

# HOUSE BILL REPORT

## HB 1104

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### As Reported By House Committee On:

Appropriations

**Title:** An act relating to restrictions on postretirement employment.

**Brief Description:** Placing restrictions on postretirement employment.

**Sponsors:** Representatives H. Sommers, Cooke, Carlson, Ogden, Sehlin and Mason; by request of Joint Committee on Pension Policy.

#### **Brief History:**

##### **Committee Activity:**

Appropriations: 2/4/97, 2/19/97 [DPS].

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Benson; Carlson; Chopp; Cody; Cooke; Crouse; Dyer; Grant; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; Poulsen; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

**Staff:** Elissa Benson (786-7191).

**Background:** Limitations on Post-Retirement Employment. Retirement benefits in the Public Employees' Retirement System (PERS), the Teachers' Retirement System (TRS), and the Law Enforcement Officers' and Fire Fighters' (LEOFF) Retirement System begin accruing on the first day of the month following job termination. However, for PERS and TRS, a person does not become a retiree— until receipt of his or her first benefit check at the end of the month. Public retirees are entitled to return to work on a limited basis. However, they may not be employed by a retirement system employer before they receive their first retirement benefit in order to meet the statutory requirement that they separate from service— and be considered retired. The federal Internal Revenue Code also restricts tax-qualified plans, such as PERS and TRS, from paying pension benefits unless a separation from service has taken place.

Returning to employment before meeting the definition of retiree and separating from service invalidates the retirement. If an individual returns to state employment even for a limited time prior to fully separating from service, he or she is required to rejoin the retirement system, repay all retirement benefits received, and make retirement contributions for the period in question.

Determination of Employee Status. To be a member of a Washington State retirement system, a worker must be an *employee* of a retirement system employer. The prohibitions against receiving retirement benefits while providing services to an employer apply only to retirees who are employees of an employer. Some retirees have had to repay retirement benefits received in error due to the employer's misclassification of them as independent contractors rather than employees.

The Department of Retirement Systems (DRS) uses the common law right of control test adopted by the courts of Washington to determine if a worker is an employee. This test examines whether the employer retained the right to control and direct the worker. If the employer retains that control, the worker is an employee, not an independent contractor. This is the DRS practice, but it is not reflected in statute.

If a retiree or beneficiary does receive an overpayment of benefits, the retiree can repay the overpayment as a lump sum or as an actuarial reduction to the continuing benefit. If the overpayment was due to the failure of the employer to properly report the employment status of the employee, the employer must pay the amount of the overpayment plus interest to the appropriate retirement system. The overpayment charged to the employer is limited to \$5,000 for each year of overpayments; this limit does not apply in cases of employer fraud.

**Summary of Substitute Bill:** Limitations on Post-Retirement Employment. For PERS and TRS, a person is considered to be a retiree when his or her benefit begins to accrue. The benefit begins to accrue the first day of the calendar month following the member's separation from service.

Separation from service is defined consistently across the TRS, PERS, and LEOFF statutes as the date a person has terminated all employment with an employer.

The retiree's benefit will be reduced if the retiree returns to work sooner than a full month after the retiree's benefit accrual date. The benefit is reduced 5.5 percent for every seven hours worked in the month for a maximum of 140 hours per month for TRS and a maximum of 160 hours per month for PERS. The reduction will continue until the retiree has remained absent from employment for a full calendar month.

Determination of Employee Status. For TRS and PERS, the definitions of "being employed" and "employee" are clarified with specific reference to the common law right of control test. The DRS is directed to adopt rules consistent with common law.

Employers must report to the DRS any retirees in their employ. If the employer fails to report that the retiree has worked more than the time permitted within applicable post retirement employment restrictions, the employer is liable for the loss to the retirement trust fund.

For the PERS system, the new definitions apply retroactively to any person who retired under the early retirement window enacted in 1992, and to all cases of overpayment identified by the DRS.

**Substitute Bill Compared to Original Bill:** Numerous technical and clarifying changes are made. The emergency clause is deleted.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** None.

**Testimony Against:** None.

**Testified:** None.