is otherwise entitled for the month and the earned income for the month exceeds the monthly salary received by the retired member at the time of retirement for disability; but the amount of the reduction shall not reduce the combined total of the disability retirement allowance and earned income for the month to less than \$400. [1953 c.200 §21; 1955 c.131 §16; 1963 c.608 §5; subsection (2) enacted as 1963 c.608 §7; 1967 c.622 §18; 1969 c.640 §11; 1987 c.898 §25; 1993 c.177 §20]

**237.191 Medical examinations for applicants for disability retirement allowance.** The board shall require medical examinations for all applicants for retirement for disability under such general rules as it prescribes, and may provide for the discontinuance of any disability retirement allowance and the forfeiture of all rights under ORS 237.001 to 237.315, in the case of any person who refuses to submit to such an examination. [1953 c.200 §21]

**237.195 Procedure when disabled member is capable of resuming work.** (1)

When a member retired because of disability is determined by the board to be not incapacitated to the extent that the member is disabled from the performance of any work for which the member is qualified, the disability retirement shall be canceled forthwith, the member shall be eligible for reemployment and the individual account of the member shall be credited with the amount which stood to the credit in the account of the member in the fund at the time of retirement for disability. Any such person who for any reason is not reinstated in the service of an employer participating in the system shall receive separation benefits as provided in ORS 237.001 to 237.315.

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

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

(b) Such member is employed by an employer participating in the system and has demonstrated ability to continue in such employment.

When the conditions set forth in paragraphs (a) and (b) of this subsection have been met, the account of the employee shall be credited with the amount which stood to the credit of the employee in the account at the time of retirement for disability. [1953 c.200 §21; 1957 c.630 §12; 1967 c.622 §19]

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

(2) There is established in the Public Employees' Retirement Fund an account, separate and distinct from the General Fund, to

be known as the Variable Annuity Account. Interest earned by the account shall be credited to the account.

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

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

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

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

(c) No transfer shall be made under this subsection after the first payment on account

of the service retirement allowance of the member becomes normally due.

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

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

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

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

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

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

account during the period and such other information as the authority may require.

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

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

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

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

(9) Upon retiring from service but within 60 days after the date of the first benefit payment, a person who is a member of the system and who has an account in the Variable Annuity Account may elect to transfer the balance in that account to the account of the member in the Public Employees' Retirement Fund, and by that transfer the annuity shall be based on the account balance in the Public Employees' Retirement Fund as otherwise provided in ORS 237.001 to 237.315 and the member shall not receive a variable annuity as provided in this section.

(10) When an annuity is payable under ORS 237.001 to 237.315 to a person who is a member of the system and who has an account in the Variable Annuity Account or to a beneficiary of that person, the portion of the annuity payable from the Variable Annuity Account shall be proportionately increased or decreased for a calendar year when, as of October 31 of the preceding calendar year, the balance of the account of that person in the Variable Annuity Account exceeds or is less than the current value of the annuity, determined in accordance with

the rate of interest and approved actuarial tables then in effect.

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

(12) Notwithstanding any other provision of ORS 237.001 to 237.315, the retirement allowance to which a person who is a member of the system and who has an account in the Variable Annuity Account or who made contributions on salary in excess of \$4,800 per year during the period January 1, 1956, through December 31, 1967, and whose effective date of retirement is January 1, 1982, or later, is otherwise entitled under ORS 237.001 to 237.315 shall be subject to the following adjustment:

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

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

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

(13) Except as otherwise specifically provided in this section, the rights and benefits under ORS 237.001 to 237.315 of an active or retired member of the system or of a beneficiary of the member are not affected by this section and the provisions of ORS 237.001 to 237.315 applicable to accounts of active and retired members of the system in the Public Employees' Retirement Fund are also applicable to such accounts in the Variable Annuity Account.

(14)(a) In addition to the transfer provided for in subsection (9) of this section, a member of the system who has an account in

the Variable Annuity Account may at any time prior to retirement elect to transfer the balance in that account to the account of the member in the Public Employees' Retirement Fund if:

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

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

(C) The member has a combined total of 25 years or more of creditable service in the system and prior service credit under ORS 237.081.

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

(c) An election under paragraph (a) of this subsection shall be filed with the board, and shall be in such form as the board may provide by rule.

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

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

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

(B) Be the account balance credited by the board to the account of the member in the Public Employees' Retirement Fund if the election is determined to be effective.

(f) The annuity of a member who makes an effective transfer under this subsection shall be based on the member's account balance in the Public Employees' Retirement Fund as otherwise provided in ORS 237.001

to 237.315, and the member shall not receive a variable annuity as provided in this section. [1967 c.622 §24; 1969 c.538 §1; 1971 c.738 §7; 1973 c.695 §§5, 5a; 1981 c.761 §6; 1989 c.799 §8; 1989 c.966 §8; 1991 c.59 §1; 1993 c.177 §21]

237.198 [1963 c.608 §9; 1967 c.622 §20; repealed by 1971 c.738 §8 (237.199 enacted in lieu of 237.198)]

**237.199 Monthly service retirement allowances or monthly disability allowances increased in certain cases.** (1) Effective January 1, 1972, the monthly service retirement allowance or monthly disability retirement allowance of each member who retired at the following times shall be increased by the following percentages:

(a) Before January 1, 1968, 25 percent.

(b) After January 1, 1968, but before January 1, 1972, 12 percent.

(2) Effective January 1, 1974, the monthly service retirement allowance or monthly disability retirement allowance, including any increase pursuant to subsection (1) of this section, of each member who retired before January 1, 1974, shall be increased by 25 percent, with the following exceptions:

(a) An allowance including a current service pension computed on the basis of .92 percent of final average salary for a police officer or fire fighter or on the basis of .67 percent of final average salary for a person other than a police officer or fire fighter pursuant to ORS 237.147 (2) (1967 Replacement Part) shall be increased by 20 percent.

(b) An allowance including a current service pension computed on the basis of 1.15 percent of final average salary for a police officer or fire fighter or on the basis of .84 percent of final average salary for a person other than a police officer or fire fighter pursuant to ORS 237.147 (1971 Replacement Part) shall be increased by 12 percent.

(c) An allowance including a current service pension computed on the basis of 1.35 percent of final average salary for a police officer or fire fighter or on the basis of one percent of final average salary for a person other than a police officer or fire fighter pursuant to ORS 237.147 (2) (1973 Replacement Part) shall not be increased.

(3) First effective for the month of October 1977, the monthly service retirement allowance or monthly disability retirement allowance of each member who is entitled to receive the allowance for the month of October 1977 shall be increased by the following percentages:

(a) Twenty-five percent of the first \$50 of the monthly allowance;

(b) Fifteen percent of the amount of the monthly allowance exceeding \$50 and not exceeding \$150;

(c) Ten percent of the amount of the monthly allowance exceeding \$150 and not exceeding \$250;

(d) Five percent of the amount of the monthly allowance exceeding \$250 and not exceeding \$350; and

(e) One percent of the amount of the monthly allowance exceeding \$350. [1971 c.738 §9 (enacted in lieu of 237.198); 1973 c.695 §6; 1977 c.627 §1]

**237.200 Minimum service retirement allowance for certain employees.** Notwithstanding any other provision of ORS 237.001 to 237.315, the service retirement allowance, including any increase pursuant to ORS 237.199, of a member who has 15 or more years of creditable service, shall be not less than \$100 a month, computed under the nonrefund plan:

(1) For a member who retires and begins receiving a service retirement allowance before or on reaching the age of 65 years, on the basis of retirement at the age of 65 years.

(2) For a member who retires and begins receiving a service retirement allowance after reaching the age of 65 years, on the basis of age reached at retirement. [1973 c.695 §8; 1979 c.861 §5; 1981 c.541 §9; 1993 c.177 §22]

**237.201 Rights and moneys exempt from taxes, execution and bankruptcy; assignment prohibited; exceptions.** (1) The right of a person to a pension, an annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit or death benefit, or any other right accrued or accruing to any person under the provisions of ORS 237.001 to 237.315, and the money in the various funds created by ORS 237.271 and 237.281, shall be exempt from garnishment and all state, county and municipal taxes heretofore or hereafter imposed, except as provided under ORS chapter 118, shall not be subject to execution, garnishment, attachment or any other process or to the operation of any bankruptcy or insolvency law heretofore or hereafter existing or enacted except for execution or other process upon a support obligation or an order or notice entered pursuant to ORS 25.060, 25.311, 25.314, 25.450, 419B.408 or 419C.600, and shall be unassignable.

(2) Subsection (1) of this section does not apply to state personal income taxation of amounts paid under ORS 237.001 to 237.315. [1953 c.200 §22; 1969 c.640 §13; 1971 c.732 §3; 1979 c.85 §2; 1985 c.671 §9; 1987 c.617 §11; 1989 c.726 §6; 1991 c.823 §1; 1993 c.33 §321; 1993 c.798 §46]

Note: See temporary provisions following 237.210.

Note: See note under 237.007.

**237.202 Interest on payments from fund.** Interest is not payable on any payment

from the Public Employees' Retirement Fund unless specifically provided for in ORS 237.001 to 237.315. [1993 c.121 §5]

**237.205 Benefits payable to others under certain court decrees.** (1) Notwithstanding ORS 237.201 or any other provision of law, payments under ORS 237.001 to 237.315 of any pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit that would otherwise be made to a person entitled thereto under ORS 237.001 to 237.315 shall be paid, in whole or in part, by the board to an alternate payee if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the total value of benefits payable to a member and to an alternate payee under this section may not be greater than the value of the benefits the member would otherwise be eligible to receive. Any payment under this subsection to an alternate payee bars recovery by any other person.

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

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

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

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

(b) That the alternate payee may elect to receive payment in any form of pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit in the form of a joint and survivor annuity, that would be available to the member under ORS 237.001 to 237.315, or that would be available to the member if the member retired or separated from service at the time of election by the alternate payee, without regard to the form of benefit elected by the member.

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

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

(a) The creation of a separate account in the name of the alternate payee reflecting the decree's, order's or agreement's distribution of the member's benefits under ORS 237.001 to 237.315;

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

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

(4) If a decree, order or agreement awards an interest to an alternate payee, and if the alternate payee predeceases the member before the alternate payee has commenced receiving benefits, the alternate payee shall be considered a member of the system who died before retiring for the purposes of the death benefits provided in ORS 237.165 and 237.169, but for purposes of the death benefits provided in ORS 237.169, the alternate payee shall be considered a member of the system who died before retiring only if the member would have been eligible for death benefits under ORS 237.169 had the member died at the same time as the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons entitled to receive the benefits under ORS 237.165 and 237.169 shall constitute payment in full of the alternate payee's interest under the decree, order or agreement.

(5) Any increase in the retirement allowance provided to the member shall increase the amounts paid to the spouse or former spouse of the member in the same proportion, except that an alternate payee is not entitled to receive cost of living adjustments under ORS 237.060 or any other retirement allowance increase until benefits are first paid from the system on behalf of the member.

(6) An alternate payee under this section is not eligible to receive the benefits provided under ORS 237.071 (4), 237.247, 237.248 and 237.320 by reason of the provisions of this section.

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

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

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

(10) As used in this section, "court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia. [1979 c.607 §2; 1993 c.715 §1]

Note: Sections 3 and 4, chapter 715, Oregon Laws 1993, provide:

Sec. 3. Within 90 days of the effective date of this Act [November 4, 1993], the Public Employees' Retirement Board and the administrator of any public employer retirement plan as defined in section 2 of this Act [237.600] shall mail an explanation of the provisions of this Act to all persons who have previously notified the Public Employees' Retirement System or the public employer retirement plan of a decree, order or settlement awarding a pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit. [1993 c.715 §3]

Sec. 4. (1) Except as provided in subsection (2) of this section, the amendments to ORS 237.205 by section 1 of this Act and section 2 of this Act [237.600] apply only to decrees or orders entered or modified on or after the effective date of this Act [November 4, 1993].

(2) The amendments to ORS 237.205 by section 1 of this Act and section 2 of this Act apply to decrees and orders entered before the effective date of this Act if no benefit has been paid before the effective date of this Act to either spouse and only to the extent that application is not inconsistent with the terms of the decree or order. If the spouse or former spouse elects to receive a benefit in a form other than the form provided for in the decree or order entered before the effective date of this Act, the member is released from any restriction or direction in the decree or order regarding selection of the form of benefit. [1993 c.715 §4]

#### **237.208 Additional retirement allowance based on years of service in system.**

(1) Upon retirement of an employee who is a member of the system and computation of that member's service retirement allowance under ORS 237.111, 237.147 or 237.155, or computation of any disability retirement allowance under ORS 237.171, 237.181 or 237.187, the board shall add to the amount of the allowance, including the amount of any refund of accumulated employee contributions, an additional amount equal to the percentage increase provided in subsection (4) of this section.

(2) The amount of any death benefit under ORS 237.165, 237.167 or 237.169, including the amount of any monthly payments, shall be increased by an amount equal to the percentage increase provided in subsection (4) of this section.

(3) A member of the system who receives a lump sum under ORS 237.151 in lieu of a retirement allowance or other benefit shall receive an additional amount equal to the percentage increase provided in subsection (4) of this section.

(4)(a) The percentage increases provided for in this section to the benefits payable to or on account of a member of the system who is serving as other than a police officer or fire fighter at the time of death or retirement shall be:

(A) For a member with a combined total of 10 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 20 years, one percent.

(B) For a member with a combined total of 20 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 25 years, two percent.

(C) For a member with a combined total of 25 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 30 years, three percent.

(D) For a member with a combined total of 30 or more years of creditable service in the system and prior service credit under ORS 237.081, four percent.

(b) The percentage increases provided for in this section to the benefits payable to or on account of a member of the system who is serving as a police officer or fire fighter at the time of death or retirement shall be:

(A) For a member with a combined total of 10 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 20 years, one percent.

(B) For a member with a combined total of 20 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 25 years, two and one-half percent.

(C) For a member with a combined total of 25 or more years of creditable service in the system and prior service credit under ORS 237.081, four percent.

(c) The benefits payable to or on account of a member with less than a combined total of 10 years of creditable service in the system and prior service credit under ORS 237.081 at the time of death or retirement

shall not be increased under the provisions of this section.

(5) The increased benefits provided for in this section shall be funded by employer contributions.

(6) This section applies only to members whose effective date of retirement or death is on or after January 1, 1991. [1991 c.796 §2; 1993 c.177 §23]

Note: 237.208 was added to and made a part of 237.001 to 237.315 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: See also temporary provisions following 237.210.

**237.209 Retirement allowance increases.** (1) In addition to any increase under ORS 237.060, first effective for the month of August 1981, payable September 1, 1981, the monthly retirement allowance payable to or on account of any person who has retired as a member of the Public Employees' Retirement System shall be increased by a percentage based on the calendar year in which the person retired, as set forth in the following table:

Calendar Year of Retirement	Percentage Increase
1980	4.00
1979	4.32
1978	4.76
1977	4.44
1976	4.72
1975	4.92
1974	5.28
1973	5.92
1972	6.20
1971	6.36
1970	6.60
1969	6.88
1968	7.20
1967	7.36
1966	7.56
1965	7.88
1964	8.12
1963	8.32
1962	8.56
1961	8.64
1960	8.76
1959	8.96
1958	9.08
1957	9.28
1956	9.68
1955	10.00
1954	10.04
1953	10.16
1952	10.56
1951	10.64
1950 or any previous year	11.40

(2) In addition to any increase under ORS 237.060 and subsection (1) of this section, first effective for the month of July 1982,

payable August 1, 1982, the monthly retirement allowance payable to or on account of any person who has retired as a member of the Public Employees' Retirement System shall be increased by a percentage based on the calendar year in which the person retired. The percentage shall be four percent in respect to a person who retired in the calendar year 1981. The percentage in respect to a person who retired in a calendar year previous to the calendar year 1981 shall be the applicable percentage in the table set forth in subsection (1) of this section.

(3) In addition to any increase under ORS 237.060, first effective for the month of July 1985, payable August 1, 1985, the monthly retirement allowance payable to or on account of any person who has retired as a member of the Public Employees' Retirement System shall be increased by a percentage based on the calendar year in which the person retired, as set forth in the following table:

Calendar Year of Retirement	Percentage Increase
1983	3.00
1982	3.01
1981	3.09
1980	3.24
1979	3.48
1978	3.80
1977	3.57
1976	3.77
1975	3.92
1974	4.17
1973	4.63
1972	4.82
1971	4.93
1970	5.09
1969	5.28
1968	5.49
1967	5.60
1966	5.73
1965	5.94
1964	6.09
1963	6.22
1962	6.37
1961	6.42
1960	6.50
1959	6.62
1958	6.70
1957	6.82
1956	7.06
1955	7.25
1954 or any previous year	7.28

(4) In addition to any increase under ORS 237.060 and subsection (3) of this section, first effective for the month of July 1986, payable August 1, 1986, the monthly retirement allowance payable to or on account of any person who has retired as a member of the Public Employees' Retirement System

shall be increased by a percentage based on the calendar year in which the person retired. The percentage shall be three percent in respect to a person who retired in the calendar year 1984. The percentage in respect to a person who retired in a calendar year previous to the calendar year 1984 shall be the applicable percentage in the table set forth in subsection (3) of this section.

(5) In addition to any increase under ORS 237.060, first effective for the month of July 1989, payable August 1, 1989, the monthly retirement allowance payable to or on account of any person who has retired as a member of the Public Employees' Retirement System shall be increased by a percentage based on the calendar year in which the person retired, as set forth in the following table:

Calendar Year of Retirement	Percentage Increase
1988	0
1987	0
1986	0
1985	0
1984	0
1983	0
1982	0
1981	0
1980	3
1979	11
1978	16
1977	3
1976	7
1975	15
1974	25
1973	14
1972	15
1971	0
1970	0
1969	4
1968	7
1967	0
1966	0
1965	0
1964	0
1963	1
1962	1
1961	2
1960	3
1959	3
1958	5
1957	9
1956	9
1955	7
1954	8
1953	8
1952	10
1951	19
1950 or any previous year	18

(6) In addition to any increase under ORS 237.060, first effective for the month of December 1990, payable January 1, 1991, the

monthly retirement allowance payable to or on account of any person who has retired as a member of the Public Employees' Retirement System shall be increased by the following percentages:

(a) If the member was serving as other than a police officer or fire fighter at the time of retirement, the percentage increase shall be:

(A) For a member with a combined total of 10 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 20 years, one percent.

(B) For a member with a combined total of 20 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 25 years, two percent.

(C) For a member with a combined total of 25 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 30 years, three percent.

(D) For a member with a combined total of 30 or more years of creditable service in the system and prior service credit under ORS 237.081, four percent.

(b) If the member was serving as a police officer or fire fighter at the time of retirement, the percentage increase shall be:

(A) For a member with a combined total of 10 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 20 years, one percent.

(B) For a member with a combined total of 20 or more years of creditable service in the system and prior service credit under ORS 237.081 but less than a combined total of 25 years, two and one-half percent.

(C) For a member with a combined total of 25 or more years of creditable service in the system and prior service credit under ORS 237.081, four percent.

(c) The monthly retirement allowance payable to or on account of a member with less than a combined total of 10 years of creditable service in the system and prior service credit under ORS 237.081 at the time of retirement shall not be increased under the provisions of this subsection.

(7) The increased allowance provided in subsection (6) of this section shall be funded by employer contributions. [1981 c.776 §2; 1985 c.821 §1; 1989 c.757 §1; 1991 c.796 §3; 1993 c.177 §24]

Note: See temporary provisions following 237.210.

**237.210 Computation of retirement allowance or benefit; notice of contest.** (1) Upon receiving an application for a retire-

ment allowance or benefit from a member of the system and obtaining information necessary for computation of the retirement allowance or benefit to which the member is entitled upon retirement, the system shall provide to the member a written computation of the retirement allowance or benefit to which the member is entitled upon retirement and summary of the information used in making that computation.

(2) A member of the system may contest the accuracy of the information used by the system in making the computation of the retirement allowance or benefit to which the member is entitled upon retirement only by filing a written notice of contest with the system not later than whichever of the following days occurs last:

(a) The 240th day after the date on which the computation and information summary is provided to the member pursuant to subsection (1) of this section.

(b) The 240th day after the date on which the retirement allowance or benefit to which the member is entitled first becomes payable.

(3) The filing of a notice of contest under subsection (2) of this section extends the time allowed for election of an optional form of retirement allowance or benefit until the 30th day after the conclusion of the contest proceeding and any judicial review thereof if the proceeding or review results in a change in the computation of the retirement allowance or benefit.

(4) Upon receiving a notice of contest under subsection (2) of this section, the system shall determine the accuracy of the contested information and make a written decision either affirming the accuracy of the information and computation based thereon or changing the computation using corrected information. The system shall provide to the member a copy of the decision and a written explanation of any applicable statutes and rules. The member is entitled to judicial review of the decision as provided in ORS 183.484 and rules of the board consistent with applicable statutes.

(5) This section does not affect any authority of the system, on its own initiative, to correct an incorrect computation of any retirement allowance or benefit. [1987 c.898 §7]

Note: Section 12, chapter 796, Oregon Laws 1991, provides:

**Sec. 12. Taxation of retirement benefits and payment of additional benefits by reason of that taxation.** (1) Notwithstanding any other provision of chapter 796, Oregon Laws 1991, the increased benefits payable under ORS 237.209, 237.230 and 237.233, as amended by sections 3, 4 and 5, chapter 796, Oregon Laws 1991, and ORS 237.208, and section 14, chapter 796, Oregon Laws 1991, shall not be paid in any tax year in which the retirement benefits payable under the Public Employees' Retirement System are exempt from Oregon

personal income taxation. In the event increased benefits under chapter 796, Oregon Laws 1991, are paid in a tax year in which the retirement benefits payable under the system are exempt from Oregon personal income taxation, the benefits shall not be recoverable by the system, but the Public Employees' Retirement Board shall insure that no additional amounts are paid under the provisions of chapter 796, Oregon Laws 1991.

(2) Notwithstanding any other provision of chapter 796, Oregon Laws 1991, the increased benefits payable under section 26, chapter 815, Oregon Laws 1991, and section 7, chapter 796, Oregon Laws 1991, as amended by section 24, chapter 815, Oregon Laws 1991, shall not be paid in any tax year in which the retirement benefits payable out of the Judges' Retirement Fund are exempt from Oregon personal income taxation. In the event increased benefits under chapter 796, Oregon Laws 1991, are paid in a tax year in which the retirement benefits payable out of the fund are exempt from Oregon personal income taxation, the benefits shall not be recoverable by the fund, but the Public Employees' Retirement Board shall insure that no additional amounts are paid under the provisions of chapter 796, Oregon Laws 1991.

(3) Notwithstanding any other provision of chapter 796, Oregon Laws 1991, the increased benefits payable under ORS 237.635 shall not be paid in any tax year in which the retirement benefits payable by public employers that provide retirement benefits to its police officers and fire fighters pursuant to the provisions of ORS 237.620 (4) are exempt from Oregon personal income taxation. In the event increased benefits under chapter 796, Oregon Laws 1991, are paid in a tax year in which the retirement benefits payable out of the fund are exempt from Oregon personal income taxation, the benefits shall not be recoverable, but the public employer shall insure that no additional amounts are paid under the provisions of chapter 796, Oregon Laws 1991. [1991 c.796 §12; 1991 c.815 §28; 1993 c.18 §176]

Note: Section 1, chapter 752, Oregon Laws 1993, provides:

**Sec. 1. Temporary provision relating to direct certification to Supreme Court of cases arising out of taxation of retirement benefits.** (1) Upon appeal of any of the cases specified in subsection (2) of this section, the Court of Appeals shall promptly certify the appeal to the Supreme Court in the manner provided by ORS 19.210. Notwithstanding ORS 19.210 (2), the Supreme Court shall accept the certified appeal.

(2) Subsection (1) of this section applies only to the following cases:

(a) Any proceeding, action or suit filed in a circuit court before the effective date of this Act [August 30, 1993] or within 180 days after the effective date of this Act, in which the state or any other public employer is a party, and in which the court has adjudicated any claim that is based on contract rights of a plaintiff and that arises out of the taxation of a retirement allowance or other benefit paid through the Public Employees' Retirement System to or on behalf of former employees of the state or other public employer of the state.

(b) Any proceeding, action or suit filed in a circuit court before the effective date of this Act or within 180 days after the effective date of this Act, in which the court has adjudicated any claim that one party is required to pay damages to a former employee of another party, or any claim that one party is required to indemnify another party for payment of damages to former employees of the party seeking indemnification, and the damages payable are based on breach of contract arising out of the taxation of the retirement allowance or benefits of the former employees.

(c) Any proceeding, action or suit filed in a circuit court before or within 180 days after the effective date of this Act, in which the state or any political subdivision of the state is a party, and in which the court has

adjudicated any claim that is based on an asserted right to an exemption from state taxation of a retirement allowance or other benefit paid through a retirement system or plan other than the Public Employees' Retirement System to or on behalf of former employees of the state or a political subdivision of the state.

(3) Any party filing a notice of appeal in a case specified in subsection (2) of this section shall notate on the notice of appeal a statement that the case is subject to certification to the Supreme Court under the provisions of this section.

(4) As used in this section:

(a) "Political subdivision" includes a city, county, school district or other municipal corporation created under the laws of this state.

(b) "Public employer" has that meaning given in ORS 237.003. [1993 c.752 §1]

### (Judges)

**237.211 Definitions for ORS 237.211 to 237.233.** As used in ORS 237.211 to 237.233, unless the context requires otherwise:

(1) "Court" means the Supreme Court, the Court of Appeals, the Oregon Tax Court, a circuit court and a district court.

(2) "Judge" means a judge of any court.

(3) "Judge member" means a judge who is a member of the Public Employees' Retirement System subject to ORS 237.211 to 237.233.

(4) "Service as a judge" means creditable service, as defined by ORS 237.003, by a judge as:

(a) A regularly elected or appointed judge of a court; or

(b) A regularly elected or appointed judge of a court temporarily in another court. [1983 c.770 §2; 1993 c.177 §25]

**237.215 Judges as members of Public Employees' Retirement System.** (1) Except as provided in subsection (2) of this section, a person who is not a judge on December 31, 1983, and who is elected or appointed to the office of judge on or after January 1, 1984, shall become a judge member on the date the person takes the office.

(2) A person who, by reason of the age at which becoming a judge, could not make contributions to the Public Employees' Retirement Fund during each of five calendar years as a judge member at or before attaining the age of 75 years shall not become a judge member.

(3)(a) A district court judge who is a member of the Public Employees' Retirement System on December 31, 1983, may elect to become a judge member by giving to the board, not later than six months after January 1, 1984, written notice of desire to do so.

(b) A district court judge who is a member of the Public Employees' Retirement System on September 27, 1987, but not a judge

member may elect to become a judge member by giving to the board, not later than six months after September 27, 1987, written notice of desire to do so.

(c) A district court judge who is a member of the Public Employees' Retirement System on August 1, 1991, but not a judge member may elect to become a judge member by giving to the board, not later than six months after August 1, 1991, written notice of desire to do so.

(d) A district court judge who elects to become a judge member under paragraph (a), (b) or (c) of this subsection shall become a judge member on the first day of the month following the month in which the board receives the notice. A district court judge who so elects shall be governed as a judge member only. A district court judge who fails to so elect shall continue to be governed by the provisions of ORS 237.001 to 237.315 applicable to other persons holding elective office who may become members of the system. [1983 c.770 §3; 1987 c.625 §1; 1991 c.815 §6]

**237.217 Judge and employer contributions.** (1)(a) Each judge member shall contribute monthly to the Public Employees' Retirement Fund seven percent of the monthly salary of the judge member. The contributions of a judge member shall be credited to the account of the judge member in the fund.

(b) The state shall "pick-up," assume or pay the full amount of contributions to the fund required of judge members. The full amount of required judge member contributions "picked-up," assumed or paid by the state on behalf of judge members shall be considered "salary" only for the purpose of computing a judge member's "final average salary" within the meaning of ORS 237.220 (2) and not for any other purpose. The full amount of required judge member contributions "picked-up," assumed or paid by the state on behalf of judge members shall be added to the individual account balances of the judge members and shall be considered judge member contributions for all other purposes of ORS 237.211 to 237.233.

(2) The state shall make employer contributions to the fund in respect to judge members as provided in ORS 237.081 (1). For the purposes of actuarial computation and contributions of the state based thereon under ORS 237.081 (1), judge members shall be considered a separate group of employees. [1983 c.770 §4; 1991 c.815 §7]

**237.219 Compulsory retirement age.** A judge member shall be retired from judicial office at the end of the calendar year in which the judge member attains the age of 75 years. [1983 c.770 §5]

**237.220 Service retirement allowance of judge.** (1) Prior to attaining 60 years of age, all judge members shall elect in writing to retire under either paragraph (a) or (b) of this subsection. The election shall be irrevocable after the judge member attains 60 years of age. Any judge member who fails to make the election provided for in this subsection prior to attaining 60 years of age shall be retired under the provisions of paragraph (a) of this subsection.

(a) Upon retiring from service as a judge at the age of 65 years or thereafter a judge member who has made contributions to the Public Employees' Retirement Fund during each of five calendar years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge member and the state in an annual amount equal to 2.8125 percent of final average annual salary multiplied by the number of years of service as a judge not exceeding 16 years of service as a judge and 1.67 percent of final average salary multiplied by the number of years of service as a judge exceeding 16 years of service as a judge, but the annual amount shall not exceed 65 percent of final average salary.

(b) Upon retiring from service as a judge at the age of 60 years or thereafter, a judge member who has made contributions to the Public Employees' Retirement Fund during each of five calendar years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge member and the state in an annual amount equal to 3 percent of final average salary multiplied by the number of years of service as a judge not exceeding 16 years of service as a judge and 1.75 percent of final average salary multiplied by the number of years of service as a judge exceeding 16 years of service as a judge, but the annual amount shall not exceed 65 percent of final average salary.

(c) Any judge member electing to retire under paragraph (b) of this subsection shall serve as a pro tem judge, without compensation, for 35 days per year for a period of five years. A judge who serves more than 35 days per year may carry over the additional days to fulfill the pro tem service obligation in future years. The five-year period shall commence on the judge member's date of retirement. Retired judge members may be reimbursed for expenses incurred in providing pro tem services under this paragraph. Upon certification from the Chief Justice that any judge member who retired under paragraph (b) of this subsection has failed to perform the pro tem services required under this paragraph, and has not been relieved of the obligations to perform those services in

the manner provided by this paragraph, the board shall recalculate the service retirement allowance of the noncomplying judge member as though the judge member elected to retire under paragraph (a) of this subsection, and the noncomplying judge member shall receive only that recalculated amount thereafter. A judge may be relieved of the pro tem service obligation imposed by this paragraph if the judge fails for good cause to complete the obligation. A retired judge member who is relieved of the obligation to serve as a pro tem judge shall continue to receive the retirement allowance provided in paragraph (b) of this subsection.

(d) For the purpose of paragraph (c) of this subsection:

(A) "Good cause" includes, but is not limited to:

(i) Physical or mental incapacitation of a judge that prevents the judge from discharging the duties of judicial office;

(ii) Failure of the appointing authority to assign a judge to the requisite amount of pro tem service, whether because of insufficient need for pro tem judges, a determination by the appointing authority that the skills of a judge do not match the needs of the courts, clerical mistake, or otherwise; or

(iii) Death of a judge.

(B) "Good cause" does not include:

(i) A judge's refusal, without good cause, to accept pro tem assignments sufficient to meet the required amount; or

(ii) A judge's affirmative voluntary act that makes the judge unqualified to serve as a judge of this state including, but not limited to, failure to maintain active membership in the Oregon State Bar, acceptance of a position in another branch of state government, or acceptance of a position in the Government of the United States or of another state or nation.

(e) The Chief Justice may make rules for the implementation of this subsection.

(2) As used in subsection (1) of this section, "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year paid to a judge member in three of the calendar years of service as a judge before the judge member retires, in which three years the judge member was paid the highest salary.

(b) One-third of the total salary paid to a judge member in the last 36 calendar months of service as a judge before the judge member retires.

(3) As used in subsection (1) of this section, "number of years of service" means the

number of full years plus any remaining fraction of a year. In determining a remaining fraction, a full month shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as a full month.

(4) For a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989 Edition), the service retirement allowance under subsection (1) of this section on retirement at the age of 70 years and either 12 years of service or two full six-year terms as a judge shall be at least the equivalent of the retirement pay the judge would have received had the judge retired under ORS 1.314 to 1.390 (1989 Edition).

(5) A judge member who has made contributions to the Public Employees' Retirement Fund during each of five calendar years and who attains the age of 60 years shall be retired upon written application by the judge member to the board on a reduced service retirement allowance which shall be the actuarial equivalent of the service retirement allowance provided for in subsection (1)(a) of this section.

(6) For the purposes of this section, a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989 Edition) shall be considered to have made contributions to the Public Employees' Retirement Fund during one calendar year for each calendar year during which the judge made contributions to the Judges' Retirement Fund.

(7)(a) Notwithstanding subsection (1)(a) of this section, the maximum percentage used in calculating the annual amount of the life pension (nonrefund) for a judge who is a judge member on September 27, 1987, or who elected to become a judge member in the manner provided by ORS 237.215 (3)(b) or (4)(b) (1989 Edition), shall be the percentage specified by paragraph (b) of this subsection if either:

(A) On September 27, 1987, the judge had more than 28 years of service that were creditable either under the system; or

(B) On September 27, 1987, the judge had more than 28 years of service that were creditable under the Judges' Retirement Fund established pursuant to ORS 1.314 to 1.390 (1989 Edition) and the judge became a member of the system under the provisions of ORS 237.215 (3)(b) (1989 Edition).

(b) The maximum percentage used in calculating the annual amount of the life pension (nonrefund) of a judge member who meets the requirements of paragraph (a) of this subsection shall not exceed 45 percent plus 1.67 percent multiplied by the number of years of service as a judge that exceed 16

years and that were served on or before September 27, 1987.

(c) In computing the annual amount of the life pension of a judge who meets the requirements of paragraph (a) of this subsection, the board shall use the percentage specified by paragraph (b) of this subsection and the final average salary of the judge computed on the date of retirement, not the final average salary of the judge computed as of September 27, 1987. In making the computation under this subsection, the board shall use the definition of "final average salary" provided by ORS 237.220 as amended by section 2, chapter 625, Oregon Laws 1987. [1983 c.770 §6; 1987 c.625 §2; 1991 c.815 §§8,11; 1993 c.170 §1; 1993 c.177 §26]

**Note:** Section 2, chapter 170, Oregon Laws 1993, provides:

**Sec. 2.** The amendments to ORS 237.220 by section 1 of this Act apply to all judge members of the Public Employees' Retirement System, whether they retired before, on or after the effective date of this Act [June 24, 1993]. Within 60 days after the effective date of this Act, the Public Employees' Retirement Board shall recalculate the service retirement allowance of a judge member who retired before the effective date of this Act in the manner prescribed by ORS 237.220 as amended by section 1 of this Act. In addition, the board shall calculate and pay to a judge member within 60 days after the effective date of this Act all additional amounts that would have been paid to a retired judge member from the date of the retirement had the judge member's service retirement allowance been calculated in the manner prescribed in ORS 237.220 as amended by section 1 of this Act at the time the judge member retired. [1993 c.170 §2]

**237.223 Election to withdraw funds. (1)**

A judge member who has made contributions to the Public Employees' Retirement Fund during each of five calendar years, who has not attained the age of 60 years and who is separated, for any reason other than death or disability, from service as a judge may elect to withdraw the amount credited to the account of the judge member in the fund. Withdrawal cancels all membership rights in the system, including the right to claim credit for service as a judge or otherwise prior to withdrawal. ORS 237.111 (3) and 237.108 (1) apply to a former judge member who has withdrawn.

(2) If a judge member who is eligible to withdraw as provided in subsection (1) of this section does not elect to withdraw, the account of the judge member in the fund shall remain to the credit of the judge member, and there shall be paid such death benefits as ORS 237.211 to 237.233 provide, or a disability retirement allowance, or, after the judge member attains the age of 60 years, a reduced service retirement allowance which shall be the actuarial equivalent of the service retirement allowance provided for in ORS 237.220 (1)(a). [1983 c.770 §7; 1991 c.815 §14]

**237.225 Disability retirement of judge.**

(1)(a) A judge member who has not attained the age of 65 years and who is found to be mentally or physically incapacitated for an extended duration, as determined by medical examination by one or more physicians selected by the board, and thereby unable to perform any work for which qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, shall be retired for disability and shall receive as a disability retirement allowance, payable monthly, a pension equal to the service retirement allowance to which the judge member would be entitled under ORS 237.220 (1)(a), had the judge member served as a judge continuously until attaining the age of 65 years, but not less than an annual amount equal to 45 percent of the final average salary, as defined in ORS 237.220 (2), of the judge member.

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

(2) A judge member who has six or more years of service as a judge, who has not attained the age of 65 years and who is found to be mentally or physically incapacitated for an extended duration, as determined by medical examination by one or more physicians selected by the board, and thereby unable to perform any work for which qualified, from cause other than injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, shall be retired for disability and shall receive as a disability retirement allowance, payable monthly, a pension equal to the service retirement allowance to which the judge member would be entitled under ORS 237.220 (1)(a) had the judge member served as a judge continuously until attaining the age of 65 years, but not less than an annual amount equal to 45 percent of the final average salary, as defined in ORS 237.220 (2), of the judge member.

(3) The effective date of the disability of a judge member shall not be determined by the board as prior to the last day for which the judge member performed service as a judge.

(4) No disability retirement allowance may be paid for any month in which the judge member received salary or sick leave benefits from the state.

(5) ORS 237.171 (4) and (5), 237.187 (3), 237.191 and 237.195 apply to retirement of a judge member for disability.

(6) A judge member who is retired under the provisions of ORS 1.310 is entitled to any applicable retirement allowance for which

eligible under ORS 237.211 to 237.233. [1983 c.770 §8; 1991 c.815 §16]

**237.227 Beneficiary of judge; computation of benefits for beneficiary.** (1) For the purposes of this section, the beneficiary of the judge member shall be any person, or the personal representative of the estate of the judge member, or a trustee named by the judge member to execute an express trust, whom the judge member designates as a beneficiary by written designation duly acknowledged and filed with the board before the death of the judge member.

(2)(a) If a judge member who has six or more years of service as a judge dies before retiring, the surviving spouse of the judge member shall receive a life pension, payable monthly, equal to two-thirds of the service retirement allowance the judge member would have received under ORS 237.220 (1)(a) had the judge member retired on the date of death.

(b) If a surviving spouse receiving a pension under paragraph (a) of this subsection dies and the total amount received as pension by the surviving spouse is less than the amount credited to the account of the judge member in the fund on the date of death of the judge member, the beneficiary shall receive a lump sum amount equal to the difference between the total amount received by the surviving spouse and the amount so credited to the account of the judge member.

(c) If a judge member who has six or more years of service as a judge dies before retiring and has no surviving spouse, the beneficiary shall receive a lump sum amount equal to the amount credited to the account of the judge member in the fund on the date of death of the judge member.

(d) If the surviving spouse of a judge member who dies before retiring is not entitled to a pension under paragraph (a) of this subsection, the surviving spouse shall receive a lump sum amount equal to the amount credited to the account of the judge member in the fund on the date of death of the judge member.

(3)(a) If a judge member dies after retiring, the surviving spouse of the judge member shall receive a life pension, payable monthly, equal to two-thirds of the retirement allowance the judge member is receiving or is entitled to receive on the date of death.

(b) If a surviving spouse receiving a pension under paragraph (a) of this subsection dies and the total amount received as retirement allowance by the retired judge member and as pension by the surviving spouse is less than the amount credited to the account of the judge member on the date of retire-

ment of the judge member, the beneficiary shall receive a lump sum amount equal to the difference between the total amount received as retirement allowance and pension and the amount so credited to the account of the judge member.

(c) If a judge member dies after retiring and has no surviving spouse, and the total amount received as retirement allowance by the retired judge member is less than the amount credited to the account of the judge member on the date of retirement of the judge member, the beneficiary shall receive a lump sum amount equal to the difference between the total amount received as retirement allowance and the amount so credited to the account of the judge member.

(4) At any time after becoming a judge member, but not later than the date on which the first payment on account of retirement is due, a judge member may elect to provide an addition to the pension of the surviving spouse of the judge member under paragraph (a) of subsection (3) of this section by selecting a reduced retirement allowance for the judge member. The additional pension to the surviving spouse shall be the actuarial equivalent of the reduction in the retirement allowance of the judge member and, in no event, when added to the pension under paragraph (a) of subsection (3) of this section, shall it exceed the reduced retirement allowance elected by the judge member.

(5) Any accrued retirement allowance due a retired judge member that is unpaid at the time of death of the judge member shall be paid to the surviving spouse of the judge member; or if there is no surviving spouse, to the beneficiary of the judge member; or if there is no surviving spouse or beneficiary, to the personal representative of the estate of the judge member; or if there is no surviving spouse or beneficiary and the estate of the judge member will not be probated, for the purposes and in the manner provided in ORS 237.165 (4).

(6) Notwithstanding any other provision of this section, a judge member shall be considered to have died with no surviving spouse if:

(a) The judge member has entered into a prenuptial or antenuptial agreement with the spouse of the judge that provides that the spouse shall have no right or claim to a surviving spouse's pension; and

(b) The judge member has filed a copy of the prenuptial or antenuptial agreement with the board before the death of the judge member.

(7) The board shall not be liable for any payment made to a beneficiary by reason of a prenuptial or antenuptial agreement filed

with the board under subsection (6) of this section unless the board has actual knowledge that the agreement has been revoked. [1983 c.770 §9; 1991 c.815 §§12,13]

### 237.230 Annual adjustment of benefits.

(1) Every monthly retirement allowance or pension payable to a judge member or surviving spouse of a judge member under ORS 237.211 to 237.233 shall be adjusted annually to reflect the percentage increase or decrease in the cost of living as provided in ORS 237.060.

(2) ORS 237.209 (4) to (7) apply in respect to a judge member who retired in the calendar year 1984 or any calendar year thereafter as provided in ORS 237.209 (4) to (7), and for that purpose the monthly retirement referred to in ORS 237.209 (4) to (7) shall be the monthly retirement allowance payable to a judge member or the monthly pension payable to the surviving spouse of a judge member under ORS 237.227 (3)(a). [1983 c.770 §10; 1989 c.757 §3; 1991 c.796 §4]

Note: See temporary provisions following 237.210.

### 237.233 Application of retirement laws generally to judges.

(1) ORS 237.003 (2) and (11), 237.005, 237.091, 237.101, 237.108 (1), 237.125, 237.143, 237.145, 237.153, 237.157, 237.201, 237.205, 237.247, 237.248, 237.251, 237.253, 237.259, 237.263, 237.271, 237.275, 237.277, 237.279, 237.281, 237.285, 237.291, 237.301, 237.315 and 237.320 and the increases provided by ORS 237.208 for members of the system who are serving as other than police officers or fire fighters apply in respect to judge members.

(2) ORS 237.001 to 237.315 applies in respect to persons described in ORS 237.215 (1) and in respect to judge members only as specifically provided in ORS 237.211 to 237.233. [1983 c.770 §11; 1987 c.616 §5; 1991 c.796 §5; 1991 c.815 §15; 1993 c.120 §2; 1993 c.177 §27; 1993 c.588 §1]

Note: See note following 237.007.

Note: Section 2, chapter 588, Oregon Laws 1993, provides:

Sec. 2. The amendments to ORS 237.233 by section 1 of this Act apply to the monthly cost of health insurance premiums payable January 1, 1993, and thereafter. Within 30 days after the effective date of this Act [August 4, 1993], the Public Employees' Retirement Board shall calculate and pay on behalf of a judge member eligible for the payment provided by ORS 237.247 all amounts that would have been paid for the monthly cost of health insurance premiums on and after January 1, 1993, and before the effective date of this Act if the amendments to ORS 237.233 by section 1 of this Act had been in effect on January 1, 1993, and thereafter. [1993 c.588 §2]

Note: See also temporary provisions following 237.210.

### (Health Care Insurance)

### 237.247 Payment towards cost of health care insurance; eligibility; calcu-

lation of benefit; Retiree Health Insurance Premium Account. (1)(a) As used in this section, "eligible retired state employee" means:

(A) A retired member of the Public Employees' Retirement System who was a state employee at the time of retirement, is retired for service or disability, is receiving a retirement allowance or benefit under the system, had eight years or more of qualifying service in the system at the time of retirement or is receiving a disability retirement allowance including a pension computed as if the member had eight years or more of creditable service in the system at the time of retirement, and has attained earliest service retirement age but is not eligible for federal Medicare coverage; or

(B) A person who is a surviving spouse or dependent of a deceased eligible retired state employee as provided in subparagraph (A) of this paragraph at the time of death, who:

(i) Is receiving a retirement allowance or benefit under the system; or

(ii) Was covered at the time of the eligible retired state employee's death by the retired employee's health insurance contracted for under ORS 237.320, and the employee retired on or after September 29, 1991.

(b) For purposes of this section, "qualifying service" means creditable service in the system and any periods of employment with an employer participating in the system required of the employee before becoming a member of the system.

(2) Of the monthly cost of coverage for an eligible retired state employee under a health care insurance contract entered into under ORS 237.320, an amount as determined under subsection (3) of this section shall be paid from the Retiree Health Insurance Premium Account established by subsection (4) of this section, and any monthly cost in excess of the amount so determined shall be paid by the eligible retired state employee in the manner provided in ORS 237.320 (4). Any amount paid under this subsection shall be exempt from all state, county and municipal taxes imposed on the eligible retired member.

(3) On or before January 1 of each year, the Public Employees' Retirement Board shall calculate the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the board under ORS 237.320 and the health insurance premiums paid by state employees who are not retired under contracts entered into by the State Employees' Benefit Board and the Bargaining Unit Benefits Board. For the purposes of subsection (2) of this section, an eligible retired state em-

ployee shall be entitled to receive toward the monthly cost of coverage under a health insurance contract entered into under ORS 237.320:

(a) For an eligible retired state employee with eight years or more of qualifying service in the system, but less than 10 years of qualifying service in the system, 50 percent of the amount calculated by the board under this subsection.

(b) For an eligible retired state employee with 10 years or more of qualifying service in the system, but less than 15 years of qualifying service in the system, 60 percent of the amount calculated by the board under this subsection.

(c) For an eligible retired state employee with 15 years or more of qualifying service in the system, but less than 20 years of qualifying service in the system, 70 percent of the amount calculated by the board under this subsection.

(d) For an eligible retired state employee with 20 years or more of qualifying service in the system, but less than 25 years of qualifying service in the system, 80 percent of the amount calculated by the board under this subsection.

(e) For an eligible retired state employee with 25 years or more of qualifying service in the system, but less than 30 years of qualifying service in the system, 90 percent of the amount calculated by the board under this subsection.

(f) For an eligible retired state employee with 30 years or more of qualifying service in the system, 100 percent of the amount calculated by the board under this subsection.

(4) The Retiree Health Insurance Premium Account is established within the Public Employees' Retirement Fund, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The account shall be used only to pay costs of health care insurance contract coverage under subsection (2) of this section, paying the administrative costs incurred by the board under this section and investment of moneys in the account under any law of this state specifically authorizing that investment.

(5) The Retiree Health Insurance Premium Account shall be funded by employer contributions. The state shall transmit to the board such amounts as the board determines to be actuarially necessary to fund the liabilities of the account. The level of employer contributions shall be established by the board using the same actuarial assumptions it uses to determine employer contrib-

ution rates to the Public Employees' Retirement Fund. The amounts shall be transmitted at the same time and in the same manner as contributions for pension benefits are transmitted under ORS 237.081 (1). Such amounts, when added to any life insurance protection provided under ORS 237.001 to 237.315, shall not exceed 25 percent of the aggregate contributions by employers to the fund, other than contributions to fund prior service credits, made after July 11, 1987.

(6) If the board determines that the moneys in the Retiree Health Insurance Premium Account are not sufficient to pay the current liabilities of the account, the board may borrow from any account created by the board to hold employer contributions any reserves of employer contributions made by the state for pensions, sufficient funds to meet those liabilities. Any amounts borrowed from an account of employer contributions reserved for pensions shall be repaid on a schedule established by the board with interest at the same rate as earned by the reserve and shall be secured by future contributions to the account.

(7) The Public Employees' Retirement Board shall, by rule, establish a procedure for calculating the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the board under ORS 237.320 and the health insurance premiums paid by state employees who are not retired under contracts entered into by the State Employees' Benefit Board and the Bargaining Unit Benefits Board.

(8) As provided in section 401(h)(5) of the Internal Revenue Code of 1986, upon satisfaction of all liabilities for providing benefits described in subsection (2) of this section, any amount remaining in the Retiree Health Insurance Premium Account shall be returned to the state.

(9) No member of the system shall have an interest in the Retiree Health Insurance Premium Account or in the benefits provided under this section.

(10) For the purposes of this section:

(a) "Board" means the Public Employees' Retirement Board.

(b) "System" means the Public Employees' Retirement System. [1991 c.969 §4; 1993 c.18 §42; 1993 c.117 §1; 1993 c.118 §3; 1993 c.177 §28]

**Note:** 237.247 was added to and made a part of ORS chapter 237 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 2, chapter 117, Oregon Laws 1993, provides:

**Sec. 2.** (1) Except as provided in subsection (2) of this section, amounts payable by reason of the amendments to ORS 237.247 by section 1 of this Act are pay-

able only for the first full month after the effective date of this Act [November 4, 1993] and thereafter.

(2) Payments made before the effective date of this Act to eligible retired state employees under the provisions of ORS 237.247 based upon the use of qualifying service in making the computation provided for in ORS 237.247 (3) are ratified and approved.

(3) For the purpose of this section, "eligible retired state employee" and "qualifying service" have those meanings given in ORS 237.247. [1993 c.117 §2]

**237.248 Health care insurance to supplement Medicare; benefits payable; Retirement Health Insurance Account; funding.** (1) As used in this section, "eligible retired member" means:

(a) A retired member of the Public Employees' Retirement System who is retired for service or disability, is receiving a retirement allowance or benefit under the system, had eight years or more of qualifying service in the system at the time of retirement or is receiving a disability retirement allowance including a pension computed as if the member had eight years or more of creditable service in the system at the time of retirement, and is eligible for federal Medicare coverage; or

(b) A person who is a surviving spouse or dependent of a deceased eligible retired member as provided in paragraph (a) of this subsection at the time of death, who is eligible for federal Medicare coverage and who:

(A) Is receiving a retirement allowance or benefit under the system; or

(B) Was covered at the time of the retired member's death by the retired member's health insurance contracted for under ORS 237.320, and the member retired before May 1, 1991.

(2) For purposes of subsection (1)(a) of this section, "qualifying service" means creditable service in the system and any periods of employment with an employer participating in the system required of the employee before becoming a member of the system.

(3) Of the monthly cost of coverage for an eligible retired member under a health care insurance contract that provides coverage supplemental to federal Medicare coverage entered into under ORS 237.320, an amount equal to \$60 or the total monthly cost of that coverage, whichever is less, shall be paid from the Retirement Health Insurance Account established by subsection (4) of this section, and any monthly cost in excess of \$60 shall be paid by the eligible retired member in the manner provided in ORS 237.320 (4). Any amount paid under this subsection shall be exempt from all state, county and municipal taxes imposed on the eligible retired member.

(4) The Retirement Health Insurance Account is established within the Public Employees' Retirement Fund, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The account shall be used only to pay costs of health care insurance contract coverage under subsection (3) of this section, paying the administrative costs incurred by the board under this section and investment of moneys in the account under any law of this state specifically authorizing that investment.

(5) The Retirement Health Insurance Account shall be funded by employer contributions. Each public employer that is a member of the system shall transmit to the board such amounts as the board determines to be actuarially necessary to fund the liabilities of the account. The level of employer contributions shall be established by the board using the same actuarial assumptions it uses to determine employer contribution rates to the Public Employees' Retirement Fund. The amounts shall be transmitted at the same time and in the same manner as contributions for pension benefits are transmitted under ORS 237.081 (1). Such amounts, when added to any life insurance protection provided under ORS 237.001 to 237.315, shall not exceed 25 percent of the aggregate contributions by employers to the fund, other than contributions to fund prior service credits, made after July 11, 1987.

(6) If the board determines that the moneys in the Retirement Health Insurance Account are not sufficient to pay the current liabilities of the account, the board may borrow from any account created by the board to hold employer contributions any reserves of employer contributions for pensions, sufficient funds to meet those liabilities. Any amounts borrowed from an account of employer contributions reserved for pensions shall be repaid on a schedule established by the board with interest at the same rate as earned by the reserve and shall be secured by future contributions to the account.

(7) As provided in section 401(h)(5) of the Internal Revenue Code of 1986, upon satisfaction of all liabilities for providing benefits described in subsection (1) of this section, any amount remaining in the Retirement Health Insurance Account shall be returned to the employers participating in the retirement system on an equitable basis as determined by the board.

(8) No member of the system shall have an interest in the Retirement Health Insurance Account. [Formerly 237.325; 1991 c.814 §1; 1993 c.18 §43; 1993 c.177 §29]

Note: 237.248 was added to and made a part of 237.001 to 237.315 by legislative action but was not

added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**(Administration)**

**237.251 Public Employees' Retirement Board; confirmation; term; general powers and duties.** (1) The governing authority of the system shall be a board known as the Public Employees' Retirement Board and consisting of nine members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Except as otherwise provided in ORS 237.255, the term of each member shall be three years.

(2) The board shall have:

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

(b) The power and duty, subject to the limitations of ORS 237.001 to 237.315, of managing the system.

(3) The board:

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

(b) Shall arrange for actuarial service for the system;

(c) Shall employ a director;

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

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

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

(g) Shall determine the actuarial equivalency of optional forms of retirement allowances and establish from time to time for that purpose the necessary actuarial factors, which shall constitute a part of the system; and

(h) Shall establish limits on contributions and benefits under the system equal to the limits fixed by applicable federal law for retirement plans qualified under section 401(a) of the federal Internal Revenue Code.

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

(5) The board shall identify by rule those records that must be maintained by participating public employers for the purposes of subsection (3)(h) of this section. A participating public employer shall maintain records for all employees who are members of the system as required by board rules, and shall provide that information to the board upon request. [1953 c.200 §§4, 10; 1955 c.131 §17; 1963 c.608 §10; 1971 c.418 §10; 1983 c.740 §62; 1985 c.823 §7; 1987 c.93 §1; 1993 c.783 §2]

**237.253 Board consideration of goals and objectives of system.** The Public Employees' Retirement Board shall include a study of accounting, reporting and related subjects when considering the goals and objectives of the Public Employees' Retirement System. [1979 c.552 §3]

**Note:** 237.253 was enacted into law by the Legislative Assembly and added to and made a part of 237.001 to 237.315, but was not added to or made a part of 237.199 to 237.291 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**237.255 Qualifications of board members; compensation and expenses.** (1) Members of the board shall have the following qualifications:

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

(b) One member shall not have been employed by a public employer during the two years immediately preceding appointment to the board or be so employed throughout the term of appointment.

(c) Each of four members shall be an employee of a participating public employer in a management position at the time of appointment and throughout the term of appointment. At the time of appointment and throughout the term of appointment, one of those four members shall be employed by a political subdivision of the state other than a school district, one shall be employed by a school district and one shall be employed by the state.

(d) Each of four members shall be a public employee, as defined in ORS 243.650 (17), of a participating public employer and be in an appropriate bargaining unit, as defined in ORS 243.650 (1), having an exclusive representative at the time of appointment and throughout the term of appointment; but

membership on the board shall not itself affect the status of such a member as a public employee as defined in ORS 243.650 (17). At the time of appointment and throughout the term of appointment, one of those four members shall be engaged in teaching or other school activity, one shall be a police officer or fire fighter, one shall be an employee of the state in a category other than teaching or other school activity or police officer or fire fighter and one shall be an employee of a political subdivision of the state in a category other than teaching or other school activity or police officer or fire fighter.

(e) Notwithstanding paragraphs (c) and (d) of this subsection, one member shall be a retired member of the system at the time of appointment and throughout the term of appointment.

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

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

(3) A member of the board is entitled to compensation and expenses as provided in ORS 292.495 from the Public Employees' Retirement Fund. [1953 c.200 §§4, 5; 1969 c.314 §15; 1987 c.93 §2]

**237.259 Director and staff.** The system shall be administered, subject to the limitations of ORS 237.001 to 237.315 and the budget prescribed by the board, by the director provided for by ORS 237.251 and by a staff which the board authorizes and which the director appoints. The director shall hold that position during the discretion of the board and the members of the staff shall hold their respective positions during the discretion of the director. No member of the staff may be removed from it, however, in a manner contrary to the laws of the state regarding civil service. The director shall furnish such bond as is required by the board. [1953 c.200 §7; 1973 c.704 §11]

**237.263 Rules of board.** Subject to the limitations of ORS 237.001 to 237.315, the board shall, from time to time, establish rules for transacting its business and administering the system in accordance with the requirements of ORS 183.310 to 183.550. [1953 c.200 §6; 1971 c.734 §34; 1985 c.823 §5]

**237.271 Public Employees' Retirement Fund; disbursements; annual audit.** (1) The Public Employees' Retirement Fund is declared to be a trust fund, separate and distinct from the General Fund, for the uses and purposes set forth in ORS 237.001 to 237.315 and 237.950 to 237.980, and for no other use or purpose, except that this provision shall not be deemed to amend or im-

pair the force or effect of any law of this state specifically authorizing the investment of moneys from the fund. Interest earned by the fund shall be credited to the fund. Except as otherwise specifically provided by law, the Public Employees' Retirement Board established by ORS 237.251 is declared to be the trustee of the fund.

(2) The State of Oregon and other public employers that make contributions to the fund have no proprietary interest in the fund or in the contributions made to the fund by them. The state and other public employers disclaim any right to reclaim those contributions and waive any right of reclamation they may have in the fund. This subsection does not prohibit alteration or refund of employer contributions if the alteration or refund is authorized under ORS 237.001 to 237.315 and is due to erroneous payment or decreased liability for employer contributions under the system.

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

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

(5) Any warrant, check or order for the payment of benefits or refunds under the system out of the fund issued by the board which is canceled, declared void or otherwise

made unpayable pursuant to law because it is outstanding and unpaid for a period of more than two years, may be reissued by the board without bond if the payee is located after such warrant, check or order is canceled, declared void or otherwise made unpayable pursuant to law.

(6) The board shall provide for an annual audit of the retirement fund and for an annual report to the Legislative Assembly and to all members of, retirees of, and all employers participating in, the system. Such annual report shall include as a minimum: Comparative balance sheets and comparative operating statements, together with the report of the auditor. These statements shall be prepared in accordance with generally accepted accounting principles. [1953 c.200 §10; 1955 c.131 §18; 1959 c.556 §5; 1961 c.508 §1; 1967 c.335 §22; 1973 c.704 §12; 1975 c.614 §4; 1979 c.552 §1; 1985 c.823 §6; 1989 c.966 §9; 1991 c.813 §5; 1993 c.694 §28]

**237.273** [1959 c.556 §3; 1961 c.124 §1; 1961 c.508 §2; subsection (3) enacted as 1963 c.569 §26; repealed by 1967 c.335 §60]

**237.274** [1961 c.508 §§4, 5, 6, 7; 1963 c.183 §2; 1965 c.497 §1; repealed by 1967 c.335 §60]

**237.275 Individual accounts in fund.** The board shall provide for an individual account for each active and inactive member of the system. The account shall show the amount of the member's contributions to the fund and the interest which they have earned. The board shall furnish a written statement thereof upon request by any member or beneficiary of the system. [1953 c.200 §10; 1993 c.177 §30]

**237.277 Credits to individual accounts where earnings less than assumed interest rate.** (1) As used in this section, "individual account" means the individual account for each active and inactive member of the system in the Public Employees' Retirement Fund provided for under ORS 237.275, but not the individual account of the employee in the Variable Annuity Account established by ORS 237.197.

(2) The individual account for an active or inactive member of the system shall be examined each year. If the individual account is credited with earnings for the previous year in an amount less than the earnings that would have been credited pursuant to the assumed interest rate for that year determined by the board, the amount of the difference shall be credited to the individual account and charged to a reserve account in the fund established for the purpose. A reserve account so established may not be maintained on a deficiency basis for a period of more than five years. Earnings in excess of the assumed interest rate for years following the year for which a charge is made to the reserve account shall first be applied

to reduce or eliminate the amount of a deficiency. [1975 c.333 §2; 1993 c.177 §31]

**237.279 Contributions and interest not to be included in department budget.** Contributions required by ORS 237.001 to 237.315 to be placed in the retirement fund, and interest required to be allocated to the accounts of members of the retirement system and to participating employers, shall not be included in the biennial departmental budget of the board. [1953 c.200 §10]

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

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

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

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees' Retirement Fund to any reserve account in the fund, the board shall submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371 (1), for its review and comment. [1953 c.200 §10; 1955 c.131 §19; 1967 c.335 §23; 1967 c.622 §§21, 21a; 1973 c.704 §13; 1987 c.849 §1]

**237.285 Actuarial report.** At least once every two years the board shall cause a competent actuary familiar with public systems of retirement and death benefits to prepare a report evaluating the current and prospective assets and liabilities of the system and indicating its current and prospective financial condition. In preparing the report the actuary shall investigate the mortality, disability, service and other experience of the members of, and employers participating in the system, shall state fully the condition of the system, and shall make such recommendations as the actuary deems advisable to facilitate administering it properly. The board shall publish and distribute a summary of the report to all the public employers participating in the system. The board may authorize the transfer of any portion of the funds collected under the provisions of ORS 237.081 to carry out the recommendations of the actuary. [1953 c.200 §12; 1955 c.131 §20; 1987 c.849 §3]

**237.291 Administrative expenses of system.** (1) The administrative expenses of the system shall be paid from interest earned by the retirement fund; provided, that if such interest be insufficient the expense in excess thereof shall be paid from the contributions which ORS 237.001 to 237.315 require participating employers to pay into the Public Employees' Retirement Fund.

(2) In order to facilitate financing the establishment and administration of the system the board may designate fiscal periods and may provide that extraordinary expenses incurred during one such period, such as expenses for equipment and actuarial studies, may, for purposes of equitably distributing part of the burden of the expenses, be apportioned to subsequent fiscal periods in such manner as to the board seems equitable.

(3) For each fiscal period designated by the board there shall be deducted from the interest earned by the retirement fund, the administrative expenses of the system for that period; provided, that if such interest be

insufficient for such purpose, the excess expense shall be paid by deducting from the account of each employer participating in the system that fraction of the administrative expense of the system for that period which the employer's total contribution to the fund for the period is of the sum of all the employers' contributions to the fund for the period.

(4) Amounts payable as refunds and retirement allowances shall not for any purpose be deemed expenses of the board and shall not be included in its biennial departmental budget. [1953 c.200 §11]

**237.293 Revolving fund for payment of administrative expenses.** (1) On request from the Public Employees' Retirement System, the Oregon Department of Administrative Services shall draw warrants on amounts authorized for payment of the administrative expenses of the system for use by the system as a revolving fund. The revolving fund shall not exceed the aggregate sum of \$5,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the system may draw checks.

(2) The revolving fund may be used by the system to pay travel expenses for employees of the system and for any consultants or advisors for whom payment of travel expenses is authorized by law, or advances therefor, or for salary advances or payment to terminating employees, or for receipt and disbursement of funds made available to the system through vocational rehabilitation training programs.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the system and by the department. When such claims have been approved, a warrant covering them shall be drawn in favor of the system and charged against the appropriate fund or account and shall be used to reimburse the revolving fund. [1989 c.420 §4]

**Note:** 237.293 was added to and made a part of ORS chapter 237 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**237.295 Transfer of death benefit, or account balance, of less than \$250; conditions; procedures for filing delayed claim.**

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

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

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

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

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

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

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

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

(B) The membership of the employee in the system has been terminated under the provisions of ORS 237.109 (2); and

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

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

(c) The board shall establish procedures for the filing of a delayed claim by a former member of the system who would otherwise be entitled to receive amounts credited to the former member's account. Delayed claims may be filed after the 10-year period provided for in paragraph (a) of this subsection. [1991 c.192 §2.3]

**237.300 Applicability of ORS 237.301 to 237.315 to enforce certain provisions of ORS 237.001 to 237.291.** All provisions of ORS 237.301 to 237.315 hereby are made applicable for enforcement of the requirements of ORS 237.001 to 237.143, 237.147, 237.151, 237.155 to 237.195 and 237.199 to 237.291. [1953 c.523 §1]

**237.301 State departments to remit contributions and furnish reports; delinquent contributions; proceedings on default.** (1) All public employers that are members of the system shall promptly and regularly remit to the Public Employees' Retirement Board all contributions required of them by law and furnish all reports required by the board.

(2) Any public employer delinquent in remitting contributions shall be charged in-

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

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

(4) If any public employer other than a state agency fails to remit any contribution or pay any other obligation due under ORS 237.001 to 237.315, the board may certify to the department the fact of such failure. Upon receipt of the certification the department shall withhold payment to the public employer of any revenues or funds in the State Treasury in which the public employer is entitled by law to share and which have been apportioned to the public employer until the board certifies to the department that the failure has been remedied. The board shall send a copy of each certification it makes under this subsection to the public employer affected.

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

administrative expenses of the system. [1953 c.523 §4; 1981 c.541 §1; 1989 c.799 §9; 1991 c.249 §19]

**237.303** [1959 c.556 §4; 1975 c.614 §5; repealed by 1989 c.799 §14]

**237.305** [Formerly 237.172; 1963 c.608 §14; 1987 c.617 §12; repealed by 1989 c.799 §14]

**237.311 Mandamus against defaulting employer; appeal.** In addition to the remedies otherwise provided by ORS 237.301 the board may, by petition in usual form apply to the circuit court for the county in which is located the public employer concerned, or the principal office or place of business of such public employer, for, and if warranted, to have issued, writs of mandamus to compel such public employer to supply to the board a true and complete list and employment records of such employer's employees and all information concerning such employees that reasonably may be required and sought by said board in such petition. Such writs, among other things, shall direct the defendant therein to make such contributions to the retirement fund on account of such defendant's employees as may appear, from records and information concerning such defendant's employees, to be required by law. Either or both parties thereby aggrieved may appeal to the Court of Appeals from, or from any part of, the judgment of the circuit court given and made in such proceeding, as in ordinary mandamus proceedings. [Formerly 237.174; 1979 c.562 §8; 1989 c.799 §10]

**237.312 Recovery of overpayments and other improperly made payments from fund; waiver; limitation.** (1) If the Public Employees' Retirement Board determines that a member of the system or any other person receiving a monthly payment from the Public Employees' Retirement Fund has received any amount in excess of the amounts that the member or other person is entitled to under ORS 237.001 to 237.315, the board may recover the overpayment or other improperly made payment by:

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

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

(2)(a) Any person who receives a payment from the Public Employees' Retirement Fund and who is not entitled to receive that payment, including a member of the system who receives an overpayment, holds the improv-

erly made payment in trust subject to the board's recovery of that payment under this section or by a civil action or other proceeding.

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

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

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

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

(5) If the board determines that an overpayment or erroneous payment was caused by a fraudulent or intentional act of the person who received the payment, the board may assess interest in an amount equal to one percent per month on the balance of the improperly made payment until the payment is fully recovered. The board may also assess to the member or other person all costs incurred by the board in recovering the payment, including attorney fees. Interest and costs may be collected in the manner prescribed in subsections (1) and (2) of this section. The board may waive the interest and costs on an overpayment or other improperly made payment for good cause shown.

(6) Notwithstanding ORS 293.240, the board may waive the recovery of any payment or payments made to a person who was not entitled to receive the payment or payments if the total amount of the overpayment

or other improperly made payments is less than \$50.

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

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

(9) The board shall adopt rules establishing the procedures to be followed by the board in recovering overpayments and erroneous payments under this section. [1993 c.119 §2]

Note: Section 3, chapter 119, Oregon Laws 1993, provides:

Sec. 3. The procedures established by section 2 of this Act [237.312] for recovery of overpayments and other improperly made payments apply only to the recovery of improperly made payments from the Public Employees' Retirement Fund made on or after the effective date of this Act [November 4, 1993]. [1993 c.119 §3]

### 237.315 Procedure for board hearings.

In order to determine any facts necessary to the administration of the retirement system, the board may conduct hearings, subpoena and examine witnesses and require any person having custody thereof to bring before the board any book, record, document, certificate, writing, article or thing necessary to a determination of facts. The chairman or member of the board acting in such capacity shall have authority to administer oaths. The procedure in such hearings shall be informal. Fees shall not be paid to witnesses who are public officers or employees, whether or not their employer is participating in the system. No public employer shall make deduction from the compensation of public officers or employees because of absence from their respective positions in order to be examined as witnesses before the board. The fees of other witnesses and mileage of any witness shall be as allowed by law to witnesses in ORS 44.415 (2). Fees and mileage and all other necessary disbursements in connection with a hearing shall be paid by the public employer whose failure or refusal to supply any facts requested of it by the board made necessary such hearing. [Formerly 237.176; 1989 c.980 §10b]

### 237.320 Board, on behalf of retired, may contract for medical and hospital insurance. (1) As used in this section:

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

(b) "Eligible person" means:

(A) A member of the Public Employees' Retirement System who is retired for service or disability and is receiving a retirement allowance or benefit under the system, and a spouse or dependent of that member;

(B) A person who is a surviving spouse or dependent of a deceased retired member of the system or the surviving spouse or dependent of a member of the system who had not retired but who had reached earliest retirement age at the time of death;

(C) A person who is receiving retirement pay or a pension calculated under ORS 1.314 to 1.380 (1989 Edition), and a spouse or dependent of that person; or

(D) A surviving spouse or dependent of a deceased retired member of the system or of a person who was receiving retirement pay or a pension calculated under ORS 1.314 to 1.380 (1989 Edition) if the surviving spouse or dependent was covered at the time of the decedent's death by a health care insurance plan contracted for under this section.

(c) "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.

(2) The Public Employees' Retirement Board shall conduct a continuing study and investigation of all matters connected with the providing of health care insurance protection to eligible persons. The board shall design benefits, devise specifications, invite proposals, analyze carrier responses to advertisements for proposals and do acts necessary to award contracts to provide health care insurance, including insurance that provides coverage supplemental to federal Medicare coverage, with emphasis on features based on health care cost containment principles, for eligible persons. The board is not subject to the provisions of ORS 279.005 to 279.111 in awarding contracts under the provisions of this section. The board shall establish procedures for inviting proposals and awarding contracts under this section.

(3) The board shall enter into a contract with a carrier to provide health care insurance for eligible persons for a one or two-year period. The board may enter into more than one contract with one or more carriers, contracting jointly or severally, if in the opinion of the board it is necessary to do so to obtain maximum coverage at minimum cost and consistent with the health care insurance needs of eligible persons. The board periodically shall review a current contract or contracts and make suitable study and investigation for the purpose of determining whether a different contract or contracts can and should, in the best interest of eligible persons, be entered into. If it would be advantageous to eligible persons to do so, the board shall enter into a different contract or contracts. Contracts shall be signed by the chairman on behalf of the board.

(4) Except as provided in ORS 237.247 and 237.248, the board may deduct monthly from the retirement allowance or benefit, retirement pay or pension payable to an eligible person who elects to participate in a health care insurance plan the monthly cost of the coverage for the person under a health care insurance contract entered into under this section and the administrative costs incurred by the board under this section, and shall pay the amount due to the carrier providing the coverage. The board by rule may establish other procedures for collecting the monthly cost of the coverage and the administrative costs incurred by the board under this section if the board does not deduct those costs from the retirement allowance or benefit, retirement pay or pension payable to an eligible person.

(5) Subject to applicable provisions of ORS 183.310 to 183.550, the board may make rules not inconsistent with this section to determine the terms and conditions of eligible person participation and coverage and otherwise to implement and carry out the purposes and provisions of this section and ORS 237.248.

(6) The board may retain consultants, brokers or other advisory personnel, organizations specializing in health care cost containment or other administrative services when it determines the necessity and, subject to the State Personnel Relations Law, shall employ such personnel as are required to assist in performing the functions of the board under this section. [1959 c.319 §2; 1967 c.359 §685; 1981 c.195 §1; 1987 c.616 §3; 1987 c.617 §13; 1989 c.597 §1; 1989 c.799 §11a; 1991 c.814 §2; 1991 c.815 §29; 1993 c.117 §3; 1993 c.148 §1]

**Note:** Sections 4 and 5, chapter 117, Oregon Laws 1993, provide:

**Sec. 4.** The deductions authorized by the amendments to ORS 237.320 by section 3 of this Act may be made from a monthly retirement allowance or benefit,

retirement pay or pension that is payable on or after the effective date of this Act [November 4, 1993]. Any deductions of administrative costs from the retirement allowance or benefit, retirement pay or pension for the administrative costs incurred by the Public Employees' Retirement Board under ORS 237.320 before the effective date of this Act are ratified and approved. [1993 c.117 §4]

**Sec. 5.** Any coverage provided before the effective date of this Act [November 4, 1993] to the spouses or dependents of members of the Public Employees' Retirement System, or to spouses or dependents of persons receiving retirement pay or a pension calculated under ORS 1.314 to 1.380 (1989 Edition), under contracts for health care insurance entered into by the Public Employees' Retirement Board pursuant to the provisions of ORS 237.320, is validated. [1993 c.117 §5]

**Note:** Section 2, chapter 148, Oregon Laws 1993, provides:

**Sec. 2.** The amendments to ORS 237.320 by section 1 of this Act apply only to surviving spouses and dependents of members of the system who die on or after July 1, 1983. The Public Employees' Retirement Board need not attempt to give notice of the provisions of this Act to any surviving spouse or dependent of a deceased member unless the member dies on or after the effective date of this Act [November 4, 1993]. [1993 c.148 §2]

237.325 [1987 c.616 §2; 1989 c.597 §2; 1989 c.799 §12a; 1989 c.826 §1a; 1989 c.966 §10a; renumbered 237.248 in 1989]

## COVERAGE OF EMPLOYEES UNDER FEDERAL SOCIAL SECURITY ACT

**237.410 Definitions for ORS 237.420 to 237.520.** As used in ORS 237.420 to 237.520, unless the context requires otherwise:

(1) "Public agency" or "political subdivision" means the State of Oregon, any city, county, municipal or public corporation or any political subdivision of the State of Oregon or any instrumentality thereof, or any school district, or any agency created by two or more political subdivisions referred to in ORS 237.003 (9) to provide themselves governmental services, the employees of which constitute a coverage group. For purposes of ORS 237.420 to 237.520, such agency created by two or more political subdivisions is a governmental instrumentality and a legal entity with power to enter into contracts, hold property and sue and be sued.

(2) "Coverage group" has the meaning given that term by the provisions of section 218 of title 2 of the federal Social Security Act, and amendments thereto, and applicable federal regulations adopted pursuant thereto. [Amended by 1953 c.192 §1; 1963 c.608 §15; 1993 c.177 §32]

**237.411 Construction of ORS 237.412 to 237.418 as supplemental to ORS 237.420 to 237.520.** The provisions of ORS 237.412 to 237.418 relating to Old Age and Survivors Insurance coverage are supplemental to ORS 237.420 to 237.520, and shall be so construed. [1953 c.180 §8]

**237.412 Declaration of policy regarding federal social security protection for employees of state and political subdivisions.**

In order to extend to employees of the State of Oregon, all the school districts and all the political subdivisions of the state participating in the Public Employees' Retirement System immediately prior to March 27, 1953, and to the dependents and survivors of such employees, the basic protection accorded to others by the Old Age and Survivors Insurance system embodied in title 2 for the federal Social Security Act, it hereby is declared to be the policy of this state, subject to the limitations of ORS 237.412 to 237.418, that such action be taken, and hereby it is expressly authorized, as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under applicable federal law. [1953 c.180 §1]

**237.414 Extension of federal social security benefits to employees of state and certain political subdivisions.** (1) The Public Employees' Retirement Board hereby is authorized and directed to enter into an agreement or modification of such agreement with the Federal Security Administrator (United States Secretary of Health and Human Services) on behalf of the State of Oregon, consistent with the terms and provisions of ORS 237.412 to 237.418, for the purpose of extending the benefits of the Federal Old Age and Survivors Insurance system to employees of the state and the political subdivisions which at the time of repeal of chapter 401, Oregon Laws 1945, were participating in the Public Employees' Retirement System established by that chapter. The board may authorize its director, on behalf of and in the name of the board, to sign modifications of the agreement including within the agreement legally qualified eligible public agencies.

(2) The agreement shall provide benefits for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of title 2 of the Social Security Act.

(3) The duties and obligations of the state and its political subdivisions as employers, in relation to such agreement, shall be as provided by ORS 237.420 to 237.520.

(4) Such agreement or modification thereof shall be effective with respect to services performed after an effective date specified in such agreement or modification, but in no case prior to January 1, 1951.

(5) All services which:

(a) Constitute employment within the meaning of title 2 of the Social Security Act,

(b) Are performed in the employ of the state or a political subdivision or in the em-

ploy of an instrumentality of either the state or a political subdivision, or both, and

(c) Are covered by a plan which is in conformity with the terms of the agreement and which has been approved by the board, shall be covered by the agreement.

(6) The Public Employees' Retirement Board hereby is authorized and directed to include in the agreement for Old Age and Survivors Insurance coverage to be executed by the board with the Federal Security Administrator (United States Secretary of Health and Human Services) in conformance with this section, the elective officers of the political subdivisions described in subsection (1) of this section, and the elective officers of the State of Oregon. [1953 c.180 §12; 1953 c.193 §1; 1957 c.261 §1; 1967 c.38 §4; 1973 c.704 §14; 1981 c.683 §1; 1991 c.67 §51 and 1991 c.813 §6]

**237.418 Authority of interstate agencies to extend federal social security benefits to their employees.** (1) Any instrumentality jointly created by this state and any other state or states hereby is authorized, to the extent that this state may confer authority, upon the granting of like authority by such other state or states:

(a) To enter into an agreement with the Federal Security Administrator (United States Secretary of Health and Human Services) whereby the benefits of the Federal Old Age and Survivors Insurance system shall be extended to employees of such instrumentality;

(b) To require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay if they were covered by an agreement made pursuant to ORS 237.414; and

(c) To make payments to the Secretary of the Treasury of the United States in accordance with such agreement, including payment from its own funds, and otherwise to comply with such agreement.

(2) Such agreement shall, to the extent practicable, be consistent with the terms and provisions of ORS 237.412 and 237.414. [1953 c.180 §13; 1991 c.67 §52 and 1991 c.813 §7]

**237.420 Agreements to extend federal social security coverage to employees of public agencies not covered by ORS 237.414.** The Public Employees' Retirement Board established by ORS 237.952 shall, for the purposes of administration of this law, after March 27, 1953, succeed to the powers and duties of the Public Employees' Retirement Board established by chapter 401, Oregon Laws 1945, as amended, and shall, upon application by any public agency in accordance with ORS 237.430 and 237.440, execute on behalf of the state an agreement or mod-

ification of such agreement, with the Federal Security Administrator (United States Secretary of Health and Human Services), or the designated agent or successor, for the coverage of employees of such public agency under the insurance system established by title 2 of the federal Social Security Act in conformity with the provisions of section 218 thereof and amendments thereto, and applicable federal regulations adopted pursuant thereto. [Amended by 1953 c.192 §2; 1991 c.67 §53 and 1991 c.813 §8]

**237.430 Public agencies to be included in the agreement.** The agreement shall include each coverage group as to which formal request for inclusion is made by the legislative or governing body of the employing public agency pursuant to ORS 237.440, prior to the effective date of the agreement, or any modification thereof. However, the board shall not be required to include in any agreement or modification any public agency which is not entitled by law to share in any apportionment of state revenue or funds and has at any time within the 10 years next preceding the date of its application been insolvent or failed to pay when due, the principal or interest of its bonds, warrants or other obligations. [Amended by 1953 c.192 §3(1)]

**237.440 Application by political subdivision for inclusion.** The legislative or governing body of every political subdivision may make formal application to the Public Employees' Retirement Board for inclusion of the eligible employees of such political subdivision in the agreement or any modification thereof. [Amended by 1953 c.192 §3(2); 1955 c.278 §1]

**237.450 Starting date for contributions.** Every public agency included in the agreement pursuant to ORS 237.430 and 237.440 shall be liable for the contributions required to be remitted by an employer under the provisions of sections 3101 and 3111 of the federal Internal Revenue Code and amendments thereto, except that no contributions required by ORS 237.460 shall be withheld or remitted prior to July 1, 1951, or prior to the approval of the agreement by the Federal Security Administrator (United States Secretary of Health and Human Services). [Amended by 1953 c.192 §4; 1991 c.67 §54; 1991 c.813 §9]

**237.460 Withholding and remitting of employees' contributions.** (1) Every public agency included in the agreement shall withhold from wages and salaries paid by it to officers and employees covered by the agreement, and remit to the retirement board, that portion required to be withheld from the salaries and wages of employees under the provisions of section 3101 of the federal Internal Revenue Code of 1954 and

amendments thereto as required by section 218(e) of title 2 of the federal Social Security Act.

(2) The provisions of subsection (1) of this section requiring remission to the retirement board of amounts withheld from wages and salaries apply only to amounts withheld from wages and salaries that were paid on or before December 31, 1986. Amounts withheld from wages and salaries that were paid after December 31, 1986, shall be remitted to the Internal Revenue Service. [Amended by 1981 c.849 §1; 1991 c.813 §10]

**237.465 Employees required to contribute.** All employees of the state, all employees of the school districts of the state and all employees of political subdivisions of the state subject to the agreement for Old Age and Survivors Insurance coverage, other than employees specifically excluded by that agreement, shall make contributions for such coverage as required by ORS 237.460. [1955 c.278 §2]

**237.470 Retirement board to promulgate regulations.** The Public Employees' Retirement Board shall promulgate regulations, not inconsistent with ORS 237.410 to 237.520, necessary to provide proper procedures to assure conformity with section 218 of title 2 of the federal Social Security Act and amendments thereto, and federal regulations adopted pursuant thereto. Such regulations shall include provisions governing application procedures, requiring an applicant to present proof satisfactory to the board of its ability to discharge its obligations under ORS 237.410 to 237.520, determining the extent of coverage within separate coverage groups, and provisions prescribing the time and manner of filing reports and making any payment required by ORS 237.410 to 237.520.

**237.480 Procedure against employer failing to comply with regulations.** If an employer fails to report or remit to the retirement board in the manner and within the time prescribed in the regulations adopted by the board, the board, without notice, may send an auditor to the office of the employer to examine its records and to obtain the necessary reports or remittances, the entire cost of such audit to be paid by the delinquent employer.

**237.490 Deposit investment and payment of funds.** (1) All employer and employee contributions and other moneys received or collected by the Public Employees' Retirement Board under ORS 237.410 to 237.520 shall be deposited in the State Treasury to the credit of an account, separate and distinct from the General Fund, to be known as the Social Security Revolving

Account and such account is appropriated for the purposes of ORS 237.410 to 237.520.

(2) All moneys in the account shall be held in trust and invested as provided in ORS 293.701 to 293.820. Interest from such investments shall be used first for paying the administrative expenses described in ORS 237.500 and not later than the 15th day of February, May, August and November, after paying the administrative expenses, as determined by the Public Employees' Retirement Board, for the preceding calendar quarter, the balance of the interest remaining shall be available for general governmental expenses.

(3) The Oregon Department of Administrative Services may review all duly approved claims certified by the Public Employees' Retirement Board for the payment of amounts required to be paid to the Secretary of the Treasury pursuant to agreements entered into under ORS 237.430 to 237.440, and for the payment of necessary refunds and may issue warrants therefor payable out of the Social Security Revolving Account. [Amended by 1953 c.192 §5(1); 1967 c.399 §§2, 6; 1975 c.614 §6; 1989 c.966 §11]

**237.500 Administrative expenses.** All expenses of the Public Employees' Retirement Board in excess of those paid under ORS 237.490 (2) incurred in administering the provisions of ORS 237.410 to 237.520, including such proportion of the salary of the director, counsel, professional consultants and employees of the retirement board, as the time required of them for the administration of ORS 237.410 to 237.520 shall bear to the time required for the administration of both ORS 237.410 to 237.520 and the public employees retirement law, shall be paid in the manner provided by law, out of the Social Security Revolving Account. For such purpose, the board may make monthly withdrawals from said account in lump sums. The board may, under such rules as it promulgates, collect from each public agency its respective pro rata share of the expenses incurred in administering ORS 237.410 to 237.520. Each public agency included in the agreement pursuant to ORS 237.430 is required to pay its pro rata share of the expenses incurred by the board in administering ORS 237.410 to 237.520. In order to facilitate financing the administration of the system the board may designate fiscal periods and may provide that extraordinary expenses incurred during one such period, such as expenses for equipment, may, for purposes of equitably distributing part of the burden of the expenses, be apportioned to subsequent fiscal periods in such manner as to the board seems equitable. [Amended by 1953 c.192 §5(2); 1967 c.399 §3; 1973 c.704 §15]

**237.510 Collection of delinquent contributions.** (1) Upon failure of any public agency to remit contributions to the retirement board as provided by ORS 237.460 or pay its pro rata share as provided by ORS 237.500 and determined by the board, the board may recover by action in a court of competent jurisdiction the amount due and unpaid.

(2) Any public agency delinquent in submitting remittances to the retirement board as provided in ORS 237.460 shall be charged interest on the total amount of remittance due from it at the rate of one percent per month or fraction thereof during which the agency is delinquent. Interest so paid shall be deposited in the Social Security Revolving Account and shall be used by the board in paying the expenses of administration and any penalties which the board may incur.

(3) In order to obtain prompt remittance of contributions and payment of obligations due under ORS 237.410 to 237.520, the board, in the event of delinquency of any public agency entitled by law to share in the apportionment of any state revenues or funds, shall certify the amount of such delinquency to the Oregon Department of Administrative Services, which shall pay the claim out of any revenues or funds in the State Treasury apportioned to the delinquent public agency.

(4) In addition to the remedies otherwise provided under this section, the board may, by petition in usual form, apply to the circuit court for the county in which is located the public agency concerned, or the principal office or place of business of such public agency, for, and if warranted, to have issued, writs of mandamus to compel such public agency to supply to the board a true and complete list and employment records of such agency's employees and all information concerning such employees that reasonably may be required and sought by the board in such petition. Such writs, among other things, shall direct the defendant therein to make such remittances as may appear, from records and information concerning such defendant's employees, to be required by law. Either or both parties thereby aggrieved may appeal to the Court of Appeals from, or from any part of, the judgment of the circuit court given and made in such proceeding, as in ordinary mandamus proceedings. If the court allows the issuance of a peremptory writ, the court shall award reasonable attorney fees, costs and disbursements to the board. [Amended by 1953 c.192 §5(3); 1975 c.614 §7; 1981 c.541 §2; 1991 c.813 §11]

**237.515 Exclusion of contributions from biennial budget.** Contributions required by ORS 237.410 to 237.520 to be placed in the Social Security Revolving Account

and thereafter remitted to the Secretary of the Treasury of the United States shall not be included in the biennial budget of the Public Employees' Retirement Board as income or expenses of such board. [1953 c.192 §5(4)]

**237.520 Social Security Revolving Account appropriation.** For the purpose of establishing the Social Security Revolving Account created by this Act, there hereby is appropriated out of the General Fund in the State Treasury and transferred to and made a part of the Social Security Revolving Account, the sum of \$5,000. In computing the expenses of administration of ORS 237.410 to 237.520 the Public Employees' Retirement Board, during each of the first five years following the date of the first agreement executed under ORS 237.420, shall include as expenses of administration the sum of \$1,000 in excess of the actual expenses incurred by the board in such year. At the end of the sixth month following the first five years the entire sum of \$5,000 shall be repaid to the General Fund.

**PAYMENT OF PUBLIC PENSION TO ALTERNATE PAYEE AFTER MARITAL DISSOLUTION, ANNULMENT OR SEPARATION**

**237.600 Payment to alternate payee; provisions of decree, order or settlement; administrative expenses.** (1) Notwithstanding any other provision of law, payment of any pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit under any public employer retirement plan other than the Public Employees' Retirement System that would otherwise be made to a person entitled to benefits under the plan shall be paid, in whole or in part, to an alternate payee if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the total value of benefits payable to a member and to an alternate payee under this section may not be greater than the value of the benefits the member would otherwise be eligible to receive. Any payment under this subsection to an alternate payee bars recovery by any other person.

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

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

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

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

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

(c) That the alternate payee's life is the measuring life for the purposes of measuring payments to the alternate payee under the form of benefit selected by the alternate payee.

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

(4)(a) A decree, order or agreement providing for payment to an alternate payee under subsection (1) of this section may not provide for payment to an alternate payee of:

(A) Any disability payments provided to a member of a public employer retirement plan in lieu of workers' compensation benefits pursuant to ORS 656.027 (6), to the extent those payments are to be made before the member attains 55 years of age; or

(B) Any medical or hospital benefits payable to a member as part of a disability benefit provided to a member of a public employer retirement plan in lieu of workers' compensation benefits pursuant to ORS 656.027 (6), regardless of the member's age.

(b) Paragraph (a) of this subsection does not prevent a court from considering the disability payments described in that paragraph in making a division of property pursuant to ORS 107.105 or an award of support.

(5) Any public employer or public employer retirement plan that is required by the provisions of this section to make a payment to some person other than a member of the retirement plan offered by the public employer shall charge and collect out of the

benefits payable to the member and the other person actual and reasonable administrative expenses and related costs incurred by the public employer or public employer retirement plan in obtaining data and making calculations that are necessary by reason of the provisions of this section. A public employer or public employer retirement plan may not charge more than \$300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. A public employer or public employer retirement plan that charges and collects administrative expenses and related costs under the provisions of this subsection shall allocate those expenses between the member of the retirement plan and any other person receiving a benefit from the plan based on the fraction of the benefit received by the member or person.

(6) As used in this section:

(a) "Court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia.

(b) "Member" means a person entitled to a benefit from a public employer retirement plan.

(c) "Public employer" means the state, one of its agencies, any city, county, municipal or public corporation, any political subdivision of the state or any instrumentality thereof, or an agency created by two or more such political subdivisions to provide themselves governmental services.

(d) "Public employer retirement plan" means any system, program, annuity, contract or other plan established by a public employer for the purpose of providing a pension, annuity, retirement allowance or disability benefit to officers or employees of the public employer. [1993 c.715 §2]

Note: 237.600 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 237 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 3 and 4, chapter 715, Oregon Laws 1993, provide:

Sec. 3. Within 90 days of the effective date of this Act [November 4, 1993], the Public Employes' Retirement Board and the administrator of any public employer retirement plan as defined in section 2 of this Act [237.600] shall mail an explanation of the provisions of this Act to all persons who have previously notified the Public Employes' Retirement System or the public employer retirement plan of a decree, order or settlement awarding a pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit. [1993 c.715 §3]

Sec. 4. (1) Except as provided in subsection (2) of this section, the amendments to ORS 237.205 by section 1 of this Act and section 2 of this Act [237.600] apply only to decrees or orders entered or modified on or after the effective date of this Act [November 4, 1993].

(2) The amendments to ORS 237.205 by section 1 of this Act and section 2 of this Act apply to decrees and orders entered before the effective date of this Act if no benefit has been paid before the effective date of this Act to either spouse and only to the extent that application is not inconsistent with the terms of the decree or order. If the spouse or former spouse elects to receive a benefit in a form other than the form provided for in the decree or order entered before the effective date of this Act, the member is released from any restriction or direction in the decree or order regarding selection of the form of benefit. [1993 c.715 §4]

### COVERAGE FOR POLICE OFFICERS AND FIRE FIGHTERS

**237.610 Definitions for ORS 237.610 and 237.620.** As used in this section and ORS 237.620:

(1) "Fire fighter" means:

(a) Persons employed by a city, county or district whose duties involve fire fighting, but does not include volunteer fire fighters; and

(b) The State Fire Marshal and the chief deputy fire marshal and deputy state fire marshals appointed under ORS 476.040.

(2) "Police officer" includes police chiefs and police officers 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; county adult parole and probation officers, as defined in ORS 181.610, who are classified by the county governing body for purposes of this section and ORS 237.620; corrections officers as defined in ORS 181.610; employees of districts whose duties, as classified by the governing body of the district, are the regular duties of police officers; and investigators of the Criminal Justice Division of the Department of Justice; 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 any city, county or district that employs police officers or fire fighters. [1971 c.692 §2; 1973 c.19 §2; 1979 c.656 §6; 1981 c.479 §1; 1989 c.614 §2; 1991 c.67 §55]

**237.620 Membership of police officers and fire fighters.** (1) On or before July 1, 1973, all public employers of police officers and fire fighters who are not participants in the Public Employes' Retirement System shall become participants in the system with respect to the police officers and fire fighters employed by them.

(2) All police officers and fire fighters in the employ of the public employer on the date the public employer becomes a participant in the system under subsection (1) of this section shall establish membership under

the six-month service requirement of ORS 237.011.

(3) The participation of the public employer in the system under this section shall apply to services of its employee police officers and fire fighters on and after the effective date of the public employer's participation in the system. The public employer also shall provide a prior service pension for its police officers and fire fighters, within the limitations of ORS 237.081 (2), for continuous service to the public employer for a period not exceeding 20 years before the effective date of the public employer's participation in the system.

(4) Notwithstanding subsections (1) and (2) of this section, if a public employer provides retirement benefits to its police officers and fire fighters which are equal to or better than the benefits which would be provided to them under the system, as determined at the expense of the public employer by the Public Employees' Retirement Board, the public employer shall not be required to participate in the system with respect to its police officers and fire fighters. This exemption shall continue to apply for only as long as the coverage remains substantially unchanged under ORS 237.001 to 237.315 but must be reexamined whenever substantial changes are made therein. [1971 c.692 §3; 1973 c.704 §16; 1975 c.449 §13; 1989 c.888 §2; 1991 c.67 §56]

**237.630** [1971 c.692 §4; 1975 c.449 §7; renumbered 237.173 in 1991]

**237.635 Mandated increase in benefits payable under systems other than Public Employees' Retirement System.** Any public employer that provides retirement benefits to its police officers and fire fighters other than by participation in the Public Employees' Retirement System pursuant to the provisions of ORS 237.620 (4) shall provide increases to the police officers and fire fighters of the public employer, both active and retired, that are equal to the increases in retirement benefits that are provided for in this 1991 Act for active and retired police officers or fire fighters who are members of the Public Employees' Retirement System, or shall provide to those police officers and fire fighters increases in retirement benefits that are the actuarial equivalent of the increases in retirement benefits that are provided for in this 1991 Act for police officers or fire fighters who are members of the Public Employees' Retirement System. No other retirement benefit or other benefit provided by those public employers shall be decreased by the employer by reason of the increases mandated by this section. [1991 c.796 §11]

**Note:** The Legislative Counsel has not undertaken pursuant to 173.610 to substitute specific ORS references for the words "this Act" in 237.635. Chapter 796, Oregon Laws 1991, enacted into law and amended the ORS

sections which may be found by referring to the 1991 Comparative Section Table located in volume 15 of Oregon Revised Statutes. See also temporary provisions following 237.210.

**237.640** [1971 c.692 §5; 1973 c.704 §17; 1975 c.449 §8; 1991 c.813 §12; renumbered 237.163 in 1991]

### LIQUIDATION OF PRE-1953 RETIREMENT SYSTEM

**237.950 Pre-1953 Public Employees' Retirement System abolished.** The Public Employees' Retirement System of the State of Oregon, established by chapter 401, Oregon Laws 1945, as amended, hereby is abolished, subject to the provisions of ORS 237.950 to 237.980. [1953 c.180 §2]

**237.952 Public Employees' Retirement Board.** (1) There hereby is established and created the Public Employees' Retirement Board, which shall administer the provisions of ORS 237.414 and 237.950 to 237.980, shall have powers and duties herein provided, and shall be comprised of five persons appointed by the Governor. The term of each appointee shall be four years.

(2) The board shall have the powers and privileges of a corporation, including the right to sue and be sued in its own name.

(3) Members of the board shall be citizens of the United States and residents of the State of Oregon for at least two years immediately preceding their appointment to the board. Two members shall not be employed by a public employer during their respective terms of office on the board or have been so employed during the two years immediately preceding appointment to the board. The other three members of the board shall be employees of public employers under social security coverage and so employed throughout the respective terms of their appointment. Any vacancy on the board shall be filled by appointment for the unexpired term of the member replaced.

(4) The successor of a board member in either group shall have the qualifications herein prescribed for such group.

(5) The board shall, at its first meeting of each fiscal year, designate one of its members to serve as chairman of the board for the ensuing year and until a successor is designated and takes that office. The board shall hold meetings as frequently as may be necessary for the performance of its duties.

(6) Within the limitations of ORS 237.414 and 237.950 to 237.980, the board shall have the power to establish and enforce rules and regulations for transacting its business and administering ORS 237.414 and 237.950 to 237.980.

(7) Members of the board shall serve without compensation but shall be reim-

bursed for their necessary expenses incurred in the performance of their duties as such members. [1953 c.180 §9; 1953 c.521 §3; 1991 c.67 §57]

**237.956 Director and staff.** The board shall employ a director whose duties shall be as hereinafter provided. All ministerial duties required in the administration of ORS 237.414 and 237.950 to 237.980 shall be performed by the director and by employees under the direction of the director. The director shall hold the position during the pleasure of the board and shall furnish such bond as required by the board. The board shall also designate an employee to perform duties in the absence of the director. [1953 c.180 §10; 1973 c.704 §18]

**237.960 Transfer of assets and administration of retirement fund.** (1) All assets of the previously existing Public Employees' Retirement System, as of March 27, 1953, including moneys and securities, accounts receivable, office equipment and all personal property of any description, hereby are transferred to the Public Employees' Retirement Board created and established by ORS 237.952, which board shall have control thereof for the purpose of liquidating the obligations of the Public Employees' Retirement System and otherwise applying such assets as herein directed.

(2) During the period of liquidation the board may invest and reinvest moneys, purchase, sell and exchange securities as in its judgment to the best interest of beneficiaries.

(3) The board shall succeed to all the duties and prerogatives of the Public Employees' Retirement Board created by chapter 401, Oregon Laws 1945, as amended, in relation to the Public Employees' Retirement Fund. Said fund shall be and remain a trust fund for the purpose of liquidating the obligations of the abolished retirement system, and the Public Employees' Retirement Board created by ORS 237.952 hereby is declared to be the trustee of said fund.

(4) From the current service account of the State of Oregon in the Public Employees' Retirement Fund there shall be transferred to the Social Security Revolving Account an amount of \$60,000 which shall be recovered from the participating employers in the manner prescribed by ORS 237.520, and upon recovery shall be repaid to the Public Employees' Retirement Board. [1953 c.180 §3]

**237.964 Collection of accrued liabilities.** In order to liquidate accrued liabilities with respect to prior service credit and delinquent contributions, each public employer which at any time prior to March 27, 1953, has participated in the Public Employees' Retirement System shall continue to remit payments to the Public Employees' Retirement

Board at the rate and in the time and manner prescribed by chapter 401, Oregon Laws 1945, as amended. The board shall have a right of action against any such public employer for the enforcement of the provisions of this section. [1953 c.180 §5]

**237.968 Continuation of retirement benefits of certain members.** The board shall pay all retirement benefits to which members of the Public Employees' Retirement System who retired prior to March 27, 1953, may be entitled under the provisions of chapter 401, Oregon Laws 1945, as amended, and shall give full recognition to all rights to which such members are entitled under said law. The board also shall determine and pay in accordance with the provisions of that law retirement benefits to which members of the Public Employees' Retirement System are entitled by the provisions of said law. [1953 c.180 §4]

**237.972 Continuation of abolished system with regard to certain members.** Notwithstanding any other provision of chapter 180, Oregon Laws 1953, chapter 401, Oregon Laws 1945, as amended, shall remain in full force and effect with respect to any employee of a public employer which heretofore withdrew from the Public Employees' Retirement System pursuant to subsection (5) of section 8 of said law, as amended by section 1, chapter 322, Oregon Laws 1951, who did not sign the petition for such withdrawal. Such employee shall be and remain a member of the Public Employees' Retirement System with full rights and benefits thereunder as if chapter 180, Oregon Laws 1953, had not been passed; and until the entire obligation of the public employer with respect to all such employees, as provided in chapter 401, Oregon Laws 1945, as amended, shall have been paid in full, such public employer shall continue to deduct from payrolls and transmit the contributions thereby required and make the matching contributions thereby required to the Public Employees' Retirement Board created by ORS 237.952 and such public employer shall remain liable to such Public Employees' Retirement Board for all contributions required by such law together with interest thereon at the legal rate from the date of any delinquency. [1953 c.180 §11]

**237.976 Disposition of contributions made under abolished system.** (1) From contributions of each employee and the matching contributions of the employer, respectively, due and paid to the Public Employees' Retirement Fund for services performed after January 1, 1951, there shall be deducted as much thereof as necessary to constitute an amount equal to the total sum of the tax which would have been imposed upon the employee and the employer, respec-

tively, by sections 1400 and 1410 of the Internal Revenue Code, if the services of the employee subsequent to January 1, 1951, had constituted employment as defined by section 1426 of such Code; provided, however, that no such deductions shall be made from the contributions of the employees referred to in ORS 237.972 or from the matching contributions of their employers, heretofore or hereafter paid into the Public Employees' Retirement Fund. A sum equal to the total of the amounts deducted as provided in the preceding sentence hereby is transferred from the Public Employees' Retirement Fund to the Social Security Revolving Account in the General Fund created by ORS 237.490, and shall be expended by the Public Employees' Retirement Board in payment of the contributions required to secure coverage under the system of Old Age and Survivors Insurance established by title 2 of the Social Security Act, effective from January 1, 1951, for all employees with respect to whom such deductions were made.

(2) Each member of the Public Employees' Retirement System shall have the right to a refund of all contributions heretofore paid by the member into the fund after deducting therefrom the amount herein specified for social security coverage, providing that within 60 days after March 27, 1953, the member signs and files a written request therefor with the Public Employees' Retirement Board, in which event such contribution shall be paid to the member by the Public Employees' Retirement Board as soon thereafter as practicable and in no case later than October 1, 1953. The refund of all contributions paid by the member, as by this section authorized, in the case of each applicant who receives such refund shall extinguish all the rights of membership in the Public Employees' Retirement System established by chapter 401, Oregon Laws 1945, including the right to claim credit for any time whatever spent in public employment prior to the receipt of such refund. Unless an em-

ployee shall have filed such request for refund within said 60 days the balance of contributions of the employee remaining after such deduction, together with an equal amount contributed by the employer, and the contributions of the employers based on the prior service credit of the employee, shall be used to purchase retirement benefits for such employee in accordance with ORS 237.001 to 237.315. If, pending such disposition of employees' contributions, any employee should die, the accumulated contributions of the employee shall be paid as the employee shall have directed in writing. In the absence of such written direction, the accumulated contributions shall be paid in accordance with the provisions of chapter 401, Oregon Laws 1945, as amended.

(3) There shall be no refund made to any participating employer until such time as all liabilities against such employer have been fully liquidated and discharged. [1953 c.180 §6; 1953 c.521 §1]

**237.980 Rights and moneys exempt from taxation, execution and bankruptcy and are unassignable.** During the entire period of liquidation of the Public Employees' Retirement System, the right of a person to a pension, annuity or a retirement allowance, to the return of contributions upon separation from service with a public employer, the refund of contributions authorized by ORS 237.976, the payment of annuity, or retirement allowance itself, any optional benefit or death benefit, or any right accrued or accruing to any person under the provisions of the repealed Public Employees' Retirement Act [chapter 401, Oregon Laws 1945] or ORS 237.412 to 237.418 or 237.950 to 237.980, shall be exempt from all state, county and municipal taxes, and shall not be subject to execution, garnishment, attachment or any other process or to the operation of any bankruptcy or insolvency law, and shall not be assignable. [1953 c.180 §7; 1953 c.521 §2]

**PUBLIC OFFICERS AND EMPLOYEES**

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