

House Bill 4046

Sponsored by Representatives WHISNANT, REARDON, GOMBERG, Senators HANSELL, ROBLAN; Representatives BARKER, NOBLE, RESCHKE (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that outside compensation of employee of public university or community college is not included in employee's salary for purposes of Public Employees Retirement System.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to salary under the Public Employees Retirement System; creating new provisions; amend-
3 ing ORS 238.005, 238A.005, 341.556, 352.232 and 353.270; and declaring an emergency.

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

5 **SECTION 1.** ORS 341.556 is amended to read:

6 341.556. (1) The board of a community college may authorize receipt of compensation for any
7 faculty member from private or public resources, including, but not limited to, income from:

8 (a) Consulting;

9 (b) Appearances and speeches;

10 (c) Intellectual property conceived, reduced to practice or originated and therefore owned within
11 the community college;

12 (d) Providing services or other valuable consideration for a private corporation, individual or
13 entity, whether paid in cash or in-kind, stock or other equity interest or anything of value regardless
14 of whether there is a licensing agreement between the community college and the private entity;
15 and

16 (e) Performing public duties paid by private organizations, including institution corporate affil-
17 iates, that augments a faculty member's publicly funded salary. Such income shall be authorized and
18 received in accordance with policies and standards established by each board.

19 (2) Each board may not authorize compensation, as described in subsection (1) of this section,
20 that, in the board's judgment, does not comport with the mission of the community college or that
21 substantially interferes with a faculty member's duties to the community college.

22 (3) Any compensation described and authorized under subsection (1) of this section is considered
23 official compensation or reimbursement of expenses for purposes of ORS 244.040 and is not consid-
24 ered an honorarium prohibited by ORS 244.042. If authorization or receipt of the compensation cre-
25 ates a potential conflict of interest, the faculty member shall report the potential conflict in writing
26 in accordance with standards of the board. The disclosure is a public record subject to public in-
27 spection.

28 **(4) Compensation described and authorized under subsection (1) of this section is not**
29 **salary for purposes of ORS chapter 238 or 238A.**

30 [(4)] (5) Each board shall adopt standards governing faculty outside employment and activities,

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 including potential conflicts of interest, as defined by standards of the board and consistent with
 2 ORS 244.020, and the public disclosure thereof, and procedures for reporting and hearing potential
 3 or actual conflict of interest complaints.

4 **SECTION 2.** ORS 352.232 is amended to read:

5 352.232. (1) The governing board of a public university listed in ORS 352.002 may authorize re-
 6 ceipt of compensation for any officer or employee from private or public resources, including, but
 7 not limited to, income from:

8 (a) Consulting;

9 (b) Appearances and speeches;

10 (c) Intellectual property conceived, reduced to practice or originated and therefore owned within
 11 the public university;

12 (d) Providing services or other valuable consideration for a private corporation, individual, or
 13 entity, whether paid in cash or in-kind, stock or other equity interest, or anything of value regard-
 14 less of whether there is a licensing agreement between the public university and the private entity;
 15 and

16 (e) Performing public duties paid by private organizations, including institution corporate affil-
 17 iates, that augments an officer's or employee's publicly funded salary. Such income shall be author-
 18 ized and received in accordance with policies and standards established by each governing board.

19 (2) Each governing board may not authorize compensation, as described in subsection (1) of this
 20 section, that, in the governing board's judgment, does not comport with the mission of the public
 21 university or substantially interferes with an officer's or employee's duties to the university.

22 (3) Any compensation described and authorized under subsection (1) of this section is considered
 23 official compensation or reimbursement of expenses for purposes of ORS 244.040 and is not consid-
 24 ered an honorarium prohibited by ORS 244.042. If authorization or receipt of the compensation cre-
 25 ates a potential conflict of interest, the officer or employee shall report the potential conflict in
 26 writing in accordance with standards of the governing board. The disclosure is a public record
 27 subject to public inspection.

28 **(4) Compensation described and authorized under subsection (1) of this section is not**
 29 **salary for purposes of ORS chapter 238 or 238A.**

30 [(4)] (5) Each governing board shall adopt standards governing employee outside employment
 31 and activities, including potential conflict of interest, as defined by standards of the governing board
 32 and consistent with ORS 244.020, and the public disclosure thereof, and procedures for reporting and
 33 hearing potential or actual conflict of interest complaints.

34 **SECTION 3.** ORS 353.270 is amended to read:

35 353.270. (1) Oregon Health and Science University may authorize receipt of compensation for
 36 any officer or employee of the university from private or public resources, including but not limited
 37 to income from:

38 (a) Consulting;

39 (b) Appearances and speeches;

40 (c) Intellectual property conceived, reduced to practice or originated and therefore owned within
 41 the university;

42 (d) Providing services or other valuable consideration for a private corporation, individual or
 43 entity, whether paid in cash or in kind, stock or other equity interest, or anything of value regard-
 44 less of whether there is a licensing agreement between the university and the private entity;

45 (e) Performing public duties paid by private organizations, including university corporate affil-

1 iates, that augment an officer's or employee's publicly funded salary. Such income shall be author-
 2 ized and received in accordance with policies established by the university; and

3 (f) Providing medical and other health services.

4 (2) The university may not authorize compensation, as described in subsection (1) of this section,
 5 that, in the university's judgment, does not comport with the missions of the university or substan-
 6 tially interferes with an officer's or employee's duties to the university.

7 (3) Any compensation described and authorized under subsection (1) of this section is considered
 8 official compensation or reimbursement of expenses for purposes of ORS 244.040 and is not consid-
 9 ered an honorarium prohibited by ORS 244.042. If authorization or receipt of the compensation cre-
 10 ates a potential conflict of interest, the officer or employee shall report the potential conflict in
 11 writing in accordance with policies of the university. The disclosure is a public record subject to
 12 public inspection.

13 **(4) Compensation described and authorized under subsection (1) of this section is not**
 14 **salary for purposes of ORS chapter 238 or 238A.**

15 [(4)] (5) The university shall adopt standards governing employee outside employment and ac-
 16 tivities of employees, including potential conflicts of interest, as defined by the university and con-
 17 sistent with ORS 244.020, and the public disclosure thereof, and procedures for reporting and
 18 hearing potential or actual conflict of interest complaints.

19 **SECTION 4.** ORS 238.005 is amended to read:

20 238.005. For purposes of this chapter:

21 (1) "Active member" means a member who is presently employed by a participating public em-
 22 ployer in a qualifying position and who has completed the six-month period of service required by
 23 ORS 238.015.

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

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

27 (4) "Calendar year" means 12 calendar months commencing on January 1 and ending on De-
 28 cember 31 following.

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

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

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

38 (6) "Creditable service" means any period of time during which an active member is being paid
 39 a salary by a participating public employer and for which benefits under this chapter are funded by
 40 employer contributions and earnings on the fund. For purposes of computing years of "creditable
 41 service," full months and major fractions of a month shall be considered to be one-twelfth of a year
 42 and shall be added to all full years. "Creditable service" includes all retirement credit received by
 43 a member.

44 (7) "Earliest service retirement age" means the age attained by a member when the member
 45 could first make application for retirement under the provisions of ORS 238.280.

- 1 (8) "Employee" includes, in addition to employees, public officers, but does not include:
 2 (a) Persons engaged as independent contractors.
 3 (b) Seasonal, emergency or casual workers whose periods of employment with any public em-
 4 ployer or public employers do not total 600 hours in any calendar year.
 5 (c) Persons provided sheltered employment or made-work by a public employer in an employment
 6 or industries program maintained for the benefit of such persons.
 7 (d) Persons employed and paid from federal funds received under a federal program intended
 8 primarily to alleviate unemployment. However, any such person shall be considered an "employee"
 9 if not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects
 10 to have the person so considered by an irrevocable written notice to the board.
 11 (e) Persons who are employees of a railroad, as defined in ORS 824.020, and who, as such em-
 12 ployees, are included in a retirement plan under federal railroad retirement statutes. This paragraph
 13 shall be deemed to have been in effect since the inception of the system.
 14 (f) Persons employed in positions classified as post-doctoral scholar positions by a public uni-
 15 versity listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370.
 16 (9) "Final average salary" means whichever of the following is greater:
 17 (a) The average salary per calendar year paid by one or more participating public employers to
 18 an employee who is an active member of the system in three of the calendar years of membership
 19 before the effective date of retirement of the employee, in which three years the employee was paid
 20 the highest salary. The three calendar years in which the employee was paid the largest total salary
 21 may include calendar years in which the employee was employed for less than a full calendar year.
 22 If the number of calendar years of active membership before the effective date of retirement of the
 23 employee is three or fewer, the final average salary for the employee is the average salary per cal-
 24 endar year paid by one or more participating public employers to the employee in all of those years,
 25 without regard to whether the employee was employed for the full calendar year.
 26 (b) One-third of the total salary paid by a participating public employer to an employee who is
 27 an active member of the system in the last 36 calendar months of active membership before the ef-
 28 fective date of retirement of the employee.
 29 (10) "Firefighter" does not include a volunteer firefighter, but does include:
 30 (a) The State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals; and
 31 (b) An employee of the State Forestry Department who is certified by the State Forester as a
 32 professional wildland firefighter and whose primary duties include the abatement of uncontrolled
 33 fires as described in ORS 477.064.
 34 (11) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-
 35 lowing.
 36 (12) "Fund" means the Public Employees Retirement Fund.
 37 (13) "Inactive member" means a member who is not employed in a qualifying position, whose
 38 membership has not been terminated in the manner described by ORS 238.095 and who is not retired
 39 for service or disability.
 40 (14) "Institution of higher education" means a public university listed in ORS 352.002, the
 41 Oregon Health and Science University and a community college, as defined in ORS 341.005.
 42 (15) "Member" means a person who has established membership in the system and whose mem-
 43 bership has not been terminated as described in ORS 238.095. "Member" includes active, inactive
 44 and retired members.
 45 (16) "Member account" means the regular account and the variable account.

1 (17) “Normal retirement age” means:

2 (a) For a person who establishes membership in the system before January 1, 1996, as described
 3 in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter
 4 or 58 years of age if the employee retires at that age as other than a police officer or firefighter.

5 (b) For a person who establishes membership in the system on or after January 1, 1996, as de-
 6 scribed in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or
 7 firefighter or 60 years of age if the employee retires at that age as other than a police officer or
 8 firefighter.

9 (18) “Pension” means annual payments for life derived from contributions by one or more public
 10 employers.

11 (19) “Police officer” includes:

12 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions
 13 whose duties, as assigned by the Director of the Department of Corrections, include the custody of
 14 persons committed to the custody of or transferred to the Department of Corrections and employees
 15 of the Department of Corrections who were classified as police officers on or before July 27, 1989,
 16 whether or not such classification was authorized by law.

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

19 (c) Employees of the Oregon Liquor Control Commission who are classified as regulatory spe-
 20 cialists by the administrator of the commission.

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

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

25 (f) Police officers who are commissioned by a university under ORS 352.121 or 353.125 and who
 26 are classified as police officers by the university.

27 (g) Parole and probation officers employed by the Department of Corrections, parole and pro-
 28 bation officers who are transferred to county employment under ORS 423.549 and adult parole and
 29 probation officers, as defined in ORS 181A.355, who are classified as police officers for the purposes
 30 of this chapter by the county governing body. If a county classifies adult parole and probation offi-
 31 cers as police officers for the purposes of this chapter, and the employees so classified are repres-
 32 ented by a labor organization, any proposal by the county to change that classification or to cease
 33 to classify adult parole and probation officers as police officers for the purposes of this chapter is
 34 a mandatory subject of bargaining.

35 (h) Police officers appointed under ORS 276.021 or 276.023.

36 (i) Employees of the Port of Portland who are classified as airport police by the Board of Com-
 37 missioners of the Port of Portland.

38 (j) Employees of the State Department of Agriculture who are classified as livestock police of-
 39 ficers by the Director of Agriculture.

40 (k) Employees of the Department of Public Safety Standards and Training who are classified by
 41 the department as other than secretarial or clerical personnel.

42 (L) Investigators of the Criminal Justice Division of the Department of Justice.

43 (m) Corrections officers as defined in ORS 181A.355.

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

1 (o) The Director of the Department of Corrections.

2 (p) An employee who for seven consecutive years has been classified as a police officer as de-
 3 fined by this section, and who is employed or transferred by the Department of Corrections to fill
 4 a position designated by the Director of the Department of Corrections as being eligible for police
 5 officer status.

6 (q) An employee of the Department of Corrections classified as a police officer on or prior to
 7 July 27, 1989, whether or not that classification was authorized by law, as long as the employee
 8 remains in the position held on July 27, 1989. The initial classification of an employee under a sys-
 9 tem implemented pursuant to ORS 240.190 does not affect police officer status.

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

13 (s) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,
 14 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who
 15 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the
 16 Department of Corrections or the Oregon Youth Authority.

17 (t) Employees at youth correction facilities as defined in ORS 420.005 whose primary job de-
 18 scription involves the custody, control, treatment, investigation or supervision of juveniles placed
 19 in such facilities.

20 (u) Employees of the Oregon Youth Authority who are classified as juvenile parole and pro-
 21 bation officers.

22 (v) Employees of the Department of Human Services who are prohibited from striking under ORS
 23 243.726 and whose duties include the care of residents of residential facilities, as defined in ORS
 24 443.400, that house individuals with intellectual or developmental disabilities.

25 (20) "Prior service credit" means credit provided under ORS 238.442 or under ORS 238.225 (2)
 26 to (6) (1999 Edition).

27 (21) "Public employer" means the state, one of its agencies, any city, county, or municipal or
 28 public corporation, any political subdivision of the state or any instrumentality thereof, or an agency
 29 created by one or more such governmental organizations to provide governmental services. For
 30 purposes of this chapter, such agency created by one or more governmental organizations is a gov-
 31 ernmental instrumentality and a legal entity with power to enter into contracts, hold property and
 32 sue and be sued.

33 (22) "Qualifying position" means one or more jobs with one or more participating public em-
 34 ployers in which an employee performs 600 or more hours of service in a calendar year, excluding
 35 any service in a job for which a participating public employer does not provide benefits under this
 36 chapter pursuant to an application made under ORS 238.035.

37 (23) "Regular account" means the account established for each active and inactive member un-
 38 der ORS 238.250.

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

40 (25) "Retirement credit" means a period of time that is treated as creditable service for the
 41 purposes of this chapter.

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

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

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

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

6 (C) Retroactive payments described in ORS 238.008; and

7 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
8 652.190.

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

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

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

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

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

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

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

20 (G) Payments for periods of leave of absence after the date the employer and employee have
21 agreed that no future services qualifying pursuant to ORS 238.015 (3) will be performed, except for
22 sick leave and vacation;

23 (H) Payments for instructional services rendered to public universities listed in ORS 352.002 or
24 the Oregon Health and Science University when such services are in excess of full-time employment
25 subject to this chapter. A person employed under a contract for less than 12 months is subject to
26 this subparagraph only for the months to which the contract pertains; *[or]*

27 (I) Payments made by an employer for insurance coverage provided to a domestic partner of an
28 employee; **or**

29 **(J) Compensation described and authorized under ORS 341.556, 352.232 or 353.270.**

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

31 (28) "System" means the Public Employees Retirement System.

32 (29) "Variable account" means the account established for a member who participates in the
33 Variable Annuity Account under ORS 238.260.

34 (30) "Vested" means being an active member of the system in each of five calendar years.

35 (31) "Volunteer firefighter" means a firefighter whose position normally requires less than 600
36 hours of service per year.

37 **SECTION 5.** ORS 238A.005 is amended to read:

38 238A.005. For the purposes of this chapter:

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

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

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

45 (4) "Eligible employee" means a person who performs services for a participating public em-

1 ployer, including elected officials other than judges. “Eligible employee” does not include:

2 (a) Persons engaged as independent contractors;

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

4 (c) Persons provided sheltered employment or make-work by a public employer;

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

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

7 (f) Employees of foreign trade offices of the Oregon Business Development Department who live
8 and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

9 (g) An employee actively participating in an alternative retirement program established under
10 ORS 353.250 or an optional retirement plan established under ORS 341.551;

11 (h) Employees of a public university listed in ORS 352.002 who are actively participating in an
12 optional retirement plan offered under ORS 243.800;

13 (i) Persons employed in positions classified as post-doctoral scholar positions by a public uni-
14 versity listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370;

15 (j) Any employee who belongs to a class of employees that was not eligible on August 28, 2003,
16 for membership in the system under the provisions of ORS chapter 238 or other law;

17 (k) Any person who belongs to a class of employees who are not eligible to become members
18 of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

19 (L) Any person who is retired under ORS 238A.100 to 238A.250 or ORS chapter 238 and who
20 continues to receive retirement benefits while employed; and

21 (m) Judges.

22 (5) “Firefighter” means:

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

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

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

30 (6) “Fund” means the Public Employees Retirement Fund.

31 (7)(a) “Hour of service” means:

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

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

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

42 (8) “Inactive member” means a member of the pension program or the individual account pro-
43 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who
44 is not a retired member and who is not employed in a qualifying position.

45 (9) “Individual account program” means the defined contribution individual account program of

1 the Oregon Public Service Retirement Plan established under ORS 238A.025.

2 (10) "Institution of higher education" means a public university listed in ORS 352.002, the
3 Oregon Health and Science University or a community college, as defined in ORS 341.005.

4 (11) "Member" means an eligible employee who has established membership in the pension pro-
5 gram or the individual account program of the Oregon Public Service Retirement Plan and whose
6 membership has not been terminated under ORS 238A.110 or 238A.310.

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

9 (13) "Pension program" means the defined benefit pension program of the Oregon Public Service
10 Retirement Plan established under ORS 238A.025.

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

12 (15) "Qualifying position" means one or more jobs with one or more participating public em-
13 ployers in which an eligible employee performs 600 or more hours of service in a calendar year,
14 excluding any service in a job for which benefits are not provided under the Oregon Public Service
15 Retirement Plan pursuant to ORS 238A.070 (2).

16 (16) "Retired member" means a pension program member who is receiving a pension as provided
17 in ORS 238A.180 to 238A.195.

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

24 (b) "Salary" includes the following amounts:

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

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

29 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit
30 plan by the employer at the election of the employee and that is not includable in the taxable in-
31 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2016.

32 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the
33 election of the employee and that is not included in the taxable income of the employee by reason
34 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2016.

35 (E) Retroactive payments described in ORS 238.008.

36 (F) The amount of an employee contribution to the individual account program that is paid by
37 the employer and deducted from the compensation of the employee, as provided under ORS 238A.335
38 (1) and (2)(a).

39 (G) The amount of an employee contribution to the individual account program that is not paid
40 by the employer under ORS 238A.335.

41 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS
42 652.190.

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

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

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

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

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

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

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

9 (G) Payments for instructional services rendered to public universities listed in ORS 352.002 or
10 the Oregon Health and Science University when those services are in excess of full-time employment
11 subject to this chapter. A person employed under a contract for less than 12 months is subject to
12 this subparagraph only for the months covered by the contract.

13 (H) The amount of an employee contribution to the individual account program that is paid by
14 the employer and is not deducted from the compensation of the employee, as provided under ORS
15 238A.335 (1) and (2)(b).

16 **(I) Compensation described and authorized under ORS 341.556, 352.232 or 353.270.**

17 *[(I)]* **(J)** Any amount in excess of \$200,000 for a calendar year. If any period over which salary
18 is determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by
19 a fraction, the numerator of which is the number of months in the determination period and the
20 denominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate
21 cost-of-living adjustments authorized by the Internal Revenue Service.

22 (18) "System" means the Public Employees Retirement System.

23 (19) "Workers' compensation benefits" means:

24 (a) Payments made under ORS chapter 656; or

25 (b) Payments provided in lieu of workers' compensation benefits under ORS 656.027 (6).

26 **SECTION 6. (1) Except as provided in subsection (2) of this section, the amendments to**
27 **ORS 238.005, 238A.005, 341.556, 352.232 and 353.270 by sections 1 to 5 of this 2018 Act apply to**
28 **all compensation described and authorized under ORS 341.556, 352.232 and 353.270, whether**
29 **paid before, on or after the effective date of this 2018 Act.**

30 **(2) The amendments to ORS 238.005, 238A.005, 341.556, 352.232 and 353.270 by sections 1**
31 **to 5 of this 2018 Act apply only to members of the Public Employees Retirement System**
32 **whose effective date of retirement is on or after the effective date of this 2018 Act.**

33 **SECTION 7. This 2018 Act being necessary for the immediate preservation of the public**
34 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
35 **on its passage.**

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