

## Issue Memo: Support Senate Bill 201A Oregon Public Retirement Service Retirement Plan Out-of-State University Employees

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### Overview & Background:

SB 201A resolves an implementation error from 2003 related to public university out-of-state employees' participation in the Oregon Public Service Retirement Plan (OPSRP/Tier 3).

The Oregon Legislature has amended the PERS statute several times since its inception, thereby creating three membership "tiers."

- Tier 1: Employees hired before Jan. 1, 1996
- Tier 2: Employees hired on or after Jan. 1, 1996, and before Aug. 29, 2003
- Tier 3: Employees hired on or after Aug. 29, 2003

PERS Tier 3 is also referred to as the Oregon Public Service Retirement Plan ("OPSRP").

Public employees who participate in PERS receive retirement benefits that are calculated as a percentage of their salary. Under PERS Tiers 1 and 2, "salary" is defined as including all compensation, **regardless of whether the compensation is taxable in Oregon**, paid to an employee in cash out of the funds of a public employer.

The Oregon Legislature changed the definition of "salary" when it enacted OPSRP. Under OPSRP, salary includes only compensation that is includable in the employee's taxable income under Oregon law. This definition excludes compensation paid to Oregon public employees who reside and work outside Oregon ("out-of-state employees"), thus potentially preventing out-of-state employees from receiving PERS retirement benefits.

### Implementation of 2003 Reforms:

In 2003, when the OPSRP statutes became effective (including the new definition of salary), the universities centrally administered their employee benefits under the Oregon University System, including determining employees' eligibility for PERS membership.

Employees received generalized information regarding retirement benefits, but they never received clarification that compensation not taxable in Oregon would not be counted for purposes of calculating OPSRP retirement benefits.

Over the years, the universities have continued to provide the same generalized retirement information regarding OPSRP. Additionally, the universities continued making contributions to PERS based on all eligible employees' salaries, regardless of whether salaries were taxable in Oregon.

Affected employees mistakenly believe they have earned and will continue to earn benefits under PERS's pension plan and the Individual Account Program ("IAP") and are expecting to receive those benefits when they retire.

**Proposed Solution:**

**SB 201A would retroactively include compensation that is not taxable in Oregon for all employees hired between August 29, 2003 and December 31, 2016.**

The universities' primary goal is to ensure that any employees affected by this issue are made whole.

This statutory amendment would be the most cost-effective and least burdensome way to resolve this issue because the universities have already been making contributions to the pension plan and the IAP based on affected employees' total compensation, including compensation that is not taxable in Oregon. Any other solutions would require PERS to refund the universities' contributions to enable the universities to make the affected employees whole outside PERS via private settlements.

**Effect of the -1 Amendment:**

The amendment makes the following changes to the bill:

1. Replaces "university with a governing board" with "public university listed in ORS 352.002," because "universities with governing boards" were not in existence during the entire relevant period.
2. Changes the relevant period from 8/29/03 through 12/31/2017 to 8/29/03 through 12/31/2016.
3. Changes "lives" to "resided" because residency would be easier to administer as it provides a more objective, legal standard that can be linked to existing required documentation such as tax filings.
4. Added language to clarify that periods of employment that begin on and after 1/1/2017 won't be covered by SB 201A. In other words, only periods of "continuous employment with a public university" that begin on or before December 31, 2016, will be covered by the bill. "Continuous employment" will be defined in OAR.