

## **Employee Choice and Shared Responsibility Public Retirement Program**

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

**SECTION 1. Findings of Facts Necessitating a Rebalancing of the Public Employees Retirement System.** The people of Oregon find that:

**(1) Oregon's Public Employees Retirement System (PERS) has accumulated unfunded liabilities in excess of \$20 billion;**

**(2) These liabilities resulted from pension payouts that have exceeded the system's target for retirement benefits, lower-than-projected earnings on the system's investments and failures to recognize and account for the true costs of the system's pension plan;**

**(3) Further, the costs of the PERS pension plan were shifted in full to public employers in 2004, after the enactment of legislation that ended the requirement for public employees to contribute six percent of their pay to support their pension benefits;**

**(4) Also, in 2004, PERS created a separate 401(k)-style retirement plan for all covered employees, to which public employees or their employers now contribute six percent of pay, and this plan now funds supplemental retirement benefits in addition to the benefits of the pension plan;**

**(5) As a result of these changes, the cost borne by public employers for sustaining PERS pension benefits has more than doubled from an historic average of 12 percent of payroll to more than 25 percent of payroll and will exceed 30 percent of payroll over the next three years;**

**(6) For the average Oregon household, the share of the annual taxes and fees paid to support PERS climbed from \$620 in 2010 to \$1,560 today and will exceed \$2,200 annually by 2025;**

**(7) These cost increases are billed to K-12 school districts, community colleges, public universities, police and fire departments, public health clinics, libraries and senior service agencies, thereby forcing reductions in services or increases in taxes and fees at all levels of government in Oregon;**

**(8) These costs will continue to burden public employers and taxpayers unless changes are made to the structure of the system, which currently provides both a pension plan and a separate 401(k)-style retirement savings plan to all covered employees;**

**(9) Recent court decisions have clarified that all PERS benefits earned to date must**

be honored, but that changes to the system can be legally enacted on a going forward basis for current as well as future employees;

(10) Defined contribution plans, such as 401(k) plans commonly offered by private employers, can provide more flexible and portable benefits for employees while stabilizing costs for employers and taxpayers; and

(11) Employee contributions are standard features of retirement plans in the private sector and in public pension systems in other states, where employee payments to support their pension benefits average six percent of salary, according to the National Association of State Retirement Administrators.

**SECTION 2. Establishing a Public Employee Retirement System Based on Employee Choices and Shared Contributions to Sustain Retirement Benefits.** We, the citizens of Oregon, affirm the obligation to protect the retirement benefits earned to date by public employees and retirees and recognize the need to stabilize the costs of PERS for public employers and taxpayers while maintaining adequate and competitive retirement benefits for public employees in the future. For these purposes, we enact the following changes to PERS on a going forward basis to:

(1) Create an optional 401(k)-style retirement plan for new employees funded equally by employer and employee contributions of six percent of pay;

(2) Reinstate the requirement that employees participating in the pension plan contribute six percent of their pay to share in the cost of sustaining the plan;

(3) End the practice of requiring employees to participate in both the pension plan and a 401(k)-style plan;

(4) Allow new public employees to choose between the pension plan or the 401(k)-style plan, in order to align with their career plans and meet their retirement goals;

(5) Recognize that arrangements by which employers agree to pay an employee's six percent retirement contribution may be established or continue in effect when the employer payment is made in lieu of paying six percent of an employee's salary; and

(6) Establish safeguards to limit the growth of unfunded liabilities in the pension plan and protect taxpayers from bearing the full cost of any increased liabilities in the future.

**SECTION 3. Establishment of an Optional 401(k)-Style Individual Retirement Savings Plan for Newly-Hired Employees.** (1) The Individual Retirement Savings Plan is created within the Public Employees Retirement System for the purpose of providing employees the option of receiving a 401(k)-style retirement plan supported by the employer's contribution of six percent of the employee's pay and the employee's contribution of six percent of the employee's pay.

(2)(a) A member who elects to participate in the individual retirement savings plan must make employee contributions to the individual retirement savings plan of six percent of the member's salary.

(b) A participating public employer that employs a member who elects to participate in the individual retirement savings plan must make employer contributions to the individual retirement savings plan for the member of six percent of the member's salary.

(c) Contributions to the individual retirement savings plan under this subsection shall be credited by the Public Employees Retirement Board to the individual retirement savings plan account established for the member under section 8 (1) of this 2020 Act.

**SECTION 4. Procedures for New Employees to Choose Either the Individual Retirement Savings Plan or the Pension Plan.** (1) Before the first day of the month after an eligible employee who is employed in a qualifying position completes six full calendar months of employment, the eligible employee shall elect:

(a) To become a member of the pension program under ORS 238A.100 and to participate in the individual account program on the first day of the month after the employee completes six full calendar months of employment; or

(b) To participate in the individual retirement savings plan on the first day of the month after the employee completes six full calendar months of employment and to decline to become a member of the pension program under ORS 238A.100.

(2) If an employee fails to make the election required by subsection (1) of this section, the employee will be considered to have elected to participate in the individual retirement savings plan under subsection (1)(b) of this section.

(3) An election under section of this 2020 Act is irrevocable.

**SECTION 5. Continuation of the PERS Pension Plans With Employee Contributions.** (1) Sums contributed by an employee on or after July 1, 2021, to the individual account program account under ORS 238A.350, whether contributed by the employee directly or by an employer's picking up, assuming or paying the contribution on behalf of the employee, shall be used to pay for the benefits to be provided under ORS chapter 238 and the pension program established by ORS 238A.100 to 238A.250.

(2) Notwithstanding subsection (1) of this section, interest earned on an individual retirement account or the individual retirement savings plan account shall be credited to the employee.

(3) The Money Match method of determining a service retirement allowance in ORS 238.300(2)(b)(A) does not apply for work performed on or after July 1, 2021.

(4) For the purposes of this section:

(a) Employee contributions are picked up if an employee's compensation will be reduced to generate the funds needed to make the employee contributions; and

(b) Employee contributions are assumed or paid if an employee's compensation will not be reduced for the purpose of generating the funds needed to make the employee contributions.

**SECTION 6. Employer Payment of Employee Contributions.** (1) On or after July 1, 2021, a participating public employer may agree, by a written employment policy or agreement to pick up the full amount of employee contributions required or permitted by section 3 of this 2020 Act for all or less than all active members of the individual retirement savings plan employed by the employer.

(2) If a participating public employer agrees to pick up employee contributions under subsection (1) of this section:

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

(b) The full amount of required employee contributions picked up by the employer on behalf of its employees shall be considered "salary," as defined in ORS 238A.005, for the purpose of calculating the amount of the contribution, for the purpose of computing a

member's "final average salary," as defined in ORS 238A.130, and for all other purposes.

(3) A participating public employer must give written notice to the Public Employees Retirement Board at the time that a written employment policy or agreement described in subsection (1) of this section is adopted or changed. Any change in the manner in which employee contributions are to be paid applies only to employee contributions made on and after the date the notice is received by the board.

(4) For the purposes of this section, employee contributions are picked up if the written employment policy or agreement described in subsection (1) of this section provides that employee compensation has been or will be reduced to generate the funds needed to make the employee contributions.

**SECTION 7. Procedures upon Retirement under the Individual Retirement Savings Plan.** (1) Upon retirement on or after the earliest retirement date, as described in ORS 238A.165, a member of the individual retirement savings plan shall receive in a lump sum the amounts in the member's employee account, individual retirement savings plan account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320.

(2)(a)(A) In lieu of a lump sum payment under subsection (1) of this section, a member of the individual retirement savings plan may elect to receive the amounts in the member's employee account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, in substantially equal installments paid over a period of 5, 10, 15 or 20 years, or over a period that is equal to the anticipated life span of the member as actuarially determined by the Public Employees Retirement Board.

(B) Installments may be made on a monthly, quarterly or annual basis. In no event may the period selected by the member exceed the time allowed by the minimum distribution requirements described in subsection (4) of this section.

(C) The board shall by rule establish the manner in which installments will be adjusted to reflect investment gains and losses on the unpaid balance during the payout period elected by the member under this paragraph. The board by rule may establish minimum monthly amounts payable under this paragraph.

**(D) The board may require that a lump sum payment, or an installment schedule different from the schedules provided for in this subsection, be used to pay the vested amounts in the member's accounts if those amounts are not adequate to generate the minimum monthly amounts specified by the rule.**

**(3) A member of the individual retirement savings plan electing to receive installments under subsection (2) of this section must designate a beneficiary or beneficiaries. In the event the member dies before all amounts in the employee and vested employer accounts are paid, all remaining installment payments shall be made to the beneficiary or beneficiaries designated by the member. A beneficiary may elect to receive a lump sum distribution of the remaining amounts.**

**(4) Notwithstanding any other provision of ORS 238A.300 to 238A.415, the entire interest of a member of the individual retirement savings plan must be distributed over a time period commencing no later than the latest retirement date set forth in ORS 238A.170, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on December 31, 2017. The board shall adopt rules implementing those minimum distribution requirements.**

**SECTION 8. Treatment of Accounts. (1) The Public Employees Retirement Board shall create an individual retirement savings plan account for each member who elects to participate in the individual retirement savings plan under section 3 of this 2020 Act, which shall consist of the contributions made by or on behalf of the member under ORS 238A.330 (2), as adjusted under ORS 238A.350 (1).**

**(2) A member who elects to participate in the individual retirement savings plan under section 6 or 7 of this 2020 Act becomes vested in the individual retirement savings plan account established for the member under subsection (1) of this section on the date the individual retirement savings plan account is established.**

**(3) Except as provided in subsection (4) of this section, if an employer makes employer contributions for a member under ORS 238A.340, the member becomes vested in the employer account established under ORS 238A.350 (4) on the earliest of the following dates:**

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(a) The date on which the member completes at least 600 hours of service in each of five calendar years. The five calendar years need not be consecutive, but are subject to the provisions of subsection (5) of this section.

(b) The date on which an active member reaches the normal retirement age for the member under ORS 238A.160.

(c) If the individual account program is terminated, the date on which termination becomes effective, but only to the extent the account is then funded.

(d) The date on which an active member becomes disabled, as described in ORS 238A.155 (5).

(e) The date on which an active member dies.

(4) Notwithstanding any other provision of ORS 238A.300 to 238A.415, the annual addition to the individual retirement savings plan account of a member of the individual account program for a calendar year, together with the annual additions to the accounts of the member under any other defined contribution plan maintained by the participating public employer for a calendar year, may not exceed the lesser of \$40,000, or 100 percent of the member's compensation for that calendar year. For purposes of this section, "annual addition" has the meaning given that term in 26 U.S.C. 415(c)(2), as in effect on December 31, 2017, and "compensation" has the meaning given the term "participant's compensation" in 26 U.S.C. 415(c)(3), as in effect on December 31, 2017. The board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect cost-of-living adjustments authorized by the Internal Revenue Service.

(5) An inactive member of the individual account program may elect to receive a distribution of the amounts in the member's individual retirement savings plan account to the extent the member is vested in those account if the inactive member has 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 fund as a qualified governmental retirement plan and trust.

(6) If a member of the individual account program dies before retirement, the amounts in the member's individual retirement savings plan account, to the extent the

member is vested in the account, shall be paid in a lump sum to the beneficiary or beneficiaries designated by the member for the purposes of this section.

**SECTION 9. Continuation of Alternative Plans.** (1) Sections 3 and 4 of this 2020 Act do not apply to:

(a) Employees offered alternative retirement programs under ORS 353.250.

(b) An administrative or academic employee who is eligible to become a member of the Optional Retirement Plan authorized by ORS 243.800.

(c) Police officers and firefighters.

(2) Sections 3, 4 and 5 of this 2020 Act do not apply to:

(a) A judge member as defined in ORS 238.500 who participates in and contributes to the pension plan under ORS 238.515.

(b) A member of the Legislative Assembly who is not eligible to participate in the pension plan.

**SECTION 10. Employer Contribution Rates to be Offset by Employee Contributions for the Pension Plan/Recalculation of Employer Contribution Rates to Account for Savings.**

(1) When the Public Employees Retirement Board determines the amounts actuarially necessary to adequately fund benefits under ORS 238.225 and this 2020 Act, the board shall offset the contributions made by or for employees under sections 3, 4 and 5 of this 2020 Act against the amount of contributions to be made by participating public employers and by other public employers who are required to make contributions on behalf of members.

(2) As soon as practicable after the effective date of this 2020 Act, the Public Employees Retirement Board shall:

(a) Determine the amount of savings in employer contributions that are attributable to the provisions of this 2020 Act; and

(b) Recalculate the contribution rates of all employers, pursuant to ORS 238.225, to reflect the provisions of this 2020 Act.

(3) The board shall issue corrected contribution rate orders to employers affected by rates recalculated under this section as soon as is practicable after the effective date of this 2020 Act. The corrected rates are effective July 1, 2021.

**Section 11. Study of Additional Provisions to Limit Exposure to Increased Pension Liabilities for Employers and Taxpayers and to Establish Greater Equity for Employees in the System's Pension Plans.** (1) In order to limit the exposure of employers and their taxpayers to the growth of liabilities in the system's existing pension plans, to promote greater equity in benefits between older and younger employees and to provide for an equitable sharing of costs for the system's existing pension plans between employers and employees in the future, the Public Employees Retirement Board shall conduct a study and develop recommendations regarding the costs and benefits for public employers and public employees and their effects on the interest and welfare of the public of the following changes:

(a) Apportioning increases in the normal cost of benefits in the pension plans on a 50-50 basis between employers and employees, to be separately calculated and applied by employer or employer group and by categories of membership and benefit level, when increases in the normal cost of benefits, above the normal cost established for the period beginning July 1, 2021, exceed one percent of payroll;

(b) Giving the board the authority to apportion any increase in payroll contribution rates for the normal cost of benefits based on employee salary levels, so that higher paid employees are required to pay a higher percentage of salary for their benefits;

(c) Modifying, on a going forward basis, features of the pension benefits of employees hired before August 29, 2003, such as the Money Match benefit feature and the use of unused sick leave and vacation, which would otherwise continue to provide pensions above the years-of-service pension formula for salaries earned by these employees;

(d) Establishing a maximum annual salary basis for pension benefits below the maximums now in effect; and,

(e) Requiring that retired employees, who are permitted by law to be re-employed by PERS-covered employers and continue to receive their retirement benefits while re-employed, contribute a portion of salary or otherwise accept a reduction in salary so that additional payments on their behalf can be made to reduce the system's unfunded pension liabilities.

(2) The board's study may include recommendations for additional legislation needed to accomplish its recommendations.

(3) No later than December 1, 2021, the board shall submit, in the manner provided in ORS 192.245, a report, including the recommendations made under subsections (1) and (2) of this section, to the interim legislative committees having jurisdiction over laws relating to the Public Employees Retirement System.

**SECTION 12.** Section 11 of this 2019 Act is repealed on January 2, 2023.

**SECTION 13. Plan Qualification.** The Public Employees Retirement Board shall adopt any rules and take any actions necessary to ensure that the Public Employees Retirement System, including the individual retirement savings plan, and the Public Employees Retirement Fund maintain qualification as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code.

**SECTION 14. Severability.** If any provision of this 2020 Act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this 2020 Act that can be given effect without the invalid provision or application, and to this end the provisions of this 2020 Act are severable.

**SECTION 15. No New Rights.** Nothing in this 2020 Act may be construed to prevent the Legislative Assembly or the people of this State from enacting changes to the Public Employees Retirement System, including the individual retirement savings plan, for current or future employees on a going forward basis.

**SECTION 16. Judicial Review.** (1) Jurisdiction is conferred upon the Supreme Court to determine in the manner provided by this section whether this 2020 Act breaches any contract between members of the Public Employees Retirement System and their employers or violates any provision of the Oregon Constitution or of the United States Constitution, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under Article I, section 21, of the Oregon Constitution, or

**Article I, section 10, clause 1, of the United States Constitution.**

**(2) A person who is adversely affected by this 2020 Act or who will be adversely affected by this 2020 Act may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:**

**(a) The petition must be filed within 60 days after the effective date of this 2020 Act.**

**(b) The petition must include the following:**

**(A) A statement of the basis of the challenge; and**

**(B) A statement and supporting affidavit showing how the petitioner is adversely affected.**

**(3) The petitioner shall serve a copy of the petition by registered or certified mail upon the Public Employees Retirement Board, the Attorney General and the Governor.**

**(4) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.**

**(5) The Supreme Court shall allow public employers participating in the Public Employees Retirement System to intervene in any proceeding under this section.**

**(6)(a) The Supreme Court shall allow members of the Legislative Assembly to intervene in any proceeding relating to this 2020 Act. After a member intervenes in a proceeding relating to this 2020 Act, the member has standing to participate in the proceeding even if the member ceases to be a member of the Legislative Assembly.**

**(b) A member of the Senate or the House of Representatives who intervenes in a proceeding under this subsection may not use public funds to pay legal expenses incurred in intervening in or participating in the proceeding.**

**(7) In the event the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.**

**(8) The Supreme Court may not award attorney fees to a petitioner in a proceeding under this section.**

**SECTION 17. ORS 238A.330 is amended to read:**

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238A.330. (1) A member of the individual account program must make employee contributions to the individual account program of six percent of the member's salary.

(2) Employee contributions made by a member of the individual account program under this section shall be credited by the board to the [*employee*] **contributions** account established for the member under ORS 238A.350 (2).

(3) A new member of the individual account program shall first make contributions under this section for those wages that are attributable to services performed by the employee during the first full pay period following the six-month probationary period required under ORS 238A.300, without regard to when those wages are considered earned for other purposes under this chapter.

### **SECTION 18.** ORS 238A.350 is amended to read:

238A.350. (1) Upon any contributions being made to the individual account program by or on behalf of a member of the program, the Public Employees Retirement Board shall create the account or accounts described in this section. Each account shall be adjusted at least annually in accordance with rules adopted by the board to reflect any net earnings or losses on those contributions and to pay the reasonable administrative costs of maintaining the program to the extent the earnings on the assets of the program are insufficient to pay those costs. The adjustments described in this subsection shall continue until the account is distributed to the member [*or*], **forfeited or applied to pay the costs of a pension or other retirement benefits under subsection (3) of this section.**

(2)(a) The board shall establish an employee account, which shall consist of the employee contributions made by or on behalf of the member **before July 1, 2021**, as adjusted under subsection (1) of this section.

(b) The board shall create a separate employee account for a member who becomes an active member for the purpose of service in the Legislative Assembly under ORS 237.650, which shall consist of the employee contributions made by or on behalf of the member that are attributable to the member's legislative service, as adjusted under subsection (1) of this section.

**(3)(a) The board shall establish a contributions account, which shall consist of the employee contributions made by or on behalf of the member under ORS 238A.330 on and after July 1, 2021, as adjusted under subsection (1) of this section.**

**(b) Unless the amounts in a contributions account established under this subsection are withdrawn under ORS 238A.375, the amounts in the account shall be applied by the**

**board to pay the costs of the pension or other retirement benefits payable to the member or the member's beneficiary under this chapter or ORS chapter 238 that are earned on or after July 1, 2021.**

**(c) If the amounts in the contributions account established under this subsection exceed the actuarially projected costs of the pension or other retirement benefits payable to the member or the member's beneficiary under this chapter or ORS chapter 238 that are earned on or after July 1, 2021, the board shall refund the excess amounts to the member upon retirement.**

~~[(3)]~~ (4) If the public employer agrees to make employer contributions under ORS 238A.340, the board shall establish an employer account, which shall consist of the employer contributions made on behalf of the member as adjusted under subsection (1) of this section.

~~[(4)]~~ (5) If the board accepts rollover contributions on behalf of the member, the board shall establish a rollover account, which shall consist of the rollover contributions made by the member as adjusted under subsection (1) of this section. Contributions and the earnings attributable to the contributions must be accounted for separately.

~~[(5)]~~ (6) The board shall provide an annual statement to each active and inactive member of the program that reflects the amount credited to the accounts established under this section. The statement shall reflect whether the member is vested in the employer account under the provisions of ORS 238A.320.

**SECTION 19.** ORS 238A.320 is amended to read:

238A.320. (1) A member of the individual account program becomes vested in the employee account established for the member under ORS 238A.350 (2) on the date the employee account is established.

(2) A member who makes rollover contributions becomes vested in the rollover account established for the member under ORS 238A.350 ~~[(4)]~~ (5) on the date the rollover account is established.

(3) Except as provided in subsection (4) of this section, if an employer makes employer contributions for a member under ORS 238A.340, the member becomes vested in the employer account established under ORS 238A.350 ~~[(3)]~~ (4) on the earliest of the following dates:

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(a) The date on which the member completes at least 600 hours of service in each of five calendar years. The five calendar years need not be consecutive, but are subject to the provisions of subsection (5) of this section.

(b) The date on which an active member reaches the normal retirement age for the member under ORS 238A.160.

(c) If the individual account program is terminated, the date on which termination becomes effective, but only to the extent the account is then funded.

(d) The date on which an active member becomes disabled, as described in ORS 238A.155 (5).

(e) The date on which an active member dies.

(4) If on the date that a person becomes an active member the person has already reached the normal retirement age for the person under ORS 238A.160, and the employer makes employer contributions for the member under ORS 238A.340, the person is vested in the employer account established under ORS 238A.350 [(3)] (4) on that date.

(5) If a member of the individual account program who is not vested in the employer account performs fewer than 600 hours of service in each of five consecutive calendar years, hours of service performed before the first calendar year of the period of five consecutive calendar years shall be disregarded for purposes of determining whether the member is vested under subsection (3)(a) of this section.

(6) Solely for purposes of determining whether a member is vested under subsection (3)(a) of this section, hours of service include creditable service, as defined in ORS 238.005, performed by the person before the person became an eligible employee, as long as the membership of the person under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes an eligible employee.

**(7) A member becomes vested in the contributions account established for the member under ORS 238A.350 (3) on the date the account is established.**

### **SECTION 20.** ORS 238A.375 is amended to read:

238A.375. (1)(a) An inactive member of the individual account program may elect to receive a distribution of the 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 if the inactive member has separated from all service with participating public employers and with

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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 fund as a qualified governmental retirement plan and trust.

**(b)(A) An inactive member of the individual account program may elect to receive a distribution of the amounts in the member's contributions account established for the member under ORS 238A.350 (3) if:**

**(i) The inactive member has 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 fund as a qualified governmental retirement plan and trust; and**

**(ii) The member is eligible to withdraw and withdraws from the pension program under ORS 238A.120.**

**(B) The withdrawal of the member's accounts under this paragraph cancels all membership rights in the Public Employees Retirement System.**

(2) If an inactive member of the individual account program who is not vested in the employer account receives a distribution under subsection (1) of this section, the employer account of the member is permanently forfeited as of the date of the distribution.

(3) A member may not make an election under this section for less than all of the member's individual accounts described in ORS 238A.350 in which the member is vested.

(4) A member who is vested in the pension program established under this chapter and who is eligible to withdraw from the pension program under ORS 238A.120 may make an election under this section only if the member also withdraws from the pension program.

**(5)** A member who has a member account established under ORS chapter 238 may make an election under this section only if the member also withdraws that member account in the manner provided by ORS 238.265. A member who has an account established under ORS 238.440 may make an election under this section only if the member also withdraws the account established under ORS 238.440.

[(5)] **(6)** If an inactive member receives a distribution under subsection (1) of this section and is subsequently reemployed by a participating public employer, any service performed before the date the member became an inactive member may not be used toward the period of service required for vesting in the employer account under ORS 238A.320.

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**SECTION 21.** ORS 238A.410, as amended by section 9, chapter 101, Oregon Laws 2018, is amended to read:

238A.410. (1)(a) If a member of the individual account program dies before retirement, the 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, shall be paid in a lump sum to the beneficiary or beneficiaries designated by the member for the purposes of this section.

**(b) If a member of the individual account program dies before retirement, the amounts in the contributions account established for the member under ORS 238A.350 (3) shall be applied by the Public Employees Retirement Board to pay the costs of any benefit payable under ORS 238A.230. If the amounts in the contributions account exceed the costs of the benefit payable under ORS 238A.230, the excess amounts shall be paid in a lump sum to the beneficiary or beneficiaries designated by the member for the purposes of this section.**

(2) If a member of the individual account program is married at the time of death, or there exists at the time of death any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits, the spouse or other person shall be the beneficiary for purposes of the death benefit payable under this section unless the spouse or other person consents to the designation of a different beneficiary or beneficiaries before the designation has been made and the consent has not been revoked by the spouse or other person as of the time of the member's death. Consent and revocation of consent must be in writing, acknowledged by a notary public, and submitted to the [*Public Employees Retirement*] board in accordance with rules adopted by the board. If the member's spouse is designated as the member's beneficiary and the marriage of the member and spouse is subsequently dissolved, the former spouse shall be treated as predeceasing the member for purposes of this section, unless the member expressly designates the former spouse as beneficiary after the effective date of the dissolution or the former spouse is required to be designated as a beneficiary under the provisions of ORS 238.465.

(3) For purposes of this section and ORS 238A.400 (3), if a member fails to designate a beneficiary, or if the person or persons designated do not survive the member, the death benefit provided for in this section shall be paid to the following person or persons, in the following order of priority:

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(a) The member's surviving spouse or other person who is constitutionally required to be treated in the same manner as a spouse;

(b) The member's surviving children, in equal shares; or

(c) The member's estate.

(4) The entire amount of a deceased member's vested accounts must be distributed by December 31 of the fifth calendar year after the year in which the member died. Notwithstanding any other provision of this chapter, distributions of death benefits under the individual account program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on December 31, 2017. The [*Public Employees Retirement*] board shall adopt rules implementing those minimum distribution requirements.

**SECTION 22. The leadlines used in this 2020 Act do not become part of the statutory law of this state, but are intended to express the legislative intent in the enactment of this 2020 Act**

**SECTION 23. Placement of New Laws within Existing PERS Laws. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 15 and 16 of this 2020 Act are added to and made a part of ORS chapter 238A.**