

Enrolled House Bill 2104

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Higher Education)

CHAPTER

AN ACT

Relating to Optional Retirement Plan; creating new provisions; amending ORS 243.800; and declaring an emergency.

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

SECTION 1. ORS 243.800 is amended to read:

243.800. (1) Notwithstanding any provision of ORS chapter 238 or 238A or ORS 243.910 to 243.945, the State Board of Higher Education [*may*] **shall** establish and administer an Optional Retirement Plan for administrative and academic employees of the Oregon University System who are eligible for membership in the Public Employees Retirement System. The Optional Retirement Plan must be a qualified plan under the Internal Revenue Code, capable of accepting funds transferred under subsection (7) of this section without the transfer being treated as a taxable event under the Internal Revenue Code, and willing to accept those funds. Retirement and death benefits shall be provided under the plan by the purchase of annuity contracts, fixed or variable or a combination thereof, or by contracts for investments in mutual funds.

(2) The State Board of Higher Education shall select at least two life insurance companies providing fixed and variable annuities and at least two investment companies providing mutual funds, but not more than five companies in total, for the purpose of providing benefits under the Optional Retirement Plan [*authorized by this section*]. The State Board of Higher Education shall establish selection criteria for the purpose of this subsection.

(3) An administrative or academic employee may [*elect*] **make an irrevocable election** to participate in [*an*] **the** Optional Retirement Plan [*offered under the provisions of this section in the following manner:*] **within six months after being employed. An election under this subsection is effective on the first day of the month following six full months of employment.**

[(a) An administrative or academic employee who is an active member of the Public Employees Retirement System may make an irrevocable election to participate in the plan within 180 days after the plan's implementation date, effective as of the date of election.]

[(b) An employee, as defined in ORS 243.910 (2), who is an active member of the Public Employees Retirement System and who has elected, and not canceled that election, to be assisted by the State Board of Higher Education under ORS 243.940 may make an irrevocable election to participate in the plan within 180 days of the plan's implementation date, effective as of the date of election.]

[(c) An administrative or academic employee who is hired after the plan's implementation date may make an irrevocable election to participate in the plan within the first six months of employment, effective on the first of the month following six full months of employment.]

(4) **An** administrative or academic [*employees*] **employee** who [*do*] **does** not elect to participate in [*an*] **the** Optional Retirement Plan:

(a) [*Remain members*] **Remains or becomes a member** of the Public Employees Retirement System [*if they are members on the date the plan is implemented*] **in accordance with ORS chapters 238 and 238A; or**

(b) [*Continue*] **Continues** to be assisted by the State Board of Higher Education under ORS 243.920 if [*they are*] **the employee is** being so assisted[; or]

[*c Become members of the Public Employees Retirement System in accordance with ORS chapters 238 and 238A, if they commence employment after the optional plan is implemented.*]

(5) Except as provided in subsection (6) of this section, employees who elect to participate in the **Optional Retirement** Plan are ineligible for active membership in the Public Employees Retirement System or for any assistance by the State Board of Higher Education under ORS 243.920 as long as those employees are employed in the Oregon University System and the plan is in effect.

(6)(a) An administrative or academic employee who elects to participate in the Optional Retirement Plan, **who has creditable service under ORS chapter 238 as defined by ORS 238.005** [*authorized by this section*] and who is not vested shall be considered by the Public Employees Retirement Board to be a terminated member under the provisions of ORS 238.095 [*and 238A.110 effective*] as of the effective date of the election, and the amount credited to the member account of the member shall be transferred directly to the Optional Retirement Plan by the Public Employees Retirement Board in the manner provided by subsection (7) of this section.

[*b An administrative or academic employee who elects to participate in the Optional Retirement Plan authorized by this section and who is vested shall be considered to be an inactive member by the Public Employees Retirement Board and shall retain all the rights, privileges and options under ORS chapter 238 or 238A unless the employee withdraws the amounts credited to the member account, if any, of the member pursuant to ORS 238.265.*]

(b) **An administrative or academic employee who elects to participate in the Optional Retirement Plan, who has creditable service under ORS chapter 238 as defined by ORS 238.005 and who is vested shall be considered to be an inactive member by the Public Employees Retirement Board and shall retain all the rights, privileges and options under ORS chapter 238 unless the employee makes a written request to the Public Employees Retirement Board for a transfer of the amounts credited to the member account of the member to the Optional Retirement Plan. A request for a transfer must be made at the time the member elects to participate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer all amounts credited to the member account of the member directly to the Optional Retirement Plan, and shall terminate all rights, privileges and options of the employee under ORS chapter 238.**

(c) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is not a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be considered to be a terminated member of the pension program by the Public Employees Retirement Board as of the effective date of the election.

(d) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a vested member of the pension program of the Oregon Public Service Retirement Plan as described in ORS 238A.115 on the date that the election becomes effective, shall be considered an inactive member of the pension program by the Public Employees Retirement Board as of the effective date of the election. An employee who is subject to the provisions of this paragraph retains all the rights, privileges and options of an inactive member of the pension program. If the actuarial equivalent of the employee's benefit under the pension program at the time that the election becomes effective is \$5,000 or less, the employee may make a written request to the Public Employees Retirement Board for a transfer of the employee's interest under the pension program to the Optional Retirement Plan. The request must be made at the time the member elects to participate in the Optional

Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer the amount determined to be the actuarial equivalent of the employee's benefit under the pension program directly to the Optional Retirement Plan, and shall terminate the membership of the employee in the pension program.

(e) An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a vested member of the individual account program of the Oregon Public Service Retirement Plan as described in ORS 238A.320 on the date that the election becomes effective, shall be considered an inactive member of the individual account program by the Public Employees Retirement Board as of the effective date of the election. An employee who is subject to the provisions of this paragraph retains all the rights, privileges and options of an inactive member of the individual account program. An administrative or academic employee who elects to participate in the Optional Retirement Plan, and who is a member of the individual account program of the Oregon Public Service Retirement Plan, may make a written request to the Public Employees Retirement Board that all amounts in the member's employee account, rollover account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, be transferred to the Optional Retirement Plan. The request must be made at the time the member elects to participate in the Optional Retirement Plan. Upon receiving the request, the Public Employees Retirement Board shall transfer the amounts directly to the Optional Retirement Plan, and shall terminate the membership of the employee in the individual account program upon making the transfer.

(f) Notwithstanding paragraphs (b), (d) and (e) of this subsection, the Public Employees Retirement Board shall not treat any employee as an inactive member under the provisions of this subsection for the purpose of receiving any benefit under ORS chapter 238 or 238A that requires that the employee be separated from all service with participating public employers and with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust.

(7) Any *[withdrawals]* amounts transferred from the Public Employees Retirement Fund under subsection (6) of this section, *[whether by termination under subsection (6)(a) of this section or by elective withdrawal under subsection (6)(b) of this section,]* shall be transferred directly to the Optional Retirement Plan by the Public Employees Retirement Board and shall not be made available to the employee.

(8) An employee participating in the Optional Retirement Plan *[authorized by this section]* shall contribute monthly an amount equal to the percentage of the employee's salary that the employee would otherwise have contributed as an employee contribution to the Public Employees Retirement System if the employee had not elected to participate in the Optional Retirement Plan.

(9) The State Board of Higher Education shall contribute monthly to the Optional Retirement Plan *[authorized under this section]* the percentage of salary of each employee participating in the plan equal to the percentage of salary that would otherwise have been contributed as an employer contribution on behalf of the employee to the Public Employees Retirement System, **before any offset under ORS 238.225 (9)**, if the employee had not elected to participate in the Optional Retirement Plan.

(10) Both employee and employer contributions to an Optional Retirement Plan *[authorized under this section]* shall be remitted directly to the companies that have issued annuity contracts to the participating employees or directly to the mutual funds.

(11) Benefits under the Optional Retirement Plan *[authorized under this section]* are payable to employees who elect to participate in the plan and their beneficiaries by the selected annuity provider or mutual fund in accordance with the terms of the annuity contracts or the terms of the contract with the mutual fund. Employees electing to participate in the plan agree that benefits payable under the plan are not obligations of the State of Oregon or of the Public Employees Retirement System.

(12) The percentage of salary contributed by the State Board of Higher Education under subsection (9) of this section on behalf of an employee is not affected by reason of the employee having a break in service, as described by ORS 238A.025.

SECTION 2. ORS 243.800 (12) applies to all breaks in service that occur before, on or after August 29, 2003.

SECTION 3. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by House February 22, 2005

Received by Governor:

Repassed by House July 5, 2005

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Approved:

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Chief Clerk of House

.....M.,....., 2005

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Speaker of House

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Governor

Passed by Senate July 1, 2005

Filed in Office of Secretary of State:

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President of Senate

.....M.,....., 2005

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Secretary of State