
SUBSTITUTE SENATE BILL 5118

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Winsley, Long, Bauer, Loveland and Fraser)

Read first time 02/16/95.

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

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 **Sec. 2.** RCW 41.40.010 and 1994 c 298 s 2, 1994 c 247 s 5, 1994 c
34 197 s 23, and 1994 c 177 s 8 are each reenacted and amended to read as
35 follows:

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

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

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

5 (3) "State treasurer" means the treasurer of the state of
6 Washington.

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

18 (b) "Employer" for plan II members, means every branch, department,
19 agency, commission, board, and office of the state, and any political
20 subdivision and municipal corporation of the state admitted into the
21 retirement system, including public agencies created pursuant to RCW
22 35.63.070, 36.70.060, and 39.34.030.

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

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

29 (a) Any person who became a member of the system prior to April 1,
30 1949;

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

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

38 (d) Any person who first becomes a member through the admission of
39 an employer into the retirement system on or after April 1, 1951,

1 provided, such person has been in the regular employ of the employer
2 for at least six months of the twelve-month period preceding the said
3 admission date;

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

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

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

22 (8)(a) "Compensation earnable" for plan I members, means salaries
23 or wages earned during a payroll period for personal services and where
24 the compensation is not all paid in money, maintenance compensation
25 shall be included upon the basis of the schedules established by the
26 member's employer. (~~Compensation that a member receives for being in
27 standby status is also compensation earnable, subject to the conditions
28 of this subsection. A member is in standby status when not being paid
29 for time actually worked and only when both of the following conditions
30 exist:—(i) The member is required to be present at, or in the
31 immediate vicinity of, a specified location; and (ii) the employer
32 requires the member to be prepared to report immediately for work, if
33 the need arises, although the need may not arise. Standby compensation
34 is regular salary for the purposes of RCW 41.50.150(2).~~)

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

38 (I) Retroactive payments to an individual by an employer on
39 reinstatement of the employee in a position, or payments by an employer

1 to an individual in lieu of reinstatement in a position which are
2 awarded or granted as the equivalent of the salary or wage which the
3 individual would have earned during a payroll period shall be
4 considered compensation earnable and the individual shall receive the
5 equivalent service credit;

6 (II) If a leave of absence is taken by an individual for the
7 purpose of serving in the state legislature, the salary which would
8 have been received for the position from which the leave of absence was
9 taken, shall be considered as compensation earnable if the employee's
10 contribution is paid by the employee and the employer's contribution is
11 paid by the employer or employee.

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

14 (IV) Compensation that a member would have received but for a
15 disability occurring in the line of duty only as authorized by RCW
16 41.40.038; ((and))

17 (V) Compensation that a member receives due to participation in the
18 leave sharing program only as authorized by RCW 41.04.650 through
19 41.04.670; and

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

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

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

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

31 (b) "Compensation earnable" for plan II members, means salaries or
32 wages earned by a member during a payroll period for personal services,
33 including overtime payments, and shall include wages and salaries
34 deferred under provisions established pursuant to sections 403(b),
35 414(h), and 457 of the United States Internal Revenue Code, but shall
36 exclude nonmoney maintenance compensation and lump sum or other
37 payments for deferred annual sick leave, unused accumulated vacation,
38 unused accumulated annual leave, or any form of severance pay.
39 ~~((Compensation that a member receives for being in standby status is~~

1 also compensation earnable, subject to the conditions of this
2 subsection. A member is in standby status when not being paid for time
3 actually worked and only when both of the following conditions exist:
4 (i) The member is required to be present at, or in the immediate
5 vicinity of, a specified location; and (ii) the employer requires the
6 member to be prepared to report immediately for work, if the need
7 arises, although the need may not arise. Standby compensation is
8 regular salary for the purposes of RCW 41.50.150(2).))

9 "Compensation earnable" for plan II members also includes the
10 following actual or imputed payments, which are not paid for personal
11 services:

12 (A) Retroactive payments to an individual by an employer on
13 reinstatement of the employee in a position, or payments by an employer
14 to an individual in lieu of reinstatement in a position which are
15 awarded or granted as the equivalent of the salary or wage which the
16 individual would have earned during a payroll period shall be
17 considered compensation earnable to the extent provided above, and the
18 individual shall receive the equivalent service credit;

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

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

24 (II) Such member's actual compensation earnable received for
25 nonlegislative public employment and legislative service combined. Any
26 additional contributions to the retirement system required because
27 compensation earnable under (b)(ii)(B)(II) of this subsection is
28 greater than compensation earnable under (b)(ii)(B)(I) of this
29 subsection shall be paid by the member for both member and employer
30 contributions;

31 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
32 72.09.240;

33 (D) Compensation that a member would have received but for a
34 disability occurring in the line of duty only as authorized by RCW
35 41.40.038; ((and))

36 (E) Compensation that a member receives due to participation in the
37 leave sharing program only as authorized by RCW 41.04.650 through
38 41.04.670; and

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

7 (9)(a) "Service" for plan I members, except as provided in RCW
8 41.40.088, means periods of employment in an eligible position or
9 positions for one or more employers rendered to any employer for which
10 compensation is paid, and includes time spent in office as an elected
11 or appointed official of an employer. Compensation earnable earned in
12 full time work for seventy hours or more in any given calendar month
13 shall constitute one service credit month except as provided in RCW
14 41.40.088. Compensation earnable earned for less than seventy hours in
15 any calendar month shall constitute one-quarter service credit month of
16 service except as provided in RCW 41.40.088. Only service credit
17 months and one-quarter service credit months shall be counted in the
18 computation of any retirement allowance or other benefit provided for
19 in this chapter. Any fraction of a year of service shall be taken into
20 account in the computation of such retirement allowance or benefits.
21 Time spent in standby status, whether compensated or not, is not
22 service.

23 (i) Service by a state employee officially assigned by the state on
24 a temporary basis to assist another public agency, shall be considered
25 as service as a state employee: PROVIDED, That service to any other
26 public agency shall not be considered service as a state employee if
27 such service has been used to establish benefits in any other public
28 retirement system.

29 (ii) An individual shall receive no more than a total of twelve
30 service credit months of service during any calendar year. If an
31 individual is employed in an eligible position by one or more employers
32 the individual shall receive no more than one service credit month
33 during any calendar month in which multiple service for seventy or more
34 hours is rendered.

35 (iii) A school district employee may count up to forty-five days of
36 sick leave as creditable service solely for the purpose of determining
37 eligibility to retire under RCW 41.40.180 as authorized by RCW
38 28A.400.300. For purposes of plan I "forty-five days" as used in RCW
39 28A.400.300 is equal to two service credit months. Use of less than

1 forty-five days of sick leave is creditable as allowed under this
2 subsection as follows:

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

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

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

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

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

21 (i) Service in any state elective position shall be deemed to be
22 full time service, except that persons serving in state elective
23 positions who are members of the teachers' retirement system or law
24 enforcement officers' and fire fighters' retirement system at the time
25 of election or appointment to such position may elect to continue
26 membership in the teachers' retirement system or law enforcement
27 officers' and fire fighters' retirement system.

28 (ii) A member shall receive a total of not more than twelve service
29 credit months of service for such calendar year. If an individual is
30 employed in an eligible position by one or more employers the
31 individual shall receive no more than one service credit month during
32 any calendar month in which multiple service for ninety or more hours
33 is rendered.

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

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

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

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

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

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

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

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

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

15 (13) "Membership service" means:

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

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

34 (c) Service not to exceed six consecutive months of probationary
35 service rendered after April 1, 1949, and prior to becoming a member,
36 in the case of any member, upon payment in full by such member of the
37 total amount of the employer's contribution to the retirement fund
38 which would have been required under the law in effect when such
39 probationary service was rendered if the member had been a member

1 during such period, except that the amount of the employer's
2 contribution shall be calculated by the director based on the first
3 month's compensation earnable as a member;

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

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

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

17 (15) "Regular interest" means such rate as the director may
18 determine.

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

23 (17)(a) "Average final compensation" for plan I members, means the
24 annual average of the greatest compensation earnable by a member during
25 any consecutive two year period of service credit months for which
26 service credit is allowed; or if the member has less than two years of
27 service credit months then the annual average compensation earnable
28 during the total years of service for which service credit is allowed.

29 (b) "Average final compensation" for plan II members, means the
30 member's average compensation earnable of the highest consecutive sixty
31 months of service credit months prior to such member's retirement,
32 termination, or death. Periods constituting authorized leaves of
33 absence may not be used in the calculation of average final
34 compensation except under RCW 41.40.710(2).

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

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

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

4 (21) "Retirement allowance" means the sum of the annuity and the
5 pension.

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

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

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

13 (25) "Eligible position" means:

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

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

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

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

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

31 (29) "Retiree" means any person in receipt of a retirement
32 allowance or other benefit provided by this chapter resulting from
33 service rendered to an employer while a member. A person is in receipt
34 of a retirement allowance as defined in subsection (21) of this section
35 or other benefit as provided by this chapter when the department mails,
36 causes to be mailed, or otherwise transmits the retirement allowance
37 warrant.

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

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

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

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

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

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

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

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

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

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

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