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**SENATE BILL 5496**

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**State of Washington**                      **54th Legislature**                      **1995 Regular Session**

**By** Senators Bauer, Newhouse, Loveland, Cantu, Fraser, Winsley and Long

Read first time 01/25/95. Referred to Committee on Ways & Means.

1            AN ACT Relating to exempting employers with qualified retirement  
2 plans from additional contributions; reenacting and amending RCW  
3 41.40.010; adding a new section to chapter 41.40 RCW; decodifying RCW  
4 41.40.045; and declaring an emergency.

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

6            **Sec. 1.** RCW 41.40.010 and 1994 c 298 s 2, 1994 c 247 s 5, 1994 c  
7 197 s 23, and 1994 c 177 s 8 are each reenacted and amended to read as  
8 follows:

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

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

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

15            (3) "State treasurer" means the treasurer of the state of  
16 Washington.

17            (4)(a) "Employer" for plan I members, means every branch,  
18 department, agency, commission, board, and office of the state, any  
19 political subdivision or association of political subdivisions of the

1 state admitted into the retirement system, and legal entities  
2 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the  
3 term shall also include any labor guild, association, or organization  
4 the membership of a local lodge or division of which is comprised of at  
5 least forty percent employees of an employer (other than such labor  
6 guild, association, or organization) within this chapter. The term may  
7 also include any city of the first class that has its own retirement  
8 system.

9 (b) "Employer" for plan II members, means every branch, department,  
10 agency, commission, board, and office of the state, and any political  
11 subdivision and municipal corporation of the state admitted into the  
12 retirement system, including public agencies created pursuant to RCW  
13 35.63.070, 36.70.060, and 39.34.030.

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

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

20 (a) Any person who became a member of the system prior to April 1,  
21 1949;

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

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

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

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

1 upon retirement at age seventy as found in RCW 41.40.190(4) shall not  
2 apply to the member;

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

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

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

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

30 (I) Retroactive payments to an individual by an employer on  
31 reinstatement of the employee in a position, or payments by an employer  
32 to an individual in lieu of reinstatement in a position which are  
33 awarded or granted as the equivalent of the salary or wage which the  
34 individual would have earned during a payroll period shall be  
35 considered compensation earnable and the individual shall receive the  
36 equivalent service credit;

37 (II) If a leave of absence is taken by an individual for the  
38 purpose of serving in the state legislature, the salary which would  
39 have been received for the position from which the leave of absence was

1 taken, shall be considered as compensation earnable if the employee's  
2 contribution is paid by the employee and the employer's contribution is  
3 paid by the employer or employee.

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

6 (IV) Compensation that a member would have received but for a  
7 disability occurring in the line of duty only as authorized by RCW  
8 41.40.038; and

9 (V) Compensation that a member receives due to participation in the  
10 leave sharing program only as authorized by RCW 41.04.650 through  
11 41.04.670.

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

13 (I) Remuneration for unused sick leave authorized under RCW  
14 41.04.340, 28A.400.210, or 28A.310.490;

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

17 (b) "Compensation earnable" for plan II members, means salaries or  
18 wages earned by a member during a payroll period for personal services,  
19 including overtime payments, and shall include wages and salaries  
20 deferred under provisions established pursuant to sections 403(b),  
21 414(h), and 457 of the United States Internal Revenue Code, but shall  
22 exclude nonmoney maintenance compensation and lump sum or other  
23 payments for deferred annual sick leave, unused accumulated vacation,  
24 unused accumulated annual leave, or any form of severance pay.  
25 Compensation that a member receives for being in standby status is also  
26 compensation earnable, subject to the conditions of this subsection.  
27 A member is in standby status when not being paid for time actually  
28 worked and only when both of the following conditions exist: (i) The  
29 member is required to be present at, or in the immediate vicinity of,  
30 a specified location; and (ii) the employer requires the member to be  
31 prepared to report immediately for work, if the need arises, although  
32 the need may not arise. Standby compensation is regular salary for the  
33 purposes of RCW 41.50.150(2).

34 "Compensation earnable" for plan II members also includes the  
35 following actual or imputed payments, which are not paid for personal  
36 services:

37 (A) Retroactive payments to an individual by an employer on  
38 reinstatement of the employee in a position, or payments by an employer  
39 to an individual in lieu of reinstatement in a position which are

1 awarded or granted as the equivalent of the salary or wage which the  
2 individual would have earned during a payroll period shall be  
3 considered compensation earnable to the extent provided above, and the  
4 individual shall receive the equivalent service credit;

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

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

10 (II) Such member's actual compensation earnable received for  
11 nonlegislative public employment and legislative service combined. Any  
12 additional contributions to the retirement system required because  
13 compensation earnable under (b)(ii)(B)(II) of this subsection is  
14 greater than compensation earnable under (b)(ii)(B)(I) of this  
15 subsection shall be paid by the member for both member and employer  
16 contributions;

17 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and  
18 72.09.240;

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

22 (E) Compensation that a member receives due to participation in the  
23 leave sharing program only as authorized by RCW 41.04.650 through  
24 41.04.670.

25 (9)(a) "Service" for plan I members, except as provided in RCW  
26 41.40.088, means periods of employment in an eligible position or  
27 positions for one or more employers rendered to any employer for which  
28 compensation is paid, and includes time spent in office as an elected  
29 or appointed official of an employer. Compensation earnable earned in  
30 full time work for seventy hours or more in any given calendar month  
31 shall constitute one service credit month except as provided in RCW  
32 41.40.088. Compensation earnable earned for less than seventy hours in  
33 any calendar month shall constitute one-quarter service credit month of  
34 service except as provided in RCW 41.40.088. Only service credit  
35 months and one-quarter service credit months shall be counted in the  
36 computation of any retirement allowance or other benefit provided for  
37 in this chapter. Any fraction of a year of service shall be taken into  
38 account in the computation of such retirement allowance or benefits.

1 Time spent in standby status, whether compensated or not, is not  
2 service.

3 (i) Service by a state employee officially assigned by the state on  
4 a temporary basis to assist another public agency, shall be considered  
5 as service as a state employee: PROVIDED, That service to any other  
6 public agency shall not be considered service as a state employee if  
7 such service has been used to establish benefits in any other public  
8 retirement system.

9 (ii) An individual shall receive no more than a total of twelve  
10 service credit months of service during any calendar year. If an  
11 individual is employed in an eligible position by one or more employers  
12 the individual shall receive no more than one service credit month  
13 during any calendar month in which multiple service for seventy or more  
14 hours is rendered.

15 (iii) A school district employee may count up to forty-five days of  
16 sick leave as creditable service solely for the purpose of determining  
17 eligibility to retire under RCW 41.40.180 as authorized by RCW  
18 28A.400.300. For purposes of plan I "forty-five days" as used in RCW  
19 28A.400.300 is equal to two service credit months. Use of less than  
20 forty-five days of sick leave is creditable as allowed under this  
21 subsection as follows:

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

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

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

27 (b) "Service" for plan II members, means periods of employment by  
28 a member in an eligible position or positions for one or more employers  
29 for which compensation earnable is paid. Compensation earnable earned  
30 for ninety or more hours in any calendar month shall constitute one  
31 service credit month except as provided in RCW 41.40.088. Compensation  
32 earnable earned for at least seventy hours but less than ninety hours  
33 in any calendar month shall constitute one-half service credit month of  
34 service. Compensation earnable earned for less than seventy hours in  
35 any calendar month shall constitute one-quarter service credit month of  
36 service. Time spent in standby status, whether compensated or not, is  
37 not service.

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

1 (i) Service in any state elective position shall be deemed to be  
2 full time service, except that persons serving in state elective  
3 positions who are members of the teachers' retirement system or law  
4 enforcement officers' and fire fighters' retirement system at the time  
5 of election or appointment to such position may elect to continue  
6 membership in the teachers' retirement system or law enforcement  
7 officers' and fire fighters' retirement system.

8 (ii) A member shall receive a total of not more than twelve service  
9 credit months of service for such calendar year. If an individual is  
10 employed in an eligible position by one or more employers the  
11 individual shall receive no more than one service credit month during  
12 any calendar month in which multiple service for ninety or more hours  
13 is rendered.

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

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

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

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

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

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

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

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

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

34 (13) "Membership service" means:

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

36 (b) ~~((All)) Service ((after October 1, 1947,))~~ to any employer  
37 prior to the time of its admission into the retirement system(~~(+~~  
38 ~~PROVIDED, That an amount equal to the employer and employee~~  
39 ~~contributions which would have been paid to the retirement system on~~

1 account of such service shall have been paid to the retirement system  
2 with interest (as computed by the department) on the employee's portion  
3 prior to retirement of such person, by the employee or his or her  
4 employer, except as qualified by RCW 41.40.023: PROVIDED FURTHER, That  
5 employer contributions plus employee contributions with interest  
6 submitted by the employee under this subsection shall be placed in the  
7 employee's individual account in the employees' savings fund and be  
8 treated as any other contribution made by the employee, with the  
9 exception that the contributions submitted by the employee in payment  
10 of the employer's obligation, together with the interest the director  
11 may apply to the employer's contribution, shall be excluded from the  
12 calculation of the member's annuity in the event the member selects a  
13 benefit with an annuity option));

14 (c) Service not to exceed six consecutive months of probationary  
15 service rendered after April 1, 1949, and prior to becoming a member,  
16 in the case of any member, upon payment in full by such member of the  
17 total amount of the employer's contribution to the retirement fund  
18 which would have been required under the law in effect when such  
19 probationary service was rendered if the member had been a member  
20 during such period, except that the amount of the employer's  
21 contribution shall be calculated by the director based on the first  
22 month's compensation earnable as a member;

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

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

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

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

38 (16) "Accumulated contributions" means the sum of all contributions  
39 standing to the credit of a member in the member's individual account,

1 including any amount paid under RCW 41.50.165(2), together with the  
2 regular interest thereon.

3 (17)(a) "Average final compensation" for plan I members, means the  
4 annual average of the greatest compensation earnable by a member during  
5 any consecutive two year period of service credit months for which  
6 service credit is allowed; or if the member has less than two years of  
7 service credit months then the annual average compensation earnable  
8 during the total years of service for which service credit is allowed.

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

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

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

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

23 (21) "Retirement allowance" means the sum of the annuity and the  
24 pension.

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

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

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

32 (25) "Eligible position" means:

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

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

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

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

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

12 (29) "Retiree" means any person in receipt of a retirement  
13 allowance or other benefit provided by this chapter resulting from  
14 service rendered to an employer while a member. A person is in receipt  
15 of a retirement allowance as defined in subsection (21) of this section  
16 or other benefit as provided by this chapter when the department mails,  
17 causes to be mailed, or otherwise transmits the retirement allowance  
18 warrant.

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

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

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

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

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

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

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

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

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

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

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.40 RCW  
4 to read as follows:

5 (1) Any employer admitted to the retirement system after the  
6 effective date of this act may elect to purchase membership service for  
7 the time period:

8 (a) Starting with the date of the employer's admission to the  
9 retirement system; or

10 (b) Prior to the date of the employer's admission to the retirement  
11 system if additional contributions are made equal to the total employee  
12 and employer contributions that would have been required for all  
13 employee service prior to the employer's admission to the retirement  
14 system, plus interest.

15 (i) The employee and/or employer may make the contributions under  
16 (b) of this subsection.

17 (ii) All payments under (b) of this subsection and RCW 41.40.160(2)  
18 must be completed within fifteen years from the date of the employer's  
19 admission or prior to the retirement of such employee, whichever occurs  
20 sooner.

21 (iii) All contributions plus interest made by the employee under  
22 (b) of this subsection shall be placed in the employee's individual  
23 account in the employees' savings fund and be treated as any other  
24 contribution made by the employee.

25 (2) No additional contributions under this section will be required  
26 for service prior to the employer's admission into the retirement  
27 system if:

28 (a) The employee is ineligible for membership under RCW 41.40.023;  
29 or

30 (b) The employer made contributions for such service to a qualified  
31 retirement plan as defined by 26 U.S.C. Sec. 401(a) and such  
32 contributions plus interest accrued cannot be transferred to the  
33 retirement system.

34 NEW SECTION. **Sec. 3.** RCW 41.40.045 is decodified.

35 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
36 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take  
2 effect immediately.

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