

---

HOUSE BILL 2644

---

State of Washington

53rd Legislature

1994 Regular Session

By Representatives Sommers and Silver; by request of Department of Retirement Systems

Read first time 01/19/94. Referred to Committee on Appropriations.

1 AN ACT Relating to retirement contributions and recovery of  
2 overpayments; amending RCW 41.50.130, 41.32.500, 41.32.510, and  
3 41.40.280; adding new sections to chapter 41.50 RCW; adding a new  
4 section to chapter 41.40 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) Since enactment of chapter 227, Laws of 1984 most employers  
8 that participate in state retirement systems have been responsible for  
9 ensuring that member retirement contributions are transferred to the  
10 retirement trust funds, even in situations where service credit is  
11 being established on a retroactive basis for a member who is no longer  
12 employed by the employer.

13 (2) It is the responsibility of employers to accurately report  
14 their employees' compensation and service, and to ensure that all  
15 required member and employer contributions are transferred to the  
16 department of retirement systems. However, in situations where an  
17 employer determines that a former employee should have had  
18 contributions transferred, it may be more efficient and fair to bill

1 the member for the past due member contributions than to make the  
2 employer responsible for them.

3 (3) Whenever employer or member contributions are not made at the  
4 time service is rendered, the state retirement system trust funds lose  
5 investment income which is a major source of pension funding. The  
6 department of retirement systems has broad authority to charge interest  
7 to compensate for the loss to the trust funds, subject only to explicit  
8 statutory provisions to the contrary.

9 (4) The inherent authority of the department to recover all  
10 overpayments and unauthorized payments from the retirement trust funds,  
11 for the benefit of members and taxpayers, should be established clearly  
12 in statute.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.50 RCW  
14 to read as follows:

15 The department may charge interest, as determined by the director,  
16 on member or employer contributions owing to any of the retirement  
17 systems listed in RCW 41.50.030. The department's authority to charge  
18 interest shall extend to all optional and mandatory billings for  
19 contributions where member or employer contributions are paid other  
20 than immediately after service is rendered. Except as explicitly  
21 limited by statute, the director may delay the imposition of interest  
22 charges on late contributions under this section if the delay is  
23 necessary to implement required changes in the department's accounting  
24 and information systems.

25 **Sec. 3.** RCW 41.50.130 and 1987 c 490 s 1 are each amended to read  
26 as follows:

27 (1) The director may at any time correct errors appearing in the  
28 records of the retirement systems listed in RCW 41.50.030. Should any  
29 error in such records result in any member ~~((or))~~, beneficiary, or  
30 other person or entity receiving more or less than he or she would have  
31 been entitled to had the records been correct, the director, subject to  
32 the conditions set forth in this section, shall adjust the payment in  
33 such a manner that the benefit to which such member ~~((or))~~,  
34 beneficiary, or other person or entity was correctly entitled shall be  
35 paid in accordance with the following:

36 (a) In the case of underpayments to a member or beneficiary, the  
37 retirement system shall correct all future payments from the point of

1 error detection, and shall compute the additional payment due for the  
2 allowable prior period which shall be paid in a lump sum by the  
3 appropriate retirement system.

4 (b) In the case of overpayments to a member or beneficiary, the  
5 retirement system shall adjust the payment in such a manner that the  
6 benefit to which such member or beneficiary was correctly entitled  
7 shall be reduced by an amount equal to the actuarial equivalent of the  
8 amount of overpayment. Alternatively the member shall have the option  
9 of repaying the overpayment in a lump sum within ninety days of  
10 notification and receive the proper benefit in the future. In the case  
11 of overpayments to a member ~~((or))~~, beneficiary, or other person or  
12 entity resulting from actual fraud on the part of the member ~~((or))~~,  
13 beneficiary, or other person or entity, the benefits shall be adjusted  
14 to reflect the full amount of such overpayment, plus interest at the  
15 ~~((maximum rate allowed under RCW 19.52.020(1) as it was in effect the~~  
16 ~~first month the overpayment occurred))~~ rate of one percent per month on  
17 the outstanding balance.

18 (c) In the case of overpayments to a person or entity other than a  
19 member or beneficiary, the overpayment shall constitute a debt from the  
20 person or entity to the department, recovery of which shall not be  
21 barred by laches or statute of limitations.

22 (2) Except in the case of actual fraud, in the case of overpayments  
23 to a member or beneficiary, the benefits shall be adjusted to reflect  
24 only the amount of overpayments made within three years of discovery of  
25 the error, notwithstanding any provision to the contrary in chapter  
26 4.16 RCW.

27 (3)(a) The employer shall elicit on a written form from all new  
28 employees as to their having been retired from a retirement system  
29 listed in RCW 41.50.030.

30 (b) In the case of overpayments which result from the failure of an  
31 employer to report properly to the department the employment of a  
32 retiree from information received in subparagraph (a), the employer  
33 shall, upon receipt of a billing from the department, pay into the  
34 appropriate retirement system the amount of the overpayment plus  
35 interest as determined by the director. However, except in the case of  
36 actual employer fraud, the overpayments charged to the employer under  
37 this subsection shall not exceed five thousand dollars for each year of  
38 overpayments received by a retiree. The retiree's benefits upon  
39 reretirement shall not be reduced because of such overpayment except as

1 necessary to recapture contributions required for periods of  
2 employment.

3 (c) The provision of this subsection regarding the reduction of  
4 retirees' benefits shall apply to recovery actions commenced on or  
5 after January 1, 1986, even though the overpayments resulting from  
6 retiree employment were discovered by the department prior to that  
7 date. The provisions of this subsection regarding the billing of  
8 employers for overpayments shall apply to overpayments made after  
9 January 1, 1986.

10 (4) Except in the case of actual fraud, no monthly benefit shall be  
11 reduced by more than fifty percent of the member's or beneficiary's  
12 corrected benefit. Any overpayment not recovered due to the inability  
13 to actuarially reduce a member's benefit due to: (a) The provisions of  
14 this subsection; or (b) the fact that the retiree's monthly retirement  
15 allowance is less than the monthly payment required to effectuate an  
16 actuarial reduction, shall constitute a claim against the estate of a  
17 member, beneficiary, or other person or entity in receipt of an  
18 overpayment.

19 (5) Except as provided in subsection (2) of this section,  
20 obligations of employers or members until paid to the department shall  
21 constitute a debt from the employer or member to the department,  
22 recovery of which shall not be barred by laches or statutes of  
23 limitation.

24 NEW SECTION. Sec. 4. A new section is added to chapter 41.50 RCW  
25 to read as follows:

26 (1) If a person receives a withdrawal of accumulated contributions  
27 from any of the retirement systems listed in RCW 41.50.030 in  
28 contravention of the restrictions on withdrawal for the particular  
29 system, the member shall no longer be entitled to credit for the period  
30 of service represented by the withdrawn contributions. The erroneous  
31 withdrawal shall be treated as an authorized withdrawal, subject to all  
32 conditions imposed by the member's system for restoration of withdrawn  
33 contributions. Failure to restore the contributions within the time  
34 permitted by the system shall constitute a waiver by the member of any  
35 right to receive a retirement allowance based upon the period of  
36 service represented by the withdrawn contributions.

37 (2) All erroneous withdrawals occurring prior to the effective date  
38 of this section shall be subject to the provisions of this section.

1 The deadline for restoring the prior erroneous withdrawals shall be  
2 five years from the effective date of this section for members who are  
3 currently active members of a system.

4 **Sec. 5.** RCW 41.32.500 and 1991 c 35 s 57 are each amended to read  
5 as follows:

6 (1) Membership in the retirement system is terminated when a member  
7 retires for service or disability, dies, or withdraws ~~((the))~~ his or  
8 her accumulated contributions ~~((or does not establish service credit~~  
9 ~~with the retirement system for five consecutive years; however, a~~  
10 ~~member may retain membership in the teachers' retirement system by~~  
11 ~~leaving the accumulated contributions in the teachers' retirement fund~~  
12 ~~under one of the following conditions:~~

13 (a) ~~If he or she is eligible for retirement;~~

14 (b) ~~If he or she is a member of another public retirement system in~~  
15 ~~the state of Washington by reason of change in employment and has~~  
16 ~~arranged to have membership extended during the period of such~~  
17 ~~employment;~~

18 (c) ~~If he or she is not eligible for retirement but has established~~  
19 ~~five or more years of Washington membership service credit.))~~

20 The prior service certificate becomes void when a member dies~~((7))~~  
21 or withdraws the accumulated contributions ~~((or does not establish~~  
22 ~~service credit with the retirement system for five consecutive years)),~~  
23 and any prior administrative interpretation of the board of trustees,  
24 consistent with this section, is hereby ratified, affirmed and  
25 approved.

26 (2) ~~((Any member, except an elected official, who reentered service~~  
27 ~~and who failed to restore withdrawn contributions, shall now have from~~  
28 ~~April 4, 1986, through June 30, 1987, to restore the contributions,~~  
29 ~~with interest as determined by the director.~~

30 ~~(3))~~ Within the ninety days following the employee's resumption of  
31 employment, the employer shall notify the department of the resumption  
32 and the department shall then return to the employer a statement of the  
33 potential service credit to be restored, the amount of funds required  
34 for restoration, and the date when the restoration must be  
35 accomplished. The employee shall be given a copy of the statement and  
36 shall sign a copy of the statement which signed copy shall be placed in  
37 the employee's personnel file.

1       **Sec. 6.** RCW 41.32.510 and 1982 1st ex.s. c 52 s 15 are each  
2 amended to read as follows:

3       Should a member cease to be employed by an employer and request  
4 upon a form provided by the department a refund of the member's  
5 accumulated contributions with interest, this amount shall be paid to  
6 the individual less any withdrawal fee which may be assessed by the  
7 director which shall be deposited in the department of retirement  
8 systems expense fund. The amount withdrawn, together with interest as  
9 determined by the director must be paid if the member desires to  
10 reestablish the former service credits. ~~((Termination of employment  
11 with one employer for the specific purpose of accepting employment with  
12 another employer or termination with one employer and reemployment with  
13 the same employer, whether for the same school year or for the ensuing  
14 school year, shall not qualify a member for a refund of the member's  
15 accumulated contributions. A member who files an application for a  
16 refund of the member's accumulated contributions and subsequently  
17 enters into a contract for or resumes public school employment before  
18 a refund payment has been made shall not be eligible for such  
19 payment.))~~ A member who files a request for a refund and subsequently  
20 enters into employment with an employer prior to the refund being made  
21 shall not be eligible for a refund. For purposes of this section, a  
22 written or oral employment agreement shall be considered entering into  
23 employment.

24       **Sec. 7.** RCW 41.40.280 and 1991 c 35 s 86 are each amended to read  
25 as follows:

26       The department may, in its discretion, withhold payment of all or  
27 part of a member's contributions for not more than six months after a  
28 member has ceased to be an employee. ~~((Termination of employment with  
29 one employer for the purpose of accepting employment with another  
30 employer or termination with one employer and reemployment with the  
31 same employer within a period of thirty days shall not qualify a member  
32 for a refund of his or her accumulated contributions. In addition, a  
33 member who files an application for a refund of his or her accumulated  
34 contributions and subsequently becomes employed in an eligible position  
35 before the expiration of thirty days or before a refund payment has  
36 been made, shall not be eligible for the refund payment.))~~ A member  
37 who files a request for a refund and subsequently enters into  
38 employment with an employer prior to the refund being made shall not be

1 eligible for a refund. For purposes of this section, a written or oral  
2 employment agreement shall be considered entering into employment.

3 NEW SECTION. **Sec. 8.** A new section is added to chapter 41.40 RCW  
4 under the subchapter heading "provisions applicable to plan I and plan  
5 II" to read as follows:

6 (1) Notwithstanding RCW 41.50.130, the department is not required  
7 to correct, nor to cause any employer to correct the reporting error  
8 described in subsection (2) of this section.

9 (2) Standby pay and other similar forms of compensation that are  
10 not pay for time worked are not and have never been, a salary or wage  
11 for personal services within the meaning of RCW 41.40.010(8). Without  
12 the department's knowledge, and contrary to RCW 41.40.010(8), some  
13 employers have been reporting standby pay to the department as  
14 compensation earnable. To avoid unduly impacting the retirement  
15 allowances of persons who have retired on or before the effective date  
16 of this act, the department will not correct, nor cause to be  
17 corrected, any misreporting of standby pay through February 28, 1994.  
18 Any erroneous reporting of standby pay to the department as  
19 compensation earnable on or after March 1, 1994, shall be corrected as  
20 an error under RCW 41.50.130.

21 (3) The forgiveness of past misreporting under subsection (2) of  
22 this section constitutes a benefit enhancement for those individuals  
23 whose standby pay was misreported to the department. Prior to the  
24 effective date of this act no retirement system member had any right,  
25 contractual or otherwise, to have standby pay included as compensation  
26 earnable. Under this section, only those individuals identified under  
27 subsection (2) of this section may receive compensation credit for  
28 standby pay.

--- END ---