
Appropriations Committee

HB 2127

Brief Description: Concerning additional contribution rates for contributions made after the date the service is rendered for individual employers of Washington state retirement systems.

Sponsors: Representatives Stokesbary and Ormsby.

Brief Summary of Bill

- Requires that employers reporting employees to the state retirement systems accurately report the date of first employment (including employment with a controlled entity) upon enrollment, including for those that choose the Higher Education Retirement Plan instead of the Public Employees' Retirement Plan 3.
- Requires the Department of Retirement System (DRS) to collect interest on late-reported contributions if the amount owed to the retirement system exceeds \$100,000.
- Permits the Pension Funding Council to adopt individual employer contribution rates, in lieu of a charge of late contribution rates and interest.
- Requires the individual contribution rates be sufficient to ensure that the cost of late contributions are not passed on to other retirement system employers and employees.

Hearing Date: 2/27/19

Staff: David Pringle (786-7310).

Background:

The Pension Funding Council (PFC) was created by the Legislature in 1998 to adopt the long-term economic assumptions and employer contribution rates for most of the state's retirement systems. The PFC also administers audits of the actuarial analysis produced for the PFC by the State Actuary.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The membership of the PFC consists of the chair and ranking minority members of the Senate Ways and Means Committee and the House Appropriations Committee, and the directors of the Office of Financial Management (OFM) and the Department of Retirement Services.

The Office of the State Actuary (State Actuary) is responsible for recommending appropriate member and employer contribution rates for the Public Employees', Teachers', School Employees', and Washington State Patrol Retirement Systems and the Law Enforcement Officers' and Fire Fighters' Retirement System Plan 1 to the PFC. The PFC is required to adopt the pension contribution rates for the upcoming fiscal biennium no later than July 31 of those even-numbered years.

The employer contribution rates adopted by the PFC for each of the retirement systems, referred to as the "basic" employer contributions rates, are adopted consistent with the overall results of the actuarial valuation results provided by the State Actuary. Basic employer contribution rates are calculated by the State Actuary for each system or plan and are charged as an equal percent of plan member-covered salary for all employers. In addition to the basic employer contribution rates, many of the retirement systems also include employer contribution rates to amortize the unfunded accrued actuarial liability (often referred to as simply the unfunded liability) in the Public Employees' Retirement System Plan 1 and the Teachers' Retirement System Plan 1.

The Department of Retirement Systems (DRS) was created in 1976 to administer the various retirement systems that provide benefits for state and local government employees in Washington, collectively referred to as the Washington State Retirement Systems. The retirement systems include the Public Employees' Retirement System (PERS); the Teachers' Retirement System (TRS); the School Employees' Retirement System (SERS); the Law Enforcement Officers' and Fire Fighters' System (LEOFF); the Washington State Patrol Retirement System (WSPRS); and the Public Safety Employees' Retirement System (PSERS).

The DRS requires employers to determine the plan membership and the employer contributions that are due for members of the state retirement plans they employ. For each retirement system member, the employer must calculate those contribution amounts, report the amounts due to the DRS, and then submit payment to the DRS by the fifteenth of the month following the close of a reporting period. Payments received more than three business days after the fifteenth of the month are considered late and may be subject to interest at a rate of 1 percent per month on the outstanding balance.

The PERS, TRS, SERS, LEOFF, WSPRS, and PSERS systems contain penalty provisions to punish employers or employers that knowingly falsify, or permit to be falsified, any records of the retirement system. Depending on the retirement system, the penalty for violating the false statement provisions is a gross misdemeanor or a Class B felony. The false claims provisions were enacted at or near the origins of most of the retirement systems. For example, in the Teachers' Retirement System the false claims provisions were enacted in 1937, and in the PERS system in 1947.

In the event that member or employer contributions are made other than immediately after service is rendered, the DRS may also charge interest on member or employer contributions owed to the DRS as determined by the Director of the DRS. This DRS authority was enacted by the Legislature in 1994 with a finding that when contributions are not made at the time service is

rendered, the state retirement system trust funds lose investment income, which is a major source of pension funding.

In 2018 the Division II Court of Appeals ruled in *Dolan v. King County* that a court may exercise its equitable authority and supplant a decision of the DRS to charge interest on late contributions, thereby substituting a judicial determination of what portion of those late contributions will be paid by all of the members and employers of a retirement plan through higher overall contribution rates in place of a statutory determination. The Supreme Court of Washington denied review.

Summary of Bill:

Employers reporting employees to the retirement systems must accurately report the date of first employment (including employment with a controlled entity) upon enrollment, including for those that choose the Higher Education Retirement Plan instead of the Public Employees' Retirement Plan 3. Failure of an employer to knowingly submit complete records is a violation of the falsification of retirement system records provisions.

The Department of Retirement System (DRS) must collect interest on late-reported contributions if the amount owed to the retirement system exceeds \$100,000. If the amount of late-reported service appears sufficient to affect the rates in a retirement plan, the DRS must report that to the State Actuary. The State Actuary will calculate the liability associated with the payments, and report the results to the DRS, the employer, and the Pension Funding Council.

The Pension Funding Council is authorized to adopt individual employer contribution rates, in lieu of charging the employer for late contribution rates and interest. The individual employer contribution rates must be sufficient to ensure that the cost of late contributions are not passed on to other retirement system employers and employees. If an individual employer contribution rate is imposed, the DRS may adjust an earlier determination that an employer owes contributions and interest.

Appropriation: None.

Fiscal Note: Requested on February 26, 2019.

Effective Date: The bill contains an emergency clause and takes effect immediately.