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HOUSE BILL 2862

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Van De Wege, Conway, Ericks, Simpson, and Kessler

Read first time 01/15/10. Referred to Committee on Ways & Means.

1            AN ACT Relating to membership in the public employees' retirement  
2 system; reenacting and amending RCW 41.40.023; and declaring an  
3 emergency.

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

5            **Sec. 1.** RCW 41.40.023 and 2005 c 151 s 12 and 2005 c 131 s 7 are  
6 each reenacted and amended to read as follows:

7            Membership in the retirement system shall consist of all regularly  
8 compensated employees and appointive and elective officials of  
9 employers, as defined in this chapter, with the following exceptions:

10            (1) Persons in ineligible positions;

11            (2) Employees of the legislature except the officers thereof  
12 elected by the members of the senate and the house and legislative  
13 committees, unless membership of such employees be authorized by the  
14 said committee;

15            (3)(a) Persons holding elective offices or persons appointed  
16 directly by the governor: PROVIDED, That such persons shall have the  
17 option of applying for membership during such periods of employment:  
18 AND PROVIDED FURTHER, That any persons holding or who have held  
19 elective offices or persons appointed by the governor who are members

1 in the retirement system and who have, prior to becoming such members,  
2 previously held an elective office, and did not at the start of such  
3 initial or successive terms of office exercise their option to become  
4 members, may apply for membership to be effective during such term or  
5 terms of office, and shall be allowed to establish the service credit  
6 applicable to such term or terms of office upon payment of the employee  
7 contributions therefor by the employee with interest as determined by  
8 the director and employer contributions therefor by the employer or  
9 employee with interest as determined by the director: AND PROVIDED  
10 FURTHER, That all contributions with interest submitted by the employee  
11 under this subsection shall be placed in the employee's individual  
12 account in the employee's savings fund and be treated as any other  
13 contribution made by the employee, with the exception that any  
14 contributions submitted by the employee in payment of the employer's  
15 obligation, together with the interest the director may apply to the  
16 employer's contribution, shall not be considered part of the member's  
17 annuity for any purpose except withdrawal of contributions;

18 (b) A member holding elective office who has elected to apply for  
19 membership pursuant to (a) of this subsection and who later wishes to  
20 be eligible for a retirement allowance shall have the option of ending  
21 his or her membership in the retirement system. A member wishing to  
22 end his or her membership under this subsection must file, on a form  
23 supplied by the department, a statement indicating that the member  
24 agrees to irrevocably abandon any claim for service for future periods  
25 served as an elected official. A member who receives more than fifteen  
26 thousand dollars per year in compensation for his or her elective  
27 service, adjusted annually for inflation by the director, is not  
28 eligible for the option provided by this subsection (3)(b);

29 (4) Employees holding membership in, or receiving pension benefits  
30 under, any retirement plan operated wholly or in part by an agency of  
31 the state or political subdivision thereof, or who are by reason of  
32 their current employment contributing to or otherwise establishing the  
33 right to receive benefits from any such retirement plan except as  
34 follows:

35 (a) In any case where the retirement system has in existence an  
36 agreement with another retirement system in connection with exchange of  
37 service credit or an agreement whereby members can retain service

1 credit in more than one system, such an employee shall be allowed  
2 membership rights should the agreement so provide;

3 (b) An employee shall be allowed membership if otherwise eligible  
4 while receiving survivor's benefits;

5 (c) An employee shall not either before or after June 7, 1984, be  
6 excluded from membership or denied service credit pursuant to this  
7 subsection solely on account of: (i) Membership in the plan created  
8 under chapter 2.14 RCW; or (ii) enrollment under the relief and  
9 compensation provisions or the pension provisions of the volunteer fire  
10 fighters' relief and pension fund under chapter 41.24 RCW;

11 (d) Except as provided in RCW 41.40.109, on or after July 25, 1999,  
12 an employee shall not be excluded from membership or denied service  
13 credit pursuant to this subsection solely on account of participation  
14 in a defined contribution pension plan qualified under section 401 of  
15 the internal revenue code;

16 (e) Employees who have been reported in the retirement system prior  
17 to July 25, 1999, and who participated during the same period of time  
18 in a defined contribution pension plan qualified under section 401 of  
19 the internal revenue code and operated wholly or in part by the  
20 employer, shall not be excluded from previous retirement system  
21 membership and service credit on account of such participation;

22 (5) Patient and inmate help in state charitable, penal, and  
23 correctional institutions;

24 (6) "Members" of a state veterans' home or state soldiers' home;

25 (7) Persons employed by an institution of higher learning or  
26 community college, primarily as an incident to and in furtherance of  
27 their education or training, or the education or training of a spouse;

28 (8) Employees of an institution of higher learning or community  
29 college during the period of service necessary to establish eligibility  
30 for membership in the retirement plans operated by such institutions;

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

35 (10) Persons appointed after April 1, 1963, by the liquor control  
36 board as contract liquor store managers;

37 (11) Employees of a labor guild, association, or organization:

1 PROVIDED, That elective officials and employees of a labor guild,  
2 association, or organization which qualifies as an employer within this  
3 chapter shall have the option of applying for membership;

4 (12) Retirement system retirees: PROVIDED, That following  
5 reemployment in an eligible position, a retiree may elect to  
6 prospectively become a member of the retirement system if otherwise  
7 eligible;

8 (13) Persons employed by or appointed or elected as an official of  
9 a first class city that has its own retirement system: PROVIDED, That  
10 any member elected or appointed to an elective office on or after April  
11 1, 1971, shall have the option of continuing as a member of this system  
12 in lieu of becoming a member of the city system. A member who elects  
13 to continue as a member of this system shall pay the appropriate member  
14 contributions and the city shall pay the employer contributions at the  
15 rates prescribed by this chapter. The city shall also transfer to this  
16 system all of such member's accumulated contributions together with  
17 such further amounts as necessary to equal all employee and employer  
18 contributions which would have been paid into this system on account of  
19 such service with the city and thereupon the member shall be granted  
20 credit for all such service. Any city that becomes an employer as  
21 defined in RCW 41.40.010(~~((4))~~) (13) as the result of an individual's  
22 election under this subsection shall not be required to have all  
23 employees covered for retirement under the provisions of this chapter.  
24 Nothing in this subsection shall prohibit a city of the first class  
25 with its own retirement system from: (a) Transferring all of its  
26 current employees to the retirement system established under this  
27 chapter, or (b) allowing newly hired employees the option of continuing  
28 coverage under the retirement system established by this chapter.

29 Notwithstanding any other provision of this chapter, persons  
30 transferring from employment with a first class city of over four  
31 hundred thousand population that has its own retirement system to  
32 employment with the state department of agriculture may elect to remain  
33 within the retirement system of such city and the state shall pay the  
34 employer contributions for such persons at like rates as prescribed for  
35 employers of other members of such system;

36 (14) Employees who (a) are not citizens of the United States, (b)  
37 do not reside in the United States, and (c) perform duties outside of  
38 the United States;

1 (15) Employees who (a) are not citizens of the United States, (b)  
2 are not covered by chapter 41.48 RCW, (c) are not excluded from  
3 membership under this chapter or chapter 41.04 RCW, (d) are residents  
4 of this state, and (e) make an irrevocable election to be excluded from  
5 membership, in writing, which is submitted to the director within  
6 thirty days after employment in an eligible position;

7 (16) Employees who are citizens of the United States and who reside  
8 and perform duties for an employer outside of the United States:  
9 PROVIDED, That unless otherwise excluded under this chapter or chapter  
10 41.04 RCW, the employee may apply for membership (a) within thirty days  
11 after employment in an eligible position and membership service credit  
12 shall be granted from the first day of membership service, and (b)  
13 after this thirty-day period, but membership service credit shall be  
14 granted only if payment is made for the noncredited membership service  
15 under RCW 41.50.165(2), otherwise service shall be from the date of  
16 application;

17 (17) The city manager or chief administrative officer of a city or  
18 town, other than a retiree, who serves at the pleasure of an appointing  
19 authority: PROVIDED, That such persons shall have the option of  
20 applying for membership within thirty days from date of their  
21 appointment to such positions. Persons serving in such positions as of  
22 April 4, 1986, shall continue to be members in the retirement system  
23 unless they notify the director in writing prior to December 31, 1986,  
24 of their desire to withdraw from membership in the retirement system.  
25 A member who withdraws from membership in the system under this section  
26 shall receive a refund of the member's accumulated contributions.

27 Persons serving in such positions who have not opted for membership  
28 within the specified thirty days, may do so by paying the amount  
29 required under RCW 41.50.165(2) for the period from the date of their  
30 appointment to the date of acceptance into membership;

31 (18) Persons serving as: (a) The chief administrative officer of  
32 a public utility district as defined in RCW 54.16.100; (b) the chief  
33 administrative officer of a port district formed under chapter 53.04  
34 RCW; or (c) the chief administrative officer of a county who serves at  
35 the pleasure of an appointing authority: PROVIDED, That such persons  
36 shall have the option of applying for membership within thirty days  
37 from the date of their appointment to such positions. Persons serving  
38 in such positions as of July 25, 1999, shall continue to be members in

1 the retirement system unless they notify the director in writing prior  
2 to December 31, 1999, of their desire to withdraw from membership in  
3 the retirement system. A member who withdraws from membership in the  
4 system under this section shall receive a refund of the member's  
5 accumulated contributions upon termination of employment or as  
6 otherwise consistent with the plan's tax qualification status as  
7 defined in internal revenue code section 401.

8 Persons serving in such positions who have not opted for membership  
9 within the specified thirty days, may do so at a later date by paying  
10 the amount required under RCW 41.50.165(2) for the period from the date  
11 of their appointment to the date of acceptance into membership;

12 (19) Persons enrolled in state-approved apprenticeship programs,  
13 authorized under chapter 49.04 RCW, and who are employed by local  
14 governments to earn hours to complete such apprenticeship programs, if  
15 the employee is a member of a union-sponsored retirement plan and is  
16 making contributions to such a retirement plan or if the employee is a  
17 member of a Taft-Hartley retirement plan;

18 (20) Beginning on July 22, 2001, persons employed exclusively as  
19 trainers or trainees in resident apprentice training programs operated  
20 by housing authorities authorized under chapter 35.82 RCW, (a) if the  
21 trainer or trainee is a member of a union-sponsored retirement plan and  
22 is making contributions to such a retirement plan or (b) if the  
23 employee is a member of a Taft-Hartley retirement plan; (~~and~~)

24 (21) Employees who are removed from membership under RCW 41.40.823  
25 or 41.40.633; and

26 (22) Persons employed as the state director of fire protection  
27 under RCW 43.43.938 who were previously members of the law enforcement  
28 officers' and firefighters' retirement system plan 2 under chapter  
29 41.26 RCW may continue as a member of the law enforcement officers' and  
30 firefighters' retirement system in lieu of becoming a member of this  
31 system.

32 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of the  
34 state government and its existing public institutions, and takes effect  
35 immediately.

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