

FINAL BILL REPORT

EHB 2771

C 236 L 12
Synopsis as Enacted

Brief Description: Addressing employer and employee relationships under the state retirement systems.

Sponsors: Representatives Pettigrew, Cody and Springer.

House Committee on Ways & Means
Senate Committee on Ways & Means

Background:

The Department of Retirement Systems (DRS) was created in 1976 to administer the various retirement systems that provide benefits for state and local government employees in Washington, collectively referred to as the Washington State Retirement Systems. The retirement systems include: the Public Employees' Retirement System (PERS); the Teachers' Retirement System (TRS); the School Employees' Retirement System (SERS); the Law Enforcement Officers' and Fire Fighters' System (LEOFF); the Washington State Patrol Retirement System; and the Public Safety Employees' Retirement System (PSERS).

The retirement systems administered by the DRS are limited to government employees under the federal Internal Revenue Code. By operating the retirement systems in conformance with these federal laws, certain employer and employee contributions, as well as investment earnings upon those contributions, receive preferential individual federal income tax treatment for their employees. A retirement system or retirement plan operated in conformance with federal rules is commonly referred to as a "qualified plan."

A private employer entity acting as a governmental contractor may be found under federal tax law to be an instrumentality of a public agency if specified criteria are met. The employees of a private nonprofit or for-profit entity that does not meet the federal law definition of an instrumentality of a public agency may not participate in a federal tax law-qualified governmental retirement plan such as the PERS.

If employees of a private nonprofit entity that the Internal Revenue Service does not regard as an agency or instrumentality of a public agency are included in the PERS plan, it may adversely affect the qualified status of the plan and potentially all of the participants in the plan.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under federal and state law whether an individual may be considered an employee, rather than an independent contractor, depends on a set of behavioral, financial, and business relationship factors. The tests for an employment relationship with a worker are similar under each of state and federal law. Among the ways these factors are considered include: whether the entity has a right to control what the worker does, and how the worker does it; whether there are written contracts between the entity and the worker; and whether employee-type benefits like pensions and health benefits are exchanged between them. For purposes of the state retirement systems, the factors considered in evaluating an employer-employee relationship are detailed in administrative rules.

In January 2012, the Washington Supreme Court (Court) ruled upon reconsideration in *Dolan v. King County*, Case No. 82842-3. The Court ruled that employees of several private non-profit public defender agencies that provide services to King County by contract are also employees of King County for purposes of the PERS, and that King County has such a right of control over the defender organizations that they are arms and agencies of the county.

Summary:

The stated intent of the Legislature in providing the Washington State Retirement Systems is not to provide eligibility to the employees of government contractors. The Legislature intends to more clearly state that employees of for-profit and not-for-profit corporations providing services under government contracts are not eligible for membership in the Washington State Retirement Systems. The act is curative and remedial, but has no application to the Court's decision in *Dolan v. King County*, nor application to subjects other than eligibility for state-sponsored pension benefits.

For PERS, TRS, SERS, PSERS, and LEOFF, "employer" for the retirement system does not include a government contractor. Government contractors are defined to include partnerships, limited liability companies, for-profit and nonprofit corporations, or persons, that provide services pursuant to a contract with a retirement system employer.

The determination of whether an employer-employee relationship exists is not based on the relationship between a government contractor and a retirement system employer, but solely on the relationship between a government contractor's employee and a retirement system employer.

Votes on Final Passage:

House	83	14	
Senate	38	10	(Senate amended)
House	91	5	(House concurred)

Effective: June 7, 2012