

**ESSB 5187** - H AMD TO H AMD (H-1823.1/23) **527**

By Representative Caldier

**SCOPE AND OBJECT 04/03/2023**

1 On page 611, after line 30, insert the following:

2 "Sec. 938. RCW 41.05.011 and 2019 c 411 s 4 are each amended to  
3 read as follows:

4 The definitions in this section apply throughout this chapter  
5 unless the context clearly requires otherwise.

6 (1) "Authority" means the Washington state health care authority.

7 (2) "Board" means the public employees' benefits board  
8 established under RCW 41.05.055 and the school employees' benefits  
9 board established under RCW 41.05.740.

10 (3) "Dependent care assistance program" means a benefit plan  
11 whereby employees and school employees may pay for certain  
12 employment related dependent care with pretax dollars as provided in  
13 the salary reduction plan under this chapter pursuant to 26 U.S.C.  
14 Sec. 129 or other sections of the internal revenue code.

15 (4) "Director" means the director of the authority.

16 (5) "Emergency service personnel killed in the line of duty"  
17 means law enforcement officers and firefighters as defined in RCW  
18 41.26.030, members of the Washington state patrol retirement fund as  
19 defined in RCW 43.43.120, and reserve officers and firefighters as  
20 defined in RCW 41.24.010 who die as a result of injuries sustained  
21 in the course of employment as determined consistent with Title 51  
22 RCW by the department of labor and industries.

23 (6)(a) "Employee" for the public employees' benefits board  
24 program includes all employees of the state, whether or not covered  
25 by civil service; elected and appointed officials of the executive  
26 branch of government, including full-time members of boards,  
27 commissions, or committees; justices of the supreme court and judges

1 of the court of appeals and the superior courts; and members of the  
2 state legislature. Pursuant to contractual agreement with the  
3 authority, "employee" may also include: (i) Employees of a county,  
4 municipality, or other political subdivision of the state and  
5 members of the legislative authority of any county, city, or town  
6 who are elected to office after February 20, 1970, if the  
7 legislative authority of the county, municipality, or other  
8 political subdivision of the state submits application materials to  
9 the authority to provide any of its insurance programs by contract  
10 with the authority, as provided in RCW 41.04.205 and 41.05.021(1)  
11 (g); (ii) employees of employee organizations representing state  
12 civil service employees, at the option of each such employee  
13 organization; (iii) through December 31, 2019, employees of a school  
14 district if the authority agrees to provide any of the school  
15 districts' insurance programs by contract with the authority as  
16 provided in RCW 28A.400.350; (iv) employees of a tribal government,  
17 if the governing body of the tribal government seeks and receives  
18 the approval of the authority to provide any of its insurance  
19 programs by contract with the authority, as provided in RCW  
20 41.05.021(1) (f) and (g); (v) employees of the Washington health  
21 benefit exchange if the governing board of the exchange established  
22 in RCW 43.71.020 seeks and receives approval of the authority to  
23 provide any of its insurance programs by contract with the  
24 authority, as provided in RCW 41.05.021(1) (g) and (n); and (vi)  
25 through December 31, 2019, employees of a charter school established  
26 under chapter 28A.710 RCW. "Employee" does not include: Adult family  
27 home providers; unpaid volunteers; patients of state hospitals;  
28 inmates; employees of the Washington state convention and trade  
29 center as provided in RCW 41.05.110; students of institutions of  
30 higher education as determined by their institution; and any others  
31 not expressly defined as employees under this chapter or by the  
32 authority under this chapter.

33 (b) Effective January 1, 2020, "school employee" for the school  
34 employees' benefits board program includes:

1 (i) All employees of school districts and charter schools  
2 established under chapter 28A.710 RCW;

3 (ii) Represented employees of educational service districts; and

4 (iii) Effective January 1, 2024, all employees of educational  
5 service districts.

6 (7) "Employee group" means employees of a similar employment  
7 type, such as administrative, represented classified, nonrepresented  
8 classified excluding such employees in educational service districts  
9 until December 31, 2023, confidential, represented certificated, or  
10 nonrepresented certificated excluding such employees in educational  
11 service districts until December 31, 2023, within a school  
12 employees' benefits board organization.

13 (8)(a) "Employer" for the public employees' benefits board  
14 program means the state of Washington.

15 (b) "Employer" for the school employees' benefits board program  
16 means school districts and educational service districts and charter  
17 schools established under chapter 28A.710 RCW.

18 (9) "Employer group" means those counties, municipalities,  
19 political subdivisions, the Washington health benefit exchange,  
20 tribal governments, employee organizations representing state civil  
21 service employees, and through December 31, 2019, school districts,  
22 charter schools, and through December 31, 2023, educational service  
23 districts obtaining employee benefits through a contractual  
24 agreement with the authority to participate in benefit plans  
25 developed by the public employees' benefits board.

26 (10)(a) "Employing agency" for the public employees' benefits  
27 board program means a division, department, or separate agency of  
28 state government, including an institution of higher education; a  
29 county, municipality, or other political subdivision; and a tribal  
30 government covered by this chapter.

31 (b) "Employing agency" for the school employees' benefits board  
32 program means school districts, educational service districts, and  
33 charter schools.

34

1 (11) "Faculty" means an academic employee of an institution of  
2 higher education whose workload is not defined by work hours but  
3 whose appointment, workload, and duties directly serve the  
4 institution's academic mission, as determined under the authority of  
5 its enabling statutes, its governing body, and any applicable  
6 collective bargaining agreement.

7 (12) "Flexible benefit plan" means a benefit plan that allows  
8 employees and school employees to choose the level of health care  
9 coverage provided and the amount of employee or school employee  
10 contributions from among a range of choices offered by the authority.

11 (13) "Insuring entity" means an insurer as defined in chapter  
12 48.01 RCW, a health care service contractor as defined in chapter  
13 48.44 RCW, or a health maintenance organization as defined in  
14 chapter 48.46 RCW.

15 (14) "Medical flexible spending arrangement" means a benefit  
16 plan whereby state and school employees may reduce their salary  
17 before taxes to pay for medical expenses not reimbursed by insurance  
18 as provided in the salary reduction plan under this chapter pursuant  
19 to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

20 (15) "Participant" means an individual who fulfills the  
21 eligibility and enrollment requirements under the salary reduction  
22 plan.

23 (16) "Plan year" means the time period established by the  
24 authority.

25 (17) "Premium payment plan" means a benefit plan whereby public  
26 employees may pay their share of group health plan premiums with  
27 pretax dollars as provided in the salary reduction plan under this  
28 chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the  
29 internal revenue code.

30 (18) "Public employee" has the same meaning as employee and  
31 school employee.

32 (19) "Retired or disabled school employee" means:  
33  
34

1 (a) Persons who separated from employment with a school district  
2 or educational service district and are receiving a retirement  
3 allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

4 (b) Persons who separate from employment with a school district,  
5 educational service district, or charter school on or after October  
6 1, 1993, and immediately upon separation receive a retirement  
7 allowance under chapter 41.32, 41.35, or 41.40 RCW;

8 (c) Persons who separate from employment with a school district,  
9 educational service district, or charter school due to a total and  
10 permanent disability, and are eligible to receive a deferred  
11 retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

12 (20) "Salary" means a state or school employee's monthly salary  
13 or wages.

14 (21) "Salary reduction plan" means a benefit plan whereby public  
15 employees may agree to a reduction of salary on a pretax basis to  
16 participate in the dependent care assistance program, medical  
17 flexible spending arrangement, or premium payment plan offered  
18 pursuant to 26 U.S.C. Sec. 125 or other sections of the internal  
19 revenue code.

20 (22) "School employees' benefits board organization" means a  
21 public school district or educational service district or charter  
22 school established under chapter 28A.710 RCW that is required to  
23 participate in benefit plans provided by the school employees'  
24 benefits board.

25 (23) "School year" means school year as defined in RCW 28A.  
26 150.203(11).

27 (24) "Seasonal employee" means a state employee hired to work  
28 during a recurring, annual season with a duration of three months or  
29 more, and during the 2023-25 fiscal biennium employees of the  
30 legislature the duration of the regular legislative session for that  
31 year, and anticipated to return each season to perform similar work.

32 (25) "Separated employees" means persons who separate from  
33 employment with an employer as defined in:

34 (a) RCW 41.32.010(17) on or after July 1, 1996; or

1 (b) RCW 41.35.010 on or after September 1, 2000; or  
2 (c) RCW 41.40.010 on or after March 1, 2002;  
3 and who are at least age fifty-five and have at least ten years of  
4 service under the teachers' retirement system plan 3 as defined in  
5 RCW 41.32.010(33), the Washington school employees' retirement  
6 system plan 3 as defined in RCW 41.35.010, or the public employees'  
7 retirement system plan 3 as defined in RCW 41.40.010.

8 (26) "State purchased health care" or "health care" means  
9 medical and health care, pharmaceuticals, and medical equipment  
10 purchased with state and federal funds by the department of social  
11 and health services, the department of health, the basic health  
12 plan, the state health care authority, the department of labor and  
13 industries, the department of corrections, the department of  
14 veterans affairs, and local school districts.

15 (27) "Tribal government" means an Indian tribal government as  
16 defined in section 3(32) of the employee retirement income security  
17 act of 1974, as amended, or an agency or instrumentality of the  
18 tribal government, that has government offices principally located  
19 in this state.

20

21 **Sec. 1.** RCW 41.05.065 and 2018 c 260 s 12 are each amended to  
22 read as follows:

23 (1) The public employees' benefits board shall study all matters  
24 connected with the provision of health care coverage, life  
25 insurance, liability insurance, accidental death and dismemberment  
26 insurance, and disability income insurance or any of, or a  
27 combination of, the enumerated types of insurance for employees and  
28 their dependents on the best basis possible with relation both to  
29 the welfare of the employees and to the state. However, liability  
30 insurance shall not be made available to dependents.

31 (2) The public employees' benefits board shall develop employee  
32 benefit plans that include comprehensive health care benefits for  
33 employees. In developing these plans, the public employees' benefits  
34 board shall consider the following elements:

1 (a) Methods of maximizing cost containment while ensuring access  
2 to quality health care;

3 (b) Development of provider arrangements that encourage cost  
4 containment and ensure access to quality care, including but not  
5 limited to prepaid delivery systems and prospective payment methods;

6 (c) Wellness incentives that focus on proven strategies, such as  
7 smoking cessation, injury and accident prevention, reduction of  
8 alcohol misuse, appropriate weight reduction, exercise, automobile  
9 and motorcycle safety, blood cholesterol reduction, and nutrition  
10 education;

11 (d) Utilization review procedures including, but not limited to  
12 a cost-efficient method for prior authorization of services,  
13 hospital inpatient length of stay review, requirements for use of  
14 outpatient surgeries and second opinions for surgeries, review of  
15 invoices or claims submitted by service providers, and performance  
16 audit of providers;

17 (e) Effective coordination of benefits; and

18 (f) Minimum standards for insuring entities.

19 (3) To maintain the comprehensive nature of employee health care  
20 benefits, benefits provided to employees shall be substantially  
21 equivalent to the state employees' health benefit plan in effect on  
22 January 1, 1993. Nothing in this subsection shall prohibit changes  
23 or increases in employee point-of-service payments or employee  
24 premium payments for benefits or the administration of a high  
25 deductible health plan in conjunction with a health savings account.  
26 The public employees' benefits board may establish employee  
27 eligibility criteria which are not substantially equivalent to  
28 employee eligibility criteria in effect on January 1, 1993.

29 (4) Except if bargained for under chapter 41.80 RCW, the public  
30 employees' benefits board shall design benefits and determine the  
31 terms and conditions of employee and retired or disabled school  
32 employee participation and coverage, including establishment of  
33 eligibility criteria subject to the requirements of this chapter.  
34 Employer groups obtaining benefits through contractual agreement

1 with the authority for employees defined in RCW 41.05.011(6)(a) (i)  
2 through (vi) may contractually agree with the authority to benefits  
3 eligibility criteria which differs from that determined by the  
4 public employees' benefits board. The eligibility criteria  
5 established by the public employees' benefits board shall be no more  
6 restrictive than the following:

7 (a) Except as provided in (b) through (e) of this subsection, an  
8 employee is eligible for benefits from the date of employment if the  
9 employing agency anticipates he or she will work an average of at  
10 least eighty hours per month and for at least eight hours in each  
11 month for more than six consecutive months. An employee determined  
12 ineligible for benefits at the beginning of his or her employment  
13 shall become eligible in the following circumstances:

14 (i) An employee who works an average of at least eighty hours  
15 per month and for at least eight hours in each month and whose  
16 anticipated duration of employment is revised from less than or  
17 equal to six consecutive months to more than six consecutive months  
18 becomes eligible when the revision is made.

19 (ii) An employee who works an average of at least eighty hours  
20 per month over a period of six consecutive months and for at least  
21 eight hours in each of those six consecutive months becomes eligible  
22 at the first of the month following the six-month averaging period.

23 (b) A seasonal employee is eligible for benefits from the date  
24 of employment if the employing agency anticipates that he or she  
25 will work an average of at least eighty hours per month and for at  
26 least eight hours in each month of the season. A seasonal employee  
27 determined ineligible at the beginning of his or her employment who  
28 works an average of at least eighty hours per month over a period of  
29 six consecutive months and at least eight hours in each of those six  
30 consecutive months becomes eligible at the first of the month  
31 following the six-month averaging period. A benefits-eligible  
32 seasonal employee who works a season of less than nine months shall  
33 not be eligible for the employer contribution during the off season  
34 unless the seasonal employee is an employee of the legislature whose



1 seasonal qualification is through working during the regular  
2 legislative session, but may continue enrollment in benefits during  
3 the off season by self-paying for the benefits. A benefits-eligible  
4 seasonal employee who works a season of nine months or more, or  
5 during the 2023-25 fiscal biennium who works for the legislature  
6 during regular legislative sessions, is eligible for the employer  
7 contribution through the off season following each season worked.

8 (c) Faculty are eligible as follows:

9 (i) Faculty who the employing agency anticipates will work half-  
10 time or more for the entire instructional year or equivalent nine-  
11 month period are eligible for benefits from the date of employment.  
12 Eligibility shall continue until the beginning of the first full  
13 month of the next instructional year, unless the employment  
14 relationship is terminated, in which case eligibility shall cease  
15 the first month following the notice of termination or the effective  
16 date of the termination, whichever is later.

17 (ii) Faculty who the employing agency anticipates will not work  
18 for the entire instructional year or equivalent nine-month period  
19 are eligible for benefits at the beginning of the second consecutive  
20 quarter or semester of employment in which he or she is anticipated  
21 to work, or has actually worked, half-time or more. Such an employee  
22 shall continue to receive uninterrupted employer contributions for  
23 benefits if the employee works at least half-time in a quarter or  
24 semester. Faculty who the employing agency anticipates will not work  
25 for the entire instructional year or equivalent nine-month period,  
26 but who actually work half-time or more throughout the entire  
27 instructional year, are eligible for summer or off-quarter or off-  
28 semester coverage. Faculty who have met the criteria of this  
29 subsection (4)(c)(ii), who work at least two quarters or two  
30 semesters of the academic year with an average academic year  
31 workload of half-time or more for three quarters or two semesters of  
32 the academic year, and who have worked an average of half-time or  
33 more in each of the two preceding academic years shall continue to  
34 receive uninterrupted employer contributions for benefits if he or

1 she works at least half-time in a quarter or semester or works two  
2 quarters or two semesters of the academic year with an average  
3 academic workload each academic year of half-time or more for three  
4 quarters or two semesters. Eligibility under this section ceases  
5 immediately if this criteria is not met.

6 (iii) Faculty may establish or maintain eligibility for benefits  
7 by working for more than one institution of higher education. When  
8 faculty work for more than one institution of higher education,  
9 those institutions shall prorate the employer contribution costs, or  
10 if eligibility is reached through one institution, that institution  
11 will pay the full employer contribution. Faculty working for more  
12 than one institution must alert his or her employers to his or her  
13 potential eligibility in order to establish eligibility.

14 (iv) The employing agency must provide written notice to faculty  
15 who are potentially eligible for benefits under this subsection (4)  
16 (c) of their potential eligibility.

17 (v) To be eligible for maintenance of benefits through averaging  
18 under (c)(ii) of this subsection, faculty must provide written  
19 notification to his or her employing agency or agencies of his or  
20 her potential eligibility.

21 (vi) For the purposes of this subsection (4)(c):

22 (A) "Academic year" means summer, fall, winter, and spring  
23 quarters or summer, fall, and spring semesters;

24 (B) "Half-time" means one-half of the full-time academic  
25 workload as determined by each institution; except that for  
26 community and technical college faculty, half-time academic workload  
27 is calculated according to RCW 28B.50.489.

28 (d) A legislator is eligible for benefits on the date his or her  
29 term begins. All other elected and full-time appointed officials of  
30 the legislative and executive branches of state government are  
31 eligible for benefits on the date his or her term begins or they  
32 take the oath of office, whichever occurs first.

33

34

1 (e) A justice of the supreme court and judges of the court of  
2 appeals and the superior courts become eligible for benefits on the  
3 date he or she takes the oath of office.

4 (f) Except as provided in (c)(i) and (ii) of this subsection,  
5 eligibility ceases for any employee the first of the month following  
6 termination of the employment relationship.

7 (g) In determining eligibility under this section, the employing  
8 agency may disregard training hours, standby hours, or temporary  
9 changes in work hours as determined by the authority under this  
10 section.

11 (h) Insurance coverage for all eligible employees begins on the  
12 first day of the month following the date when eligibility for  
13 benefits is established. If the date eligibility is established is  
14 the first working day of a month, insurance coverage begins on that  
15 date.

16 (i) Eligibility for an employee whose work circumstances are  
17 described by more than one of the eligibility categories in (a)  
18 through (e) of this subsection shall be determined solely by the  
19 criteria of the category that most closely describes the employee's  
20 work circumstances.

21 (j) Except for an employee eligible for benefits under (b) or (c)  
22 (ii) of this subsection, an employee who has established eligibility  
23 for benefits under this section shall remain eligible for benefits  
24 each month in which he or she is in pay status for eight or more  
25 hours, if (i) he or she remains in a benefits-eligible position and  
26 (ii) leave from the benefits-eligible position is approved by the  
27 employing agency. A benefits-eligible seasonal employee is eligible  
28 for the employer contribution in any month of his or her season in  
29 which he or she is in pay status eight or more hours during that  
30 month. Eligibility ends if these conditions are not met, the  
31 employment relationship is terminated, or the employee voluntarily  
32 transfers to a noneligible position.

33 (k) For the purposes of this subsection, the public employees'  
34 benefits board shall define "benefits-eligible position."

1 (5) The public employees' benefits board may authorize premium  
2 contributions for an employee and the employee's dependents in a  
3 manner that encourages the use of cost-efficient managed health care  
4 systems.

5 (6)(a) For any open enrollment period following August 24, 2011,  
6 the public employees' benefits board shall offer a health savings  
7 account option for employees that conforms to section 223, Part VII  
8 of subchapter B of chapter 1 of the internal revenue code of 1986.  
9 The public employees' benefits board shall comply with all  
10 applicable federal standards related to the establishment of health  
11 savings accounts.

12 (b) By November 30, 2015, and each year thereafter, the  
13 authority shall submit a report to the relevant legislative policy  
14 and fiscal committees that includes the following:

15 (i) Public employees' benefits board health plan cost and  
16 service utilization trends for the previous three years, in total  
17 and for each health plan offered to employees;

18 (ii) For each health plan offered to employees, the number and  
19 percentage of employees and dependents enrolled in the plan, and the  
20 age and gender demographics of enrollees in each plan;

21 (iii) Any impact of enrollment in alternatives to the most  
22 comprehensive plan, including the high deductible health plan with a  
23 health savings account, upon the cost of health benefits for those  
24 employees who have chosen to remain enrolled in the most  
25 comprehensive plan.

26 (7) Notwithstanding any other provision of this chapter, for any  
27 open enrollment period following August 24, 2011, the public  
28 employees' benefits board shall offer a high deductible health plan  
29 in conjunction with a health savings account developed under  
30 subsection (6) of this section.

31 (8) Employees shall choose participation in one of the health  
32 care benefit plans developed by the public employees' benefits board  
33 and may be permitted to waive coverage under terms and conditions  
34 established by the public employees' benefits board.

1 (9) The public employees' benefits board shall review plans  
2 proposed by insuring entities that desire to offer property  
3 insurance and/or accident and casualty insurance to state employees  
4 through payroll deduction. The public employees' benefits board may  
5 approve any such plan for payroll deduction by insuring entities  
6 holding a valid certificate of authority in the state of Washington  
7 and which the public employees' benefits board determines to be in  
8 the best interests of employees and the state. The public employees'  
9 benefits board shall adopt rules setting forth criteria by which it  
10 shall evaluate the plans.

11 (10) Before January 1, 1998, the public employees' benefits  
12 board shall make available one or more fully insured long-term care  
13 insurance plans that comply with the requirements of chapter 48.84  
14 RCW. Such programs shall be made available to eligible employees,  
15 retired employees, and retired school employees as well as eligible  
16 dependents which, for the purpose of this section, includes the  
17 parents of the employee or retiree and the parents of the spouse of  
18 the employee or retiree. Employees of local governments, political  
19 subdivisions, and tribal governments not otherwise enrolled in the  
20 public employees' benefits board sponsored medical programs may  
21 enroll under terms and conditions established by the director, if it  
22 does not jeopardize the financial viability of the public employees'  
23 benefits board's long-term care offering.

24 (a) Participation of eligible employees or retired employees and  
25 retired school employees in any long-term care insurance plan made  
26 available by the public employees' benefits board is voluntary and  
27 shall not be subject to binding arbitration under chapter 41.56 RCW.  
28 Participation is subject to reasonable underwriting guidelines and  
29 eligibility rules established by the public employees' benefits  
30 board and the health care authority.

31 (b) The employee, retired employee, and retired school employee  
32 are solely responsible for the payment of the premium rates  
33 developed by the health care authority. The health care authority is  
34 authorized to charge a reasonable administrative fee in addition to

1 the premium charged by the long-term care insurer, which shall  
2 include the health care authority's cost of administration,  
3 marketing, and consumer education materials prepared by the health  
4 care authority and the office of the insurance commissioner.

5 (c) To the extent administratively possible, the state shall  
6 establish an automatic payroll or pension deduction system for the  
7 payment of the long-term care insurance premiums.

8 (d) The public employees' benefits board and the health care  
9 authority shall establish a technical advisory committee to provide  
10 advice in the development of the benefit design and establishment of  
11 underwriting guidelines and eligibility rules. The committee shall  
12 also advise the public employees' benefits board and authority on  
13 effective and cost-effective ways to market and distribute the long-  
14 term care product. The technical advisory committee shall be  
15 comprised, at a minimum, of representatives of the office of the  
16 insurance commissioner, providers of long-term care services,  
17 licensed insurance agents with expertise in long-term care  
18 insurance, employees, retired employees, retired school employees,  
19 and other interested parties determined to be appropriate by the  
20 public employees' benefits board.

21 (e) The health care authority shall offer employees, retired  
22 employees, and retired school employees the option of purchasing  
23 long-term care insurance through licensed agents or brokers  
24 appointed by the long-term care insurer. The authority, in  
25 consultation with the public employees' benefits board, shall  
26 establish marketing procedures and may consider all premium  
27 components as a part of the contract negotiations with the long-term  
28 care insurer.

29 (f) In developing the long-term care insurance benefit designs,  
30 the public employees' benefits board shall include an alternative  
31 plan of care benefit, including adult day services, as approved by  
32 the office of the insurance commissioner.

33 (g) The health care authority, with the cooperation of the  
34 office of the insurance commissioner, shall develop a consumer

1 education program for the eligible employees, retired employees, and  
2 retired school employees designed to provide education on the  
3 potential need for long-term care, methods of financing long-term  
4 care, and the availability of long-term care insurance products  
5 including the products offered by the public employees' benefits  
6 board.

7 (11) The public employees' benefits board may establish  
8 penalties to be imposed by the authority when the eligibility  
9 determinations of an employing agency fail to comply with the  
10 criteria under this chapter."

11

12 Correct the title.

13

EFFECT: Adds for the duration of the 2023-25 fiscal biennium employees of the Legislature anticipated to work during regular legislative sessions to the definition of "seasonal employee" that qualifies for year-round coverage and employer contributions under the health and insurance benefits of the Public Employees' Benefits Board program.

FISCAL IMPACT: No net change to appropriated levels.

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