
SENATE BILL 6742

State of Washington

61st Legislature

2010 Regular Session

By Senator Pridemore

Read first time 01/25/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to calculating average final compensation under the
2 public employees' retirement system; and reenacting and amending RCW
3 41.40.010.

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

5 **Sec. 1.** RCW 41.40.010 and 2009 c 430 s 1 are each reenacted and
6 amended to read as follows:

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

9 (1) "Accumulated contributions" means the sum of all contributions
10 standing to the credit of a member in the member's individual account,
11 including any amount paid under RCW 41.50.165(2), together with the
12 regular interest thereon.

13 (2) "Actuarial equivalent" means a benefit of equal value when
14 computed upon the basis of such mortality and other tables as may be
15 adopted by the director.

16 (3) "Adjustment ratio" means the value of index A divided by index
17 B.

18 (4) "Annual increase" means, initially, fifty-nine cents per month

1 per year of service which amount shall be increased each July 1st by
2 three percent, rounded to the nearest cent.

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

6 (6)(a) "Average final compensation" for plan 1 members, means the
7 annual average of the greatest compensation earnable by a member during
8 any consecutive two year period of service credit months for which
9 service credit is allowed; or if the member has less than two years of
10 service credit months then the annual average compensation earnable
11 during the total years of service for which service credit is allowed.

12 (b) "Average final compensation" for plan 2 and plan 3 members,
13 means the member's average compensation earnable of the highest
14 consecutive sixty months of service credit months prior to such
15 member's retirement, termination, or death. Periods constituting
16 authorized leaves of absence may not be used in the calculation of
17 average final compensation except under RCW 41.40.710(2) or (c) of this
18 subsection.

19 (c) In calculating average final compensation under this subsection
20 for a member of plan 1, 2, or 3, the department of retirement systems
21 shall include any compensation forgone by the member (~~during the 2009-~~
22 ~~2011 fiscal biennium~~) after December 31, 2008, but before July 1,
23 2011, as a result of reduced work hours, voluntary leave without pay,
24 or temporary furloughs if the reduced compensation is an integral part
25 of the employer's expenditure reduction efforts, as certified by the
26 employer.

27 (7)(a) "Beneficiary" for plan 1 members, means any person in
28 receipt of a retirement allowance, pension or other benefit provided by
29 this chapter.

30 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
31 in receipt of a retirement allowance or other benefit provided by this
32 chapter resulting from service rendered to an employer by another
33 person.

34 (8)(a) "Compensation earnable" for plan 1 members, means salaries
35 or wages earned during a payroll period for personal services and where
36 the compensation is not all paid in money, maintenance compensation
37 shall be included upon the basis of the schedules established by the
38 member's employer.

1 (i) "Compensation earnable" for plan 1 members also includes the
2 following actual or imputed payments, which are not paid for personal
3 services:

4 (A) Retroactive payments to an individual by an employer on
5 reinstatement of the employee in a position, or payments by an employer
6 to an individual in lieu of reinstatement in a position which are
7 awarded or granted as the equivalent of the salary or wage which the
8 individual would have earned during a payroll period shall be
9 considered compensation earnable and the individual shall receive the
10 equivalent service credit;

11 (B) If a leave of absence is taken by an individual for the purpose
12 of serving in the state legislature, the salary which would have been
13 received for the position from which the leave of absence was taken,
14 shall be considered as compensation earnable if the employee's
15 contribution is paid by the employee and the employer's contribution is
16 paid by the employer or employee;

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;

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; and

25 (F) Compensation that a member receives for being in standby
26 status. For the purposes of this section, a member is in standby
27 status when not being paid for time actually worked and the employer
28 requires the member to be prepared to report immediately for work, if
29 the need arises, although the need may not arise.

30 (ii) "Compensation earnable" does not include:

31 (A) Remuneration for unused sick leave authorized under RCW
32 41.04.340, 28A.400.210, or 28A.310.490;

33 (B) Remuneration for unused annual leave in excess of thirty days
34 as authorized by RCW 43.01.044 and 43.01.041.

35 (b) "Compensation earnable" for plan 2 and plan 3 members, means
36 salaries or wages earned by a member during a payroll period for
37 personal services, including overtime payments, and shall include wages
38 and salaries deferred under provisions established pursuant to sections

1 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
2 shall exclude nonmoney maintenance compensation and lump sum or other
3 payments for deferred annual sick leave, unused accumulated vacation,
4 unused accumulated annual leave, or any form of severance pay.

5 "Compensation earnable" for plan 2 and plan 3 members also includes
6 the following actual or imputed payments, which are not paid for
7 personal services:

8 (i) Retroactive payments to an individual by an employer on
9 reinstatement of the employee in a position, or payments by an employer
10 to an individual in lieu of reinstatement in a position which are
11 awarded or granted as the equivalent of the salary or wage which the
12 individual would have earned during a payroll period shall be
13 considered compensation earnable to the extent provided above, and the
14 individual shall receive the equivalent service credit;

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

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

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

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

28 (iv) Compensation that a member would have received but for a
29 disability occurring in the line of duty only as authorized by RCW
30 41.40.038;

31 (v) Compensation that a member receives due to participation in the
32 leave sharing program only as authorized by RCW 41.04.650 through
33 41.04.670; and

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

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

3 (10) "Director" means the director of the department.

4 (11) "Eligible position" means:

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

11 (b) Any position occupied by an elected official or person
12 appointed directly by the governor, or appointed by the chief justice
13 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which
14 compensation is paid.

15 (12) "Employee" or "employed" means a person who is providing
16 services for compensation to an employer, unless the person is free
17 from the employer's direction and control over the performance of work.
18 The department shall adopt rules and interpret this subsection
19 consistent with common law.

20 (13)(a) "Employer" for plan 1 members, means every branch,
21 department, agency, commission, board, and office of the state, any
22 political subdivision or association of political subdivisions of the
23 state admitted into the retirement system, and legal entities
24 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the
25 term shall also include any labor guild, association, or organization
26 the membership of a local lodge or division of which is comprised of at
27 least forty percent employees of an employer (other than such labor
28 guild, association, or organization) within this chapter. The term may
29 also include any city of the first class that has its own retirement
30 system.

31 (b) "Employer" for plan 2 and plan 3 members, means every branch,
32 department, agency, commission, board, and office of the state, and any
33 political subdivision and municipal corporation of the state admitted
34 into the retirement system, including public agencies created pursuant
35 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
36 31, 2000, school districts and educational service districts will no
37 longer be employers for the public employees' retirement system plan 2.

1 (14) "Final compensation" means the annual rate of compensation
2 earnable by a member at the time of termination of employment.

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

7 (16) "Index A" means the index for the year prior to the
8 determination of a postretirement adjustment.

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

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

12 (19) "Ineligible position" means any position which does not
13 conform with the requirements set forth in subsection (11) of this
14 section.

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

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

23 (22) "Member account" or "member's account" for purposes of plan 3
24 means the sum of the contributions and earnings on behalf of the member
25 in the defined contribution portion of plan 3.

26 (23) "Membership service" means:

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

28 (b) All service after October 1, 1947, to any employer prior to the
29 time of its admission into the retirement system for which member and
30 employer contributions, plus interest as required by RCW 41.50.125,
31 have been paid under RCW 41.40.056 or 41.40.057;

32 (c) Service not to exceed six consecutive months of probationary
33 service rendered after April 1, 1949, and prior to becoming a member,
34 in the case of any member, upon payment in full by such member of the
35 total amount of the employer's contribution to the retirement fund
36 which would have been required under the law in effect when such
37 probationary service was rendered if the member had been a member

1 during such period, except that the amount of the employer's
2 contribution shall be calculated by the director based on the first
3 month's compensation earnable as a member;

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

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

13 (25) "Original member" of this retirement system means:

14 (a) Any person who became a member of the system prior to April 1,
15 1949;

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

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

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

28 (e) Any member who has restored all contributions that may have
29 been withdrawn as provided by RCW 41.40.150 and who on the effective
30 date of the individual's retirement becomes entitled to be credited
31 with ten years or more of membership service except that the provisions
32 relating to the minimum amount of retirement allowance for the member
33 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
34 apply to the member;

35 (f) Any member who has been a contributor under the system for two
36 or more years and who has restored all contributions that may have been
37 withdrawn as provided by RCW 41.40.150 and who on the effective date of
38 the individual's retirement has rendered five or more years of service

1 for the state or any political subdivision prior to the time of the
2 admission of the employer into the system; except that the provisions
3 relating to the minimum amount of retirement allowance for the member
4 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
5 apply to the member.

6 (26) "Pension" means payments for life derived from contributions
7 made by the employer. All pensions shall be paid in monthly
8 installments.

9 (27) "Plan 1" means the public employees' retirement system, plan
10 1 providing the benefits and funding provisions covering persons who
11 first became members of the system prior to October 1, 1977.

12 (28) "Plan 2" means the public employees' retirement system, plan
13 2 providing the benefits and funding provisions covering persons who
14 first became members of the system on and after October 1, 1977, and
15 are not included in plan 3.

16 (29) "Plan 3" means the public employees' retirement system, plan
17 3 providing the benefits and funding provisions covering persons who:

18 (a) First become a member on or after:

19 (i) March 1, 2002, and are employed by a state agency or institute
20 of higher education and who did not choose to enter plan 2; or

21 (ii) September 1, 2002, and are employed by other than a state
22 agency or institute of higher education and who did not choose to enter
23 plan 2; or

24 (b) Transferred to plan 3 under RCW 41.40.795.

25 (30) "Prior service" means all service of an original member
26 rendered to any employer prior to October 1, 1947.

27 (31) "Regular interest" means such rate as the director may
28 determine.

29 (32) "Retiree" means any person who has begun accruing a retirement
30 allowance or other benefit provided by this chapter resulting from
31 service rendered to an employer while a member.

32 (33) "Retirement" means withdrawal from active service with a
33 retirement allowance as provided by this chapter.

34 (34) "Retirement allowance" means the sum of the annuity and the
35 pension.

36 (35) "Retirement system" means the public employees' retirement
37 system provided for in this chapter.

1 (36) "Separation from service" occurs when a person has terminated
2 all employment with an employer. Separation from service or employment
3 does not occur, and if claimed by an employer or employee may be a
4 violation of RCW 41.40.055, when an employee and employer have a
5 written or oral agreement to resume employment with the same employer
6 following termination. Mere expressions or inquiries about
7 postretirement employment by an employer or employee that do not
8 constitute a commitment to reemploy the employee after retirement are
9 not an agreement under this subsection.

10 (37)(a) "Service" for plan 1 members, except as provided in RCW
11 41.40.088, means periods of employment in an eligible position or
12 positions for one or more employers rendered to any employer for which
13 compensation is paid, and includes time spent in office as an elected
14 or appointed official of an employer. Compensation earnable earned in
15 full time work for seventy hours or more in any given calendar month
16 shall constitute one service credit month except as provided in RCW
17 41.40.088. Compensation earnable earned for less than seventy hours in
18 any calendar month shall constitute one-quarter service credit month of
19 service except as provided in RCW 41.40.088. Only service credit
20 months and one-quarter service credit months shall be counted in the
21 computation of any retirement allowance or other benefit provided for
22 in this chapter. Any fraction of a year of service shall be taken into
23 account in the computation of such retirement allowance or benefits.
24 Time spent in standby status, whether compensated or not, is not
25 service.

26 (i) Service by a state employee officially assigned by the state on
27 a temporary basis to assist another public agency, shall be considered
28 as service as a state employee: PROVIDED, That service to any other
29 public agency shall not be considered service as a state employee if
30 such service has been used to establish benefits in any other public
31 retirement system.

32 (ii) An individual shall receive no more than a total of twelve
33 service credit months of service during any calendar year. If an
34 individual is employed in an eligible position by one or more employers
35 the individual shall receive no more than one service credit month
36 during any calendar month in which multiple service for seventy or more
37 hours is rendered.

1 (iii) A school district employee may count up to forty-five days of
2 sick leave as creditable service solely for the purpose of determining
3 eligibility to retire under RCW 41.40.180 as authorized by RCW
4 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW
5 28A.400.300 is equal to two service credit months. Use of less than
6 forty-five days of sick leave is creditable as allowed under this
7 subsection as follows:

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

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

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

13 (b) "Service" for plan 2 and plan 3 members, means periods of
14 employment by a member in an eligible position or positions for one or
15 more employers for which compensation earnable is paid. Compensation
16 earnable earned for ninety or more hours in any calendar month shall
17 constitute one service credit month except as provided in RCW
18 41.40.088. Compensation earnable earned for at least seventy hours but
19 less than ninety hours in any calendar month shall constitute one-half
20 service credit month of service. Compensation earnable earned for less
21 than seventy hours in any calendar month shall constitute one-quarter
22 service credit month of service. Time spent in standby status, whether
23 compensated or not, is not service.

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

26 (i) Service in any state elective position shall be deemed to be
27 full time service, except that persons serving in state elective
28 positions who are members of the Washington school employees'
29 retirement system, teachers' retirement system, public safety
30 employees' retirement system, or law enforcement officers' and
31 firefighters' retirement system at the time of election or appointment
32 to such position may elect to continue membership in the Washington
33 school employees' retirement system, teachers' retirement system,
34 public safety employees' retirement system, or law enforcement
35 officers' and firefighters' retirement system.

36 (ii) A member shall receive a total of not more than twelve service
37 credit months of service for such calendar year. If an individual is
38 employed in an eligible position by one or more employers the

1 individual shall receive no more than one service credit month during
2 any calendar month in which multiple service for ninety or more hours
3 is rendered.

4 (iii) Up to forty-five days of sick leave may be creditable as
5 service solely for the purpose of determining eligibility to retire
6 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of
7 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal
8 to two service credit months. Use of less than forty-five days of sick
9 leave is creditable as allowed under this subsection as follows:

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

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

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

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

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

18 (38) "Service credit month" means a month or an accumulation of
19 months of service credit which is equal to one.

20 (39) "Service credit year" means an accumulation of months of
21 service credit which is equal to one when divided by twelve.

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

24 (41) "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 (42) "State treasurer" means the treasurer of the state of
28 Washington.

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

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