
HOUSE BILL 3257

State of Washington

60th Legislature

2008 Regular Session

By Representatives Chase and Hasegawa

1 AN ACT Relating to providing additional choice between plans 2 and
2 3 for members of the public employees' retirement system, the teachers'
3 retirement system, and the school employees' retirement system;
4 amending RCW 41.32.835, 41.35.610, and 41.40.785; and creating a new
5 section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 41.32.835 and 2007 c 491 s 3 are each amended to read
8 as follows:

9 (1) All teachers who first become employed by an employer in an
10 eligible position on or after July 1, 2007, shall have a period of
11 ninety days to make an irrevocable choice to become a member of plan 2
12 or plan 3 for the duration of the member's continuous employment
13 relationship with an employer. At the end of ninety days, if the
14 member has not made a choice to become a member of plan 2, he or she
15 becomes a member of plan 3.

16 (2) Within ninety days of the date that a member either changes
17 employers or resumes employment after a separation from service from an
18 employer of no fewer than one and one-half months, he or she has the
19 option to irrevocably choose membership in plan 2 or plan 3 for the

1 duration of the member's continuous employment with an employer. For
2 members of plan 3 this ninety-day period runs simultaneously with the
3 ninety-day period provided for choosing a contribution rate provided in
4 RCW 41.34.040(3)(d). At the end of ninety days, if the member has not
5 made a choice to change plans, the member remains a member of plan 2 or
6 plan 3, as established in his or her most recent period of employment
7 with an employer.

8 (3) For administrative efficiency, until a member elects to become
9 a member of plan 3, or becomes a member of plan 3 by default under
10 subsection (1) of this section, the member shall be reported to the
11 department in plan 2, with member and employer contributions. Upon
12 becoming a member of plan 3 by election or by default, all service
13 credit shall be transferred to the member's plan 3 defined benefit, and
14 all employee accumulated contributions shall be transferred to the
15 member's plan 3 defined contribution account.

16 ~~((3))~~ (4) The plan choice provision as set forth in section 3,
17 chapter 491, Laws of 2007 was intended by the legislature as a
18 replacement benefit for gain-sharing. Until there is legal certainty
19 with respect to the repeal of chapter 41.31A RCW, the right to plan
20 choice under this section is noncontractual, and the legislature
21 reserves the right to amend or repeal this section. Legal certainty
22 includes, but is not limited to, the expiration of any: Applicable
23 limitations on actions; and periods of time for seeking appellate
24 review, up to and including reconsideration by the Washington supreme
25 court and the supreme court of the United States. Until that time, all
26 teachers who first become employed by an employer in an eligible
27 position on or after July 1, 2007, may choose either plan 2 or plan 3
28 under this section. If the repeal of chapter 41.31A RCW is held to be
29 invalid in a final determination of a court of law, and the court
30 orders reinstatement of gain-sharing or other alternate benefits as a
31 remedy, then all teachers who first become employed by an employer in
32 an eligible position on or after the date of such reinstatement shall
33 be members of plan 3.

34 **Sec. 2.** RCW 41.35.610 and 2007 c 491 s 7 are each amended to read
35 as follows:

36 (1) All classified employees who first become employed by an
37 employer in an eligible position on or after July 1, 2007, shall have

1 a period of ninety days to make an irrevocable choice to become a
2 member of plan 2 or plan 3 for the duration of the member's continuous
3 employment relationship with an employer. At the end of ninety days,
4 if the member has not made a choice to become a member of plan 2, he or
5 she becomes a member of plan 3.

6 (2) Within ninety days of the date that a member either changes
7 employers or resumes employment after a separation from service from an
8 employer of no fewer than one and one-half months, he or she has the
9 option to irrevocably choose membership in plan 2 or plan 3 for the
10 duration of the member's continuous employment with an employer. For
11 members of plan 3, this ninety-day period runs simultaneously with the
12 ninety-day period provided for choosing a contribution rate provided in
13 RCW 41.34.040(3)(d). At the end of ninety days, if the member has not
14 made a choice to change plans, the member remains a member of plan 2 or
15 plan 3, as established in his or her most recent period of employment
16 with an employer.

17 (3) For administrative efficiency, until a member elects to become
18 a member of plan 3, or becomes a member of plan 3 by default under
19 subsection (1) of this section, the member shall be reported to the
20 department in plan 2, with member and employer contributions. Upon
21 becoming a member of plan 3 by election or by default, all service
22 credit shall be transferred to the member's plan 3 defined benefit, and
23 all employee accumulated contributions shall be transferred to the
24 member's plan 3 defined contribution account.

25 ((+3)) (4) The plan choice provision as set forth in section 7,
26 chapter 491, Laws of 2007 was intended by the legislature as a
27 replacement benefit for gain-sharing. Until there is legal certainty
28 with respect to the repeal of chapter 41.31A RCW, the right to plan
29 choice under this section is noncontractual, and the legislature
30 reserves the right to amend or repeal this section. Legal certainty
31 includes, but is not limited to, the expiration of any: Applicable
32 limitations on actions; and periods of time for seeking appellate
33 review, up to and including reconsideration by the Washington supreme
34 court and the supreme court of the United States. Until that time, all
35 classified employees who first become employed by an employer in an
36 eligible position on or after July 1, 2007, may choose either plan 2 or
37 plan 3 under this section. If the repeal of chapter 41.31A RCW is held
38 to be invalid in a final determination of a court of law, and the court

1 orders reinstatement of gain-sharing or other alternate benefits as a
2 remedy, then all classified employees who first become employed by an
3 employer in an eligible position on or after the date of such
4 reinstatement shall be members of plan 3.

5 **Sec. 3.** RCW 41.40.785 and 2000 c 247 s 302 are each amended to
6 read as follows:

7 (1) All employees who first become employed by an employer in an
8 eligible position on or after March 1, 2002, for state agencies or
9 institutes of higher education, or September 1, 2002, for other
10 employers, shall have a period of ninety days to make an irrevocable
11 choice to become a member of plan 2 or plan 3 for the duration of the
12 member's continuous employment relationship with an employer. At the
13 end of ninety days, if the member has not made a choice to become a
14 member of plan 2, he or she becomes a member of plan 3.

15 (2) Within ninety days of the date that a member either changes
16 employers or resumes employment after a separation from service from an
17 employer of no fewer than one and one-half months, he or she has the
18 option to irrevocably choose membership in plan 2 or plan 3 for the
19 duration of the member's continuous employment with an employer. For
20 members of plan 3, this ninety-day period runs simultaneously with the
21 ninety-day period provided for choosing a contribution rate provided in
22 RCW 41.34.040(3)(d). At the end of ninety days, if the member has not
23 made a choice to change plans, the member remains a member of plan 2 or
24 plan 3, as established in his or her most recent period of employment
25 with an employer.

26 (3) For administrative efficiency, until a member elects to become
27 a member of plan 3, or becomes a member of plan 3 by default pursuant
28 to subsection (1) of this section, the member shall be reported to the
29 department in plan 2, with member and employer contributions. Upon
30 becoming a member of plan 3 by election or by default, all service
31 credit shall be transferred to the member's plan 3 defined benefit, and
32 all employee accumulated contributions shall be transferred to the
33 member's plan 3 defined contribution account.

34 NEW SECTION. **Sec. 4.** If any part of this act is found to be in
35 conflict with a final determination by the federal internal revenue
36 service that is a prescribed condition to favorable tax treatment of

1 one or more of the retirement plans, the conflicting part of this act
2 is inoperative solely to the extent of the conflict and with respect to
3 the individual members directly affected. This finding does not affect
4 the operation of the remainder of this act in its application to the
5 members concerned. The legislature reserves the right to amend or
6 repeal this act in the future as may be required to comply with a final
7 federal determination that amendment or repeal is necessary to maintain
8 the favorable tax treatment of a plan.

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