
SENATE BILL 5094

State of Washington

58th Legislature

2003 Regular Session

By Senators Carlson, Jacobsen, Spanel, Fraser, B. Sheldon and Rasmussen; by request of Joint Committee on Pension Policy

Read first time 01/15/2003. Referred to Committee on Ways & Means.

1 AN ACT Relating to providing optional service credit for substitute
2 service to members of the school employees' retirement system; amending
3 RCW 41.35.010 and 41.35.030; and adding a new section to chapter 41.35
4 RCW.

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

6 **Sec. 1.** RCW 41.35.010 and 2001 c 180 s 3 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter,
9 unless the context clearly requires otherwise((÷)).

10 (1) "Retirement system" means the Washington school employees'
11 retirement system provided for in this chapter.

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

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

16 (4) "Employer," for plan 2 and plan 3 members, means a school
17 district or an educational service district.

1 (5) "Member" means any employee included in the membership of the
2 retirement system, as provided for in RCW 41.35.030.

3 (6)(a) "Compensation earnable" for plan 2 and plan 3 members, means
4 salaries or wages earned by a member during a payroll period for
5 personal services, including overtime payments, and shall include wages
6 and salaries deferred under provisions established pursuant to sections
7 403(b), 414(h), and 457 of the United States internal revenue code, but
8 shall exclude nonmoney maintenance compensation and lump sum or other
9 payments for deferred annual sick leave, unused accumulated vacation,
10 unused accumulated annual leave, or any form of severance pay.

11 (b) "Compensation earnable" for plan 2 and plan 3 members also
12 includes the following actual or imputed payments, which are not paid
13 for personal services:

14 (i) Retroactive payments to an individual by an employer on
15 reinstatement of the employee in a position, or payments by an employer
16 to an individual in lieu of reinstatement, which are awarded or granted
17 as the equivalent of the salary or wage which the individual would have
18 earned during a payroll period shall be considered compensation
19 earnable to the extent provided in this subsection, and the individual
20 shall receive the equivalent service credit;

21 (ii) In any year in which a member serves in the legislature, the
22 member shall have the option of having such member's compensation
23 earnable be the greater of:

24 (A) The compensation earnable the member would have received had
25 such member not served in the legislature; or

26 (B) Such member's actual compensation earnable received for
27 nonlegislative public employment and legislative service combined. Any
28 additional contributions to the retirement system required because
29 compensation earnable under (b)(ii)(A) of this subsection is greater
30 than compensation earnable under this (b)(ii)(B) of this subsection
31 shall be paid by the member for both member and employer contributions;

32 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
33 and 72.09.240;

34 (iv) Compensation that a member would have received but for a
35 disability occurring in the line of duty only as authorized by RCW
36 41.40.038;

37 (v) Compensation that a member receives due to participation in the

1 leave sharing program only as authorized by RCW 41.04.650 through
2 41.04.670; and

3 (vi) Compensation that a member receives for being in standby
4 status. For the purposes of this section, a member is in standby
5 status when not being paid for time actually worked and the employer
6 requires the member to be prepared to report immediately for work, if
7 the need arises, although the need may not arise.

8 (7) "Service" for plan 2 and plan 3 members means periods of
9 employment by a member in an eligible position or positions for one or
10 more employers for which compensation earnable is paid. Compensation
11 earnable earned for ninety or more hours in any calendar month shall
12 constitute one service credit month except as provided in RCW
13 41.35.180. Compensation earnable earned for at least seventy hours but
14 less than ninety hours in any calendar month shall constitute one-half
15 service credit month of service. Compensation earnable earned for less
16 than seventy hours in any calendar month shall constitute one-quarter
17 service credit month of service. Time spent in standby status, whether
18 compensated or not, is not service.

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

21 (a) Service in any state elective position shall be deemed to be
22 full-time service.

23 (b) A member shall receive a total of not more than twelve service
24 credit months of service for such calendar year. If an individual is
25 employed in an eligible position by one or more employers the
26 individual shall receive no more than one service credit month during
27 any calendar month in which multiple service for ninety or more hours
28 is rendered.

29 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW
30 28A.400.300 is equal to two service credit months. Use of less than
31 forty-five days of sick leave is creditable as allowed under this
32 subsection as follows:

33 (i) Less than eleven days equals one-quarter service credit month;

34 (ii) Eleven or more days but less than twenty-two days equals one-
35 half service credit month;

36 (iii) Twenty-two days equals one service credit month;

37 (iv) More than twenty-two days but less than thirty-three days
38 equals one and one-quarter service credit month; and

1 (v) Thirty-three or more days but less than forty-five days equals
2 one and one-half service credit month.

3 (8) "Service credit year" means an accumulation of months of
4 service credit which is equal to one when divided by twelve.

5 (9) "Service credit month" means a month or an accumulation of
6 months of service credit which is equal to one.

7 (10) "Membership service" means all service rendered as a member.

8 (11) "Beneficiary" for plan 2 and plan 3 members means any person
9 in receipt of a retirement allowance or other benefit provided by this
10 chapter resulting from service rendered to an employer by another
11 person.

12 (12) "Regular interest" means such rate as the director may
13 determine.

14 (13) "Accumulated contributions" means the sum of all contributions
15 standing to the credit of a member in the member's individual account,
16 including any amount paid under RCW 41.50.165(2), together with the
17 regular interest thereon.

18 (14) "Average final compensation" for plan 2 and plan 3 members
19 means the member's average compensation earnable of the highest
20 consecutive sixty months of service credit months prior to such
21 member's retirement, termination, or death. Periods constituting
22 authorized leaves of absence may not be used in the calculation of
23 average final compensation except under RCW 41.40.710(2).

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

26 (16) "Annuity" means payments for life derived from accumulated
27 contributions of a member. All annuities shall be paid in monthly
28 installments.

29 (17) "Pension" means payments for life derived from contributions
30 made by the employer. All pensions shall be paid in monthly
31 installments.

32 (18) "Retirement allowance" for plan 2 and plan 3 members means
33 monthly payments to a retiree or beneficiary as provided in this
34 chapter.

35 (19) "Employee" or "employed" means a person who is providing
36 services for compensation to an employer, unless the person is free
37 from the employer's direction and control over the performance of work.

1 The department shall adopt rules and interpret this subsection
2 consistent with common law.

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

6 (21) "Retirement" means withdrawal from active service with a
7 retirement allowance as provided by this chapter.

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

14 (23) "Ineligible position" means any position which does not
15 conform with the requirements set forth in subsection (22) of this
16 section.

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

20 (25) "Retiree" means any person who has begun accruing a retirement
21 allowance or other benefit provided by this chapter resulting from
22 service rendered to an employer while a member.

23 (26) "Director" means the director of the department.

24 (27) "State elective position" means any position held by any
25 person elected or appointed to statewide office or elected or appointed
26 as a member of the legislature.

27 (28) "State actuary" or "actuary" means the person appointed
28 pursuant to RCW 44.44.010(2).

29 (29) "Plan 2" means the Washington school employees' retirement
30 system plan 2 providing the benefits and funding provisions covering
31 persons who first became members of the public employees' retirement
32 system on and after October 1, 1977, and transferred to the Washington
33 school employees' retirement system under RCW 41.40.750.

34 (30) "Plan 3" means the Washington school employees' retirement
35 system plan 3 providing the benefits and funding provisions covering
36 persons who first became members of the system on and after September
37 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

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

5 (32) "Index A" means the index for the year prior to the
6 determination of a postretirement adjustment.

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

8 (34) "Adjustment ratio" means the value of index A divided by index
9 B.

10 (35) "Separation from service" occurs when a person has terminated
11 all employment with an employer.

12 (36) "Member account" or "member's account" for purposes of plan 3
13 means the sum of the contributions and earnings on behalf of the member
14 in the defined contribution portion of plan 3.

15 (37) "Classified employee" means an employee of a school district
16 or an educational service district who is not eligible for membership
17 in the teachers' retirement system established under chapter 41.32 RCW.

18 (38) "Substitute employee" means a classified employee who is
19 employed by an employer exclusively as a substitute for an absent
20 employee.

21 **Sec. 2.** RCW 41.35.030 and 1998 c 341 s 4 are each amended to read
22 as follows:

23 Membership in the retirement system shall consist of all regularly
24 compensated classified employees and appointive and elective officials
25 of employers, as defined in this chapter, with the following
26 exceptions:

27 (1) Persons in ineligible positions;

28 (2)(a) Persons holding elective offices or persons appointed
29 directly by the governor: PROVIDED, That such persons shall have the
30 option of applying for membership during such periods of employment:
31 AND PROVIDED FURTHER, That any persons holding or who have held
32 elective offices or persons appointed by the governor who are members
33 in the retirement system and who have, prior to becoming such members,
34 previously held an elective office, and did not at the start of such
35 initial or successive terms of office exercise their option to become
36 members, may apply for membership to be effective during such term or
37 terms of office, and shall be allowed to establish the service credit

1 applicable to such term or terms of office upon payment of the employee
2 contributions therefor by the employee with interest as determined by
3 the director and employer contributions therefor by the employer or
4 employee with interest as determined by the director: AND PROVIDED
5 FURTHER, That all contributions with interest submitted by the employee
6 under this subsection shall be placed in the employee's individual
7 account in the employee's savings fund and be treated as any other
8 contribution made by the employee, with the exception that any
9 contributions submitted by the employee in payment of the employer's
10 obligation, together with the interest the director may apply to the
11 employer's contribution, shall not be considered part of the member's
12 annuity for any purpose except withdrawal of contributions;

13 (b) A member holding elective office who has elected to apply for
14 membership pursuant to (a) of this subsection and who later wishes to
15 be eligible for a retirement allowance shall have the option of ending
16 his or her membership in the retirement system. A member wishing to
17 end his or her membership under this subsection must file on a form
18 supplied by the department a statement indicating that the member
19 agrees to irrevocably abandon any claim for service for future periods
20 served as an elected official. A member who receives more than fifteen
21 thousand dollars per year in compensation for his or her elective
22 service, adjusted annually for inflation by the director, is not
23 eligible for the option provided by this subsection (2)(b);

24 (3) Retirement system retirees: PROVIDED, That following
25 reemployment in an eligible position, a retiree may elect to
26 prospectively become a member of the retirement system if otherwise
27 eligible;

28 (4) Persons enrolled in state-approved apprenticeship programs,
29 authorized under chapter 49.04 RCW, and who are employed by employers
30 to earn hours to complete such apprenticeship programs, if the employee
31 is a member of a union-sponsored retirement plan and is making
32 contributions to such a retirement plan or if the employee is a member
33 of a Taft-Hartley retirement plan;

34 (5) Persons rendering professional services to an employer on a
35 fee, retainer, or contract basis or when the income from these services
36 is less than fifty percent of the gross income received from the
37 person's practice of a profession;

1 (6) Substitute employees, except for the purposes of the purchase
2 of service credit under section 3 of this act. Upon the return or
3 termination of the absent employee a substitute employee is replacing,
4 that substitute employee shall no longer be ineligible under this
5 subsection;

6 (7) Employees who (a) are not citizens of the United States, (b) do
7 not reside in the United States, and (c) perform duties outside of the
8 United States;

9 (~~(7)~~) (8) Employees who (a) are not citizens of the United
10 States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded
11 from membership under this chapter or chapter 41.04 RCW, (d) are
12 residents of this state, and (e) make an irrevocable election to be
13 excluded from membership, in writing, which is submitted to the
14 director within thirty days after employment in an eligible position;

15 (~~(8)~~) (9) Employees who are citizens of the United States and who
16 reside and perform duties for an employer outside of the United States:
17 PROVIDED, That unless otherwise excluded under this chapter or chapter
18 41.04 RCW, the employee may apply for membership (a) within thirty days
19 after employment in an eligible position and membership service credit
20 shall be granted from the first day of membership service, and (b)
21 after this thirty-day period, but membership service credit shall be
22 granted only if payment is made for the noncredited membership service
23 under RCW 41.50.165(2), otherwise service shall be from the date of
24 application.

25 NEW SECTION. Sec. 3. A new section is added to chapter 41.35 RCW
26 under the subchapter heading "provisions applicable to plan 2 and plan
27 3" to read as follows:

28 (1) A substitute employee who works five or more months of seventy
29 or more hours for which earnable compensation is paid in a school year
30 may apply to the department to establish membership after the end of
31 the school year during which the work was performed. The application
32 must:

33 (a) Include a list of the employers the substitute employee has
34 worked for;

35 (b) Include proof of hours worked and compensation earned; and

36 (c) Be made prior to retirement.

1 (2) Substitute employees who are members may apply to the
2 department to receive service after the end of the last day of
3 instruction of the school year during which the service was performed.

4 The application must:

5 (a) Include a list of the employers the substitute employee has
6 worked for;

7 (b) Include proof of hours worked and compensation earned; and

8 (c) Be made prior to retirement.

9 (3) If the department accepts the substitute employee's application
10 for service credit, the substitute employee may obtain service credit
11 by paying the required contribution to the retirement system. The
12 employer must pay the required employer contribution upon notice from
13 the department that the substitute employee has made contributions
14 under this section.

15 (4) The department shall charge interest prospectively on employee
16 contributions that are submitted under this section more than six
17 months after the end of the school year, as defined in RCW 28A.150.040,
18 for which the substitute employee is seeking service credit. The
19 interest rate charged to the employee shall take into account interest
20 lost on employer contributions delayed for more than six months after
21 the end of the school year.

22 (5) Each employer shall quarterly notify each substitute employee
23 it has employed during the school year of the number of hours worked
24 by, and the compensation paid to, the substitute employee.

25 (6) If a substitute employee, as defined in RCW 41.35.010(38),
26 applies to the department under this section for credit for earnable
27 compensation earned from an employer, the substitute employee must make
28 contributions for all periods of service for that employer.

29 (7) The department shall adopt rules implementing this section.

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