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HOUSE BILL 1291

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State of Washington

53rd Legislature

1993 Regular Session

By Representatives Heavey, G. Cole, King, Veloria, Franklin, Jones, J. Kohl, Orr, Jacobsen, Valle, Vance, Anderson, Springer, Basich and Karahalios

Read first time 01/22/93. Referred to Committee on Appropriations.

1 AN ACT Relating to leaves of absence by members of the Washington  
2 public employees' retirement system; reenacting and amending RCW  
3 41.40.010; adding new sections to chapter 41.40 RCW; and creating a new  
4 section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the ability of  
7 rank and file public employees to engage in collective bargaining and  
8 other labor relations activities affecting their work for their direct  
9 employer without sacrificing the continuity of their pension should be  
10 preserved.

11 **Sec. 2.** RCW 41.40.010 and 1991 c 343 s 6 and 1991 c 35 s 70 are  
12 each reenacted and amended to read as follows:

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

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

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

1 (3) "State treasurer" means the treasurer of the state of  
2 Washington.

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

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

19 (5) "Member" means any employee included in the membership of the  
20 retirement system, as provided for in RCW 41.40.023.

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

22 (a) Any person who became a member of the system prior to April 1,  
23 1949;

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

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

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

36 (e) Any member who has restored all contributions that may have  
37 been withdrawn as provided by RCW 41.40.150 and who on the effective  
38 date of the individual's retirement becomes entitled to be credited  
39 with ten years or more of membership service except that the provisions

1 relating to the minimum amount of retirement allowance for the member  
2 upon retirement at age seventy as found in RCW 41.40.190(4) shall not  
3 apply to the member;

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

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

15 (8)(a) "Compensation earnable" for plan I members, means salaries  
16 or wages earned during a payroll period for personal services and where  
17 the compensation is not all paid in money, maintenance compensation  
18 shall be included upon the basis of the schedules established by the  
19 member's employer: PROVIDED, That retroactive payments to an  
20 individual by an employer on reinstatement of the employee in a  
21 position, or payments by an employer to an individual in lieu of  
22 reinstatement in a position which are awarded or granted as the  
23 equivalent of the salary or wage which the individual would have earned  
24 during a payroll period shall be considered compensation earnable and  
25 the individual shall receive the equivalent service credit: PROVIDED  
26 FURTHER, That if a leave of absence is taken by an individual for the  
27 purpose of serving in the state legislature, the salary which would  
28 have been received for the position from which the leave of absence was  
29 taken, shall be considered as compensation earnable if the employee's  
30 contribution is paid by the employee and the employer's contribution is  
31 paid by the employer or employee.

32 For members who receive service credit under section 3 of this act  
33 for a period of authorized leave for collective bargaining activities  
34 or labor relations purposes, the earnable compensation allowable for  
35 calculation of the member's average final compensation shall be the  
36 salary established in the collective bargaining agreement. The  
37 member's salary may be paid by the employer on a reimbursable basis.

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 payments for  
5 deferred annual sick leave, unused accumulated vacation, unused  
6 accumulated annual leave, or any form of severance pay: PROVIDED, That  
7 retroactive payments to an individual by an employer on reinstatement  
8 of the employee in a position, or payments by an employer to an  
9 individual in lieu of reinstatement in a position which are awarded or  
10 granted as the equivalent of the salary or wage which the individual  
11 would have earned during a payroll period shall be considered  
12 compensation earnable to the extent provided above, and the individual  
13 shall receive the equivalent service credit: PROVIDED FURTHER, That in  
14 any year in which a member serves in the legislature, the member shall  
15 have the option of having such member's compensation earnable be the  
16 greater of:

17 (i) The compensation earnable the member would have received had  
18 such member not served in the legislature; or

19 (ii) Such member's actual compensation earnable received for  
20 nonlegislative public employment and legislative service combined. Any  
21 additional contributions to the retirement system required because  
22 compensation earnable under subparagraph (i) of this subsection is  
23 greater than compensation earnable under subparagraph (ii) of this  
24 subsection shall be paid by the member for both member and employer  
25 contributions.

26 For members who receive service credit under section 3 of this act  
27 for a period of authorized leave for collective bargaining activities  
28 or labor relations purposes, the earnable compensation allowable for  
29 calculation of the member's average final compensation shall be the  
30 salary established in the collective bargaining agreement. The  
31 member's salary may be paid by the employer on a reimbursable basis.

32 (9)(a) "Service" for plan I members, except as provided in RCW  
33 41.40.088, means periods of employment in an eligible position or  
34 positions for one or more employers rendered to any employer for which  
35 compensation is paid, and includes time spent in office as an elected  
36 or appointed official of an employer. Compensation earnable earned in  
37 full time work for seventy hours or more in any given calendar month  
38 shall constitute one service credit month except as provided in RCW  
39 41.40.088. Compensation earnable earned for less than seventy hours in

1 any calendar month shall constitute one-quarter service credit month of  
2 service except as provided in RCW 41.40.088. Only service credit  
3 months and one-quarter service credit months shall be counted in the  
4 computation of any retirement allowance or other benefit provided for  
5 in this chapter. Any fraction of a year of service shall be taken into  
6 account in the computation of such retirement allowance or benefits.

7 Service by a state employee officially assigned by the state on a  
8 temporary basis to assist another public agency, shall be considered as  
9 service as a state employee: PROVIDED, That service to any other  
10 public agency shall not be considered service as a state employee if  
11 such service has been used to establish benefits in any other public  
12 retirement system: PROVIDED FURTHER, That an individual shall receive  
13 no more than a total of twelve service credit months of service during  
14 any calendar year: PROVIDED FURTHER, That where an individual is  
15 employed in an eligible position by one or more employers the  
16 individual shall receive no more than one service credit month during  
17 any calendar month in which multiple service for seventy or more hours  
18 is rendered.

19 (b) "Service" for plan II members, means periods of employment by  
20 a member in an eligible position or positions for one or more employers  
21 for which compensation earnable is paid. Compensation earnable earned  
22 for ninety or more hours in any calendar month shall constitute one  
23 service credit month except as provided in RCW 41.40.088. Compensation  
24 earnable earned for at least seventy hours but less than ninety hours  
25 in any calendar month shall constitute one-half service credit month of  
26 service. Compensation earnable earned for less than seventy hours in  
27 any calendar month shall constitute one-quarter service credit month of  
28 service.

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

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

38 A member shall receive a total of not more than twelve service  
39 credit months of service for such calendar year: PROVIDED, That when

1 an individual is employed in an eligible position by one or more  
2 employers the individual shall receive no more than one service credit  
3 month during any calendar month in which multiple service for ninety or  
4 more hours is rendered.

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

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

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

11 (13) "Membership service" means:

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

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

30 (c) Service not to exceed six consecutive months of probationary  
31 service rendered after April 1, 1949, and prior to becoming a member,  
32 in the case of any member, upon payment in full by such member of the  
33 total amount of the employer's contribution to the retirement fund  
34 which would have been required under the law in effect when such  
35 probationary service was rendered if the member had been a member  
36 during such period, except that the amount of the employer's  
37 contribution shall be calculated by the director based on the first  
38 month's compensation earnable as a member;

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

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

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

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

16 (16) "Accumulated contributions" means the sum of all contributions  
17 standing to the credit of a member in the member's individual account  
18 together with the regular interest thereon.

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

25 (b) "Average final compensation" for plan II members, means the  
26 member's average compensation earnable of the highest consecutive sixty  
27 months of service credit months prior to such member's retirement,  
28 termination, or death. Periods constituting authorized leaves of  
29 absence may not be used in the calculation of average final  
30 compensation.

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

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

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

1 (21) "Retirement allowance" means the sum of the annuity and the  
2 pension.

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

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

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

10 (25) "Eligible position" means:

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

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

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

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

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

28 (29) "Retiree" means any member in receipt of a retirement  
29 allowance or other benefit provided by this chapter resulting from  
30 service rendered to an employer by such member.

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

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

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

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

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

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.40 RCW  
5 to read as follows:

6 (1) A member shall be eligible to receive service credit for all  
7 periods the member is on an approved leave of absence to engage in  
8 collective bargaining or labor relations activities subject to the  
9 conditions and procedures specified in subsection (2) of this section.

10 (2) In order to receive credit under subsection (1) of this  
11 section, the member must be on leave authorized by a collective  
12 bargaining agreement which provides that the member retain seniority  
13 with that employer. The member must make both the employee and  
14 employer contributions, on the compensation paid by or through the  
15 employer during such periods of leave. The monthly earnable  
16 compensation used for calculating contributions must be not less than  
17 the average monthly compensation the member received from the employer  
18 in the twelve months prior to taking leave, and must not be greater  
19 than the highest monthly salary paid to persons in the collective  
20 bargaining unit.

21 (3) The compensation paid by or through the employer may be  
22 considered "compensation earnable" under RCW 41.40.010(8) regardless of  
23 whether the employer is reimbursed for payments made through it to the  
24 member.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.40 RCW  
26 to read as follows:

27 Any member of the retirement system who prior to the effective date  
28 of this act was on a leave of absence for collective bargaining  
29 activity or labor relations purposes under circumstances listed in  
30 section 3 of this act shall be granted service credit for such leave,  
31 if the service and employee and employer contributions were reported to  
32 the department by the employer consistent with section 3 of this act.

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