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**SECOND SUBSTITUTE HOUSE BILL 1802**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Reeves, Springer, Kilduff, Farrell, Appleton, Stonier, Stanford, Kloba, Frame, Ryu, Tharinger, Pellicciotti, Macri, Chapman, Fitzgibbon, Jinkins, Orwall, Doglio, Lovick, Riccelli, Peterson, Gregerson, Blake, Ortiz-Self, Ormsby, Bergquist, Fey, and Pollet)

AN ACT Relating to increasing the access of veterans, military service members, and military spouses to shared leave in state employment; amending RCW 41.04.665; adding a new section to chapter 41.04 RCW; and creating a new section.

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

**Sec.**  RCW 41.04.665 and 2016 c 177 s 1 are each amended to read as follows:

(1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services;

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or

(iv) The employee is a victim of domestic violence, sexual assault, or stalking;

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, temporary layoff under section 3(5), chapter 32, Laws of 2010 1st sp. sess., or stalking has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii) or (iv) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) or (iv) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than five hundred twenty-two days of leave, except that, a supervisor may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for the shared leave program because he or she is suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. Shared leave received under the uniformed service shared leave pool in RCW 41.04.685 is not included in this total.

(3) The agency head must allow employees who are veterans, as defined under RCW 41.04.005, and their spouses, to access shared leave from the veterans' in-state service shared leave pool upon employment.

(4) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection ((~~(3)~~)) (4)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

((~~(4)~~)) (5) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(1)(b) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

((~~(5)~~)) (6) Transfers of leave made by an agency head under subsections ((~~(3) and~~)) (4) and (5) of this section shall not exceed the requested amount.

((~~(6)~~)) (7) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency.

((~~(7)~~)) (8) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

((~~(8)~~)) (9) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

((~~(9)~~)) (10)(a) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Unused shared leave may not be returned until one of the following occurs:

(i) The agency head receives from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved; or

(ii) The employee is released to full-time employment; has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months; and the employee's doctor has declined, in writing, the employee's request for a statement indicating the employee's condition has been resolved.

(b) If a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account, the agency head must approve a new shared leave request for the employee.

(c) To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

((~~(10)~~)) (11) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

((~~(11)~~)) (12) The director of financial management may adopt rules as necessary to implement subsection (2) of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 41.04 RCW to read as follows:

(1) The veterans' in-state service shared leave pool is created to allow employees to donate leave to be used as shared leave for:

(a) Veteran employees who meet the requirements of RCW 41.04.665; or

(b) Spouses of veteran employees, who meet the requirements of RCW 41.04.665, who are caring for their spouses.

(2) Participation in the pool shall, at all times, be voluntary on the part of the employee. The office of financial management shall administer the veterans' in-state service shared leave pool.

(3) Employees who are eligible to donate leave under RCW 41.04.665 may donate leave to the veterans' in-state service shared leave pool.

(4) A veteran employee who is eligible for shared leave under RCW 41.04.665 or a spouse of a veteran employee, who is eligible for shared leave under RCW 41.04.665, who is caring for his or her spouse may request shared leave from veterans' in-state service shared leave pool.

(5) Shared leave under this section may not be granted unless the pool has a sufficient balance to fund the requested shared leave for the expected term of service.

(6) Shared leave paid under this section, in combination with an employees's salary, may not exceed the level of the employee's state monthly salary.

(7) Any leave donated must be removed from the personally accumulated leave balance of the employee donating the leave.

(8) All employees who donate to the shared leave pool must specify their intent to donate to the veterans' in-state service shared leave pool.

(9) An employee who receives shared leave from the pool is not required to recontribute such leave to the pool, except as otherwise provided in this section.

(10) Leave that may be donated or received by any one employee must be calculated as in RCW 41.04.665.

(11) As used in this section:

(a) "Employee" has the meaning provided in RCW 41.04.655, except that "employee" as used in this section does not include employees of school districts and educational service districts. "Employee" does not include employees called to service in the uniformed services.

(b) "Monthly salary" includes monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. "Monthly salary" does not include:

(i) Overtime pay;

(ii) Call back pay;

(iii) Standby pay; or

(iv) Performance bonuses.

(c) "Service in the uniformed services" has the meaning provided in RCW 41.04.655.

(d) "Veteran" has the meaning provided in RCW 41.04.005.

(12) The office of financial management shall adopt rules and policies governing the donation and use of shared leave from the veterans' in-state service shared leave pool, including definitions of pay and allowances and guidelines for agencies to use in recordkeeping concerning shared leave.

(13) Agencies shall investigate any alleged abuse of the veterans' in-state service shared leave pool and on a finding of wrongdoing, the employee may be required to repay all of the shared leave received from the veterans' in-state service shared leave pool.

(14) Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2017, in the omnibus appropriations act, this act is null and void.

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