
SUBSTITUTE HOUSE BILL 1082

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Cooke, Sommers, Carlson, Dellwo, Sehlin, Kessler, Valle, Romero, Cody and Basich)

Read first time 02/27/95.

1 AN ACT Relating to the calculation of excess compensation for
2 retirement purposes; amending RCW 41.50.150; reenacting and amending
3 RCW 41.40.010; and creating a new section.

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

5 **Sec. 1.** RCW 41.50.150 and 1984 c 184 s 1 are each amended to read
6 as follows:

7 (1) The employer of any employee whose retirement benefits are
8 based in part on excess compensation, as defined in this section,
9 shall, upon receipt of a billing from the department, pay into the
10 appropriate retirement system the present value at the time of the
11 employee's retirement of the total estimated cost of all present and
12 future benefits from the retirement system attributable to the excess
13 compensation. The state actuary shall determine the estimated cost
14 using the same method and procedure as is used in preparing fiscal note
15 costs for the legislature. However, the director may in the director's
16 discretion decline to bill the employer if the amount due is less than
17 fifty dollars. Accounts unsettled within thirty days of the receipt of
18 the billing shall be assessed an interest penalty of one percent of the

1 amount due for each month or fraction thereof beyond the original
2 thirty-day period.

3 (2) "Excess compensation," as used in this section, includes any
4 payment that was used in the calculation of the employee's retirement
5 allowance, except regular salary and overtime((~~τ~~)). Excess
6 compensation includes but is not limited to:

7 (a) A cash out of unused annual leave in excess of two hundred
8 forty hours of such leave((~~τ~~)). "Cash out" for purposes of this
9 subsection means any payment in lieu of an accrual of annual leave or
10 any payment added to salary or wages, concurrent with a reduction of
11 annual leave;

12 (b) A cash out of any other form of leave((~~τ~~));

13 (c) A payment for, or in lieu of, any personal expense((~~τ~~ and)) or
14 transportation allowance;

15 (d) The portion of any payment that exceeds twice the regular rate
16 of pay; and

17 (e) Any other termination or severance payment ((used in the
18 calculation of the employee's retirement allowance. Any payment which
19 is made pursuant to any labor agreement currently in force shall not be
20 deemed excess compensation. Any payments in excess of regular salary
21 and overtime, and two hundred forty hours of unused annual leave made
22 after the expiration of a current contract shall be excess
23 compensation)).

24 (3) This section applies to the retirement systems listed in RCW
25 41.50.030 and to retirements occurring on or after March 15, 1984.
26 Nothing in this section is intended to amend or determine the meaning
27 of any definition in chapter 2.10, 2.12, 41.26, 41.32, 41.40, or 43.43
28 RCW or to determine in any manner what payments are includable in the
29 calculation of a retirement allowance under such chapters.

30 (4) An employer is not relieved of liability under this section
31 because of the death of any person either before or after the billing
32 from the department.

33 NEW SECTION. Sec. 2. The following uncodified section is added to
34 chapter 41.50 RCW to read as follows:

35 The definition of "cashout" added to RCW 41.50.150(2)(a) by this
36 act is a clarification of the legislature's original intent regarding
37 the meaning of the term. The definition of "cashout" applies
38 retroactively to payments made before the effective date of this act.

1 **Sec. 3.** RCW 41.40.010 and 1994 c 298 s 2, 1994 c 247 s 5, 1994 c
2 197 s 23, and 1994 c 177 s 8 are each reenacted and amended to read as
3 follows:

4 As used in this chapter, unless a different meaning is plainly
5 required by the context:

6 (1) "Retirement system" means the public employees' retirement
7 system provided for in this chapter.

8 (2) "Department" means the department of retirement systems created
9 in chapter 41.50 RCW.

10 (3) "State treasurer" means the treasurer of the state of
11 Washington.

12 (4)(a) "Employer" for plan I members, means every branch,
13 department, agency, commission, board, and office of the state, any
14 political subdivision or association of political subdivisions of the
15 state admitted into the retirement system, and legal entities
16 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the
17 term shall also include any labor guild, association, or organization
18 the membership of a local lodge or division of which is comprised of at
19 least forty percent employees of an employer (other than such labor
20 guild, association, or organization) within this chapter. The term may
21 also include any city of the first class that has its own retirement
22 system.

23 (b) "Employer" for plan II members, means every branch, department,
24 agency, commission, board, and office of the state, and any political
25 subdivision and municipal corporation of the state admitted into the
26 retirement system, including public agencies created pursuant to RCW
27 35.63.070, 36.70.060, and 39.34.030.

28 (5) "Member" means any employee included in the membership of the
29 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045
30 does not prohibit a person otherwise eligible for membership in the
31 retirement system from establishing such membership effective when he
32 or she first entered an eligible position.

33 (6) "Original member" of this retirement system means:

34 (a) Any person who became a member of the system prior to April 1,
35 1949;

36 (b) Any person who becomes a member through the admission of an
37 employer into the retirement system on and after April 1, 1949, and
38 prior to April 1, 1951;

1 (c) Any person who first becomes a member by securing employment
2 with an employer prior to April 1, 1951, provided the member has
3 rendered at least one or more years of service to any employer prior to
4 October 1, 1947;

5 (d) Any person who first becomes a member through the admission of
6 an employer into the retirement system on or after April 1, 1951,
7 provided, such person has been in the regular employ of the employer
8 for at least six months of the twelve-month period preceding the said
9 admission date;

10 (e) Any member who has restored all contributions that may have
11 been withdrawn as provided by RCW 41.40.150 and who on the effective
12 date of the individual's retirement becomes entitled to be credited
13 with ten years or more of membership service except that the provisions
14 relating to the minimum amount of retirement allowance for the member
15 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
16 apply to the member;

17 (f) Any member who has been a contributor under the system for two
18 or more years and who has restored all contributions that may have been
19 withdrawn as provided by RCW 41.40.150 and who on the effective date of
20 the individual's retirement has rendered five or more years of service
21 for the state or any political subdivision prior to the time of the
22 admission of the employer into the system; except that the provisions
23 relating to the minimum amount of retirement allowance for the member
24 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
25 apply to the member.

26 (7) "New member" means a person who becomes a member on or after
27 April 1, 1949, except as otherwise provided in this section.

28 (8)(a) "Compensation earnable" for plan I members, means salaries
29 or wages earned during a payroll period for personal services and where
30 the compensation is not all paid in money, maintenance compensation
31 shall be included upon the basis of the schedules established by the
32 member's employer. ~~((Compensation that a member receives for being in
33 standby status is also compensation earnable, subject to the conditions
34 of this subsection. A member is in standby status when not being paid
35 for time actually worked and only when both of the following conditions
36 exist:—(i) The member is required to be present at, or in the
37 immediate vicinity of, a specified location; and (ii) the employer
38 requires the member to be prepared to report immediately for work, if~~

1 ~~the need arises, although the need may not arise. Standby compensation~~
2 ~~is regular salary for the purposes of RCW 41.50.150(2).)~~

3 (A) "Compensation earnable" for plan I members also includes the
4 following actual or imputed payments, which are not paid for personal
5 services:

6 (I) Retroactive payments to an individual by an employer on
7 reinstatement of the employee in a position, or payments by an employer
8 to an individual in lieu of reinstatement in a position which are
9 awarded or granted as the equivalent of the salary or wage which the
10 individual would have earned during a payroll period shall be
11 considered compensation earnable and the individual shall receive the
12 equivalent service credit;

13 (II) If a leave of absence is taken by an individual for the
14 purpose of serving in the state legislature, the salary which would
15 have been received for the position from which the leave of absence was
16 taken, shall be considered as compensation earnable if the employee's
17 contribution is paid by the employee and the employer's contribution is
18 paid by the employer or employee.

19 (III) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
20 and 72.09.240;

21 (IV) Compensation that a member would have received but for a
22 disability occurring in the line of duty only as authorized by RCW
23 41.40.038; ((and))

24 (V) Compensation that a member receives due to participation in the
25 leave sharing program only as authorized by RCW 41.04.650 through
26 41.04.670; and

27 (VI) Compensation that a member receives for being in standby
28 status. For the purposes of this section, a member is in standby
29 status when not being paid for time actually worked and the employer
30 requires the member to be prepared to report immediately for work, if
31 the need arises, although the need may not arise. Standby compensation
32 is regular salary for the purposes of RCW 41.50.150(2).

33 (B) "Compensation earnable" does not include:

34 (I) Remuneration for unused sick leave authorized under RCW
35 41.04.340, 28A.400.210, or 28A.310.490;

36 (II) Remuneration for unused annual leave in excess of thirty days
37 as authorized by RCW 43.01.044 and 43.01.041.

38 (b) "Compensation earnable" for plan II members, means salaries or
39 wages earned by a member during a payroll period for personal services,

1 including overtime payments, and shall include wages and salaries
2 deferred under provisions established pursuant to sections 403(b),
3 414(h), and 457 of the United States Internal Revenue Code, but shall
4 exclude nonmoney maintenance compensation and lump sum or other
5 payments for deferred annual sick leave, unused accumulated vacation,
6 unused accumulated annual leave, or any form of severance pay.
7 (~~Compensation that a member receives for being in standby status is~~
8 ~~also compensation earnable, subject to the conditions of this~~
9 ~~subsection. A member is in standby status when not being paid for time~~
10 ~~actually worked and only when both of the following conditions exist:~~
11 ~~(i) The member is required to be present at, or in the immediate~~
12 ~~vicinity of, a specified location; and (ii) the employer requires the~~
13 ~~member to be prepared to report immediately for work, if the need~~
14 ~~arises, although the need may not arise. Standby compensation is~~
15 ~~regular salary for the purposes of RCW 41.50.150(2).)~~)

16 "Compensation earnable" for plan II members also includes the
17 following actual or imputed payments, which are not paid for personal
18 services:

19 (A) Retroactive payments to an individual by an employer on
20 reinstatement of the employee in a position, or payments by an employer
21 to an individual in lieu of reinstatement in a position which are
22 awarded or granted as the equivalent of the salary or wage which the
23 individual would have earned during a payroll period shall be
24 considered compensation earnable to the extent provided above, and the
25 individual shall receive the equivalent service credit;

26 (B) In any year in which a member serves in the legislature, the
27 member shall have the option of having such member's compensation
28 earnable be the greater of:

29 (I) The compensation earnable the member would have received had
30 such member not served in the legislature; or

31 (II) Such member's actual compensation earnable received for
32 nonlegislative public employment and legislative service combined. Any
33 additional contributions to the retirement system required because
34 compensation earnable under (b)(ii)(B)(II) of this subsection is
35 greater than compensation earnable under (b)(ii)(B)(I) of this
36 subsection shall be paid by the member for both member and employer
37 contributions;

38 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
39 72.09.240;

1 (D) Compensation that a member would have received but for a
2 disability occurring in the line of duty only as authorized by RCW
3 41.40.038; ((and))

4 (E) Compensation that a member receives due to participation in the
5 leave sharing program only as authorized by RCW 41.04.650 through
6 41.04.670; and

7 (F) Compensation that a member receives for being in standby
8 status. For the purposes of this section, a member is in standby
9 status when not being paid for time actually worked and the employer
10 requires the member to be prepared to report immediately for work, if
11 the need arises, although the need may not arise. Standby compensation
12 is regular salary for the purposes of RCW 41.50.150(2).

13 (9)(a) "Service" for plan I members, except as provided in RCW
14 41.40.088, means periods of employment in an eligible position or
15 positions for one or more employers rendered to any employer for which
16 compensation is paid, and includes time spent in office as an elected
17 or appointed official of an employer. Compensation earnable earned in
18 full time work for seventy hours or more in any given calendar month
19 shall constitute one service credit month except as provided in RCW
20 41.40.088. Compensation earnable earned for less than seventy hours in
21 any calendar month shall constitute one-quarter service credit month of
22 service except as provided in RCW 41.40.088. Only service credit
23 months and one-quarter service credit months shall be counted in the
24 computation of any retirement allowance or other benefit provided for
25 in this chapter. Any fraction of a year of service shall be taken into
26 account in the computation of such retirement allowance or benefits.
27 Time spent in standby status, whether compensated or not, is not
28 service.

29 (i) Service by a state employee officially assigned by the state on
30 a temporary basis to assist another public agency, shall be considered
31 as service as a state employee: PROVIDED, That service to any other
32 public agency shall not be considered service as a state employee if
33 such service has been used to establish benefits in any other public
34 retirement system.

35 (ii) An individual shall receive no more than a total of twelve
36 service credit months of service during any calendar year. If an
37 individual is employed in an eligible position by one or more employers
38 the individual shall receive no more than one service credit month

1 during any calendar month in which multiple service for seventy or more
2 hours is rendered.

3 (iii) A school district employee may count up to forty-five days of
4 sick leave as creditable service solely for the purpose of determining
5 eligibility to retire under RCW 41.40.180 as authorized by RCW
6 28A.400.300. For purposes of plan I "forty-five days" as used in RCW
7 28A.400.300 is equal to two service credit months. Use of less than
8 forty-five days of sick leave is creditable as allowed under this
9 subsection as follows:

10 (A) Less than twenty-two days equals one-quarter service credit
11 month;

12 (B) Twenty-two days equals one service credit month;

13 (C) More than twenty-two days but less than forty-five days equals
14 one and one-quarter service credit month.

15 (b) "Service" for plan II members, means periods of employment by
16 a member in an eligible position or positions for one or more employers
17 for which compensation earnable is paid. Compensation earnable earned
18 for ninety or more hours in any calendar month shall constitute one
19 service credit month except as provided in RCW 41.40.088. Compensation
20 earnable earned for at least seventy hours but less than ninety hours
21 in any calendar month shall constitute one-half service credit month of
22 service. Compensation earnable earned for less than seventy hours in
23 any calendar month shall constitute one-quarter service credit month of
24 service. Time spent in standby status, whether compensated or not, is
25 not service.

26 Any fraction of a year of service shall be taken into account in
27 the computation of such retirement allowance or benefits.

28 (i) Service in any state elective position shall be deemed to be
29 full time service, except that persons serving in state elective
30 positions who are members of the teachers' retirement system or law
31 enforcement officers' and fire fighters' retirement system at the time
32 of election or appointment to such position may elect to continue
33 membership in the teachers' retirement system or law enforcement
34 officers' and fire fighters' retirement system.

35 (ii) A member shall receive a total of not more than twelve service
36 credit months of service for such calendar year. If an individual is
37 employed in an eligible position by one or more employers the
38 individual shall receive no more than one service credit month during

1 any calendar month in which multiple service for ninety or more hours
2 is rendered.

3 (iii) Up to forty-five days of sick leave may be creditable as
4 service solely for the purpose of determining eligibility to retire
5 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of
6 plan II "forty-five days" as used in RCW 28A.400.300 is equal to two
7 service credit months. Use of less than forty-five days of sick leave
8 is creditable as allowed under this subsection as follows:

9 (A) Less than eleven days equals one-quarter service credit month;

10 (B) Eleven or more days but less than twenty-two days equals one-
11 half service credit month;

12 (C) Twenty-two days equals one service credit month;

13 (D) More than twenty-two days but less than thirty-three days
14 equals one and one-quarter service credit month;

15 (E) Thirty-three or more days but less than forty-five days equals
16 one and one-half service credit month.

17 (10) "Service credit year" means an accumulation of months of
18 service credit which is equal to one when divided by twelve.

19 (11) "Service credit month" means a month or an accumulation of
20 months of service credit which is equal to one.

21 (12) "Prior service" means all service of an original member
22 rendered to any employer prior to October 1, 1947.

23 (13) "Membership service" means:

24 (a) All service rendered, as a member, after October 1, 1947;

25 (b) All service after October 1, 1947, to any employer prior to the
26 time of its admission into the retirement system: PROVIDED, That an
27 amount equal to the employer and employee contributions which would
28 have been paid to the retirement system on account of such service
29 shall have been paid to the retirement system with interest (as
30 computed by the department) on the employee's portion prior to
31 retirement of such person, by the employee or his or her employer,
32 except as qualified by RCW 41.40.023: PROVIDED FURTHER, That employer
33 contributions plus employee contributions with interest submitted by
34 the employee under this subsection shall be placed in the employee's
35 individual account in the employees' savings fund and be treated as any
36 other contribution made by the employee, with the exception that the
37 contributions submitted by the employee in payment of the employer's
38 obligation, together with the interest the director may apply to the
39 employer's contribution, shall be excluded from the calculation of the

1 member's annuity in the event the member selects a benefit with an
2 annuity option;

3 (c) Service not to exceed six consecutive months of probationary
4 service rendered after April 1, 1949, and prior to becoming a member,
5 in the case of any member, upon payment in full by such member of the
6 total amount of the employer's contribution to the retirement fund
7 which would have been required under the law in effect when such
8 probationary service was rendered if the member had been a member
9 during such period, except that the amount of the employer's
10 contribution shall be calculated by the director based on the first
11 month's compensation earnable as a member;

12 (d) Service not to exceed six consecutive months of probationary
13 service, rendered after October 1, 1947, and before April 1, 1949, and
14 prior to becoming a member, in the case of any member, upon payment in
15 full by such member of five percent of such member's salary during said
16 period of probationary service, except that the amount of the
17 employer's contribution shall be calculated by the director based on
18 the first month's compensation earnable as a member.

19 (14)(a) "Beneficiary" for plan I members, means any person in
20 receipt of a retirement allowance, pension or other benefit provided by
21 this chapter.

22 (b) "Beneficiary" for plan II members, means any person in receipt
23 of a retirement allowance or other benefit provided by this chapter
24 resulting from service rendered to an employer by another person.

25 (15) "Regular interest" means such rate as the director may
26 determine.

27 (16) "Accumulated contributions" means the sum of all contributions
28 standing to the credit of a member in the member's individual account,
29 including any amount paid under RCW 41.50.165(2), together with the
30 regular interest thereon.

31 (17)(a) "Average final compensation" for plan I members, means the
32 annual average of the greatest compensation earnable by a member during
33 any consecutive two year period of service credit months for which
34 service credit is allowed; or if the member has less than two years of
35 service credit months then the annual average compensation earnable
36 during the total years of service for which service credit is allowed.

37 (b) "Average final compensation" for plan II members, means the
38 member's average compensation earnable of the highest consecutive sixty
39 months of service credit months prior to such member's retirement,

1 termination, or death. Periods constituting authorized leaves of
2 absence may not be used in the calculation of average final
3 compensation except under RCW 41.40.710(2).

4 (18) "Final compensation" means the annual rate of compensation
5 earnable by a member at the time of termination of employment.

6 (19) "Annuity" means payments for life derived from accumulated
7 contributions of a member. All annuities shall be paid in monthly
8 installments.

9 (20) "Pension" means payments for life derived from contributions
10 made by the employer. All pensions shall be paid in monthly
11 installments.

12 (21) "Retirement allowance" means the sum of the annuity and the
13 pension.

14 (22) "Employee" means any person who may become eligible for
15 membership under this chapter, as set forth in RCW 41.40.023.

16 (23) "Actuarial equivalent" means a benefit of equal value when
17 computed upon the basis of such mortality and other tables as may be
18 adopted by the director.

19 (24) "Retirement" means withdrawal from active service with a
20 retirement allowance as provided by this chapter.

21 (25) "Eligible position" means:

22 (a) Any position that, as defined by the employer, normally
23 requires five or more months of service a year for which regular
24 compensation for at least seventy hours is earned by the occupant
25 thereof. For purposes of this chapter an employer shall not define
26 "position" in such a manner that an employee's monthly work for that
27 employer is divided into more than one position;

28 (b) Any position occupied by an elected official or person
29 appointed directly by the governor for which compensation is paid.

30 (26) "Ineligible position" means any position which does not
31 conform with the requirements set forth in subsection (25) of this
32 section.

33 (27) "Leave of absence" means the period of time a member is
34 authorized by the employer to be absent from service without being
35 separated from membership.

36 (28) "Totally incapacitated for duty" means total inability to
37 perform the duties of a member's employment or office or any other work
38 for which the member is qualified by training or experience.

1 (29) "Retiree" means any person in receipt of a retirement
2 allowance or other benefit provided by this chapter resulting from
3 service rendered to an employer while a member. A person is in receipt
4 of a retirement allowance as defined in subsection (21) of this section
5 or other benefit as provided by this chapter when the department mails,
6 causes to be mailed, or otherwise transmits the retirement allowance
7 warrant.

8 (30) "Director" means the director of the department.

9 (31) "State elective position" means any position held by any
10 person elected or appointed to state-wide office or elected or
11 appointed as a member of the legislature.

12 (32) "State actuary" or "actuary" means the person appointed
13 pursuant to RCW 44.44.010(2).

14 (33) "Plan I" means the public employees' retirement system, plan
15 I providing the benefits and funding provisions covering persons who
16 first became members of the system prior to October 1, 1977.

17 (34) "Plan II" means the public employees' retirement system, plan
18 II providing the benefits and funding provisions covering persons who
19 first became members of the system on and after October 1, 1977.

20 (35) "Index" means, for any calendar year, that year's annual
21 average consumer price index, Seattle, Washington area, for urban wage
22 earners and clerical workers, all items, compiled by the bureau of
23 labor statistics, United States department of labor.

24 (36) "Index A" means the index for the year prior to the
25 determination of a postretirement adjustment.

26 (37) "Index B" means the index for the year prior to index A.

27 (38) "Index year" means the earliest calendar year in which the
28 index is more than sixty percent of index A.

29 (39) "Adjustment ratio" means the value of index A divided by index
30 B.

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