
SUBSTITUTE SENATE BILL 6459

State of Washington 63rd Legislature 2014 Regular Session

By Senate Ways & Means (originally sponsored by Senator Tom)

READ FIRST TIME 02/11/14.

1 AN ACT Relating to defining the compensation used for calculating
2 retirement benefits for elected service; and amending RCW 41.40.010.

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

4 **Sec. 1.** RCW 41.40.010 and 2012 c 236 s 6 are each amended to read
5 as follows:

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

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

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

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

17 (4) "Annual increase" means, initially, fifty-nine cents per month
18 per year of service which amount shall be increased each July 1st by
19 three percent, rounded to the nearest cent.

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

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

10 (b) "Average final compensation" for plan 2 and plan 3 members who
11 are not elected to a state or local government position, including a
12 position as an elected judge or justice, after July 1, 2015, means the
13 member's average compensation earnable of the highest consecutive sixty
14 months of service credit months prior to such member's retirement,
15 termination, or death. Periods constituting authorized leaves of
16 absence may not be used in the calculation of average final
17 compensation except under RCW 41.40.710(2) or (c) of this subsection.

18 (c) Except as provided in (d) of this subsection, in calculating
19 average final compensation under this subsection for a member of plan
20 1, 2, or 3, the department of retirement systems shall include:

21 (i) Any compensation forgone by the member during the 2009-2011
22 fiscal biennium as a result of reduced work hours, voluntary leave
23 without pay, temporary reduction in pay implemented prior to December
24 11, 2010, or temporary furloughs if the reduced compensation is an
25 integral part of the employer's expenditure reduction efforts, as
26 certified by the employer; and

27 (ii) Any compensation forgone by a member employed by the state or
28 a local government during the 2011-2013 fiscal biennium as a result of
29 reduced work hours, mandatory leave without pay, temporary layoffs, or
30 reductions to current pay if the reduced compensation is an integral
31 part of the employer's expenditure reduction efforts, as certified by
32 the employer. Reductions to current pay shall not include elimination
33 of previously agreed upon future salary increases.

34 (d) "Average final compensation" for plan 2 and plan 3 members who
35 are elected to a state or local government position, including a
36 position as an elected judge or justice, after July 1, 2015, means:

37 (i) The same as provided in (b) and (c) of this subsection when

1 calculating a member's retirement benefit for all periods of service
2 other than as an elected official; and

3 (ii) The member's average compensation earnable for the highest
4 consecutive sixty months of service as an elected official when
5 calculating the member's retirement benefit for all periods of service
6 as an elected official.

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

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

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

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

22 (A) Retroactive payments to an individual by an employer on
23 reinstatement of the employee in a position, or payments by an employer
24 to an individual in lieu of reinstatement in a position which are
25 awarded or granted as the equivalent of the salary or wage which the
26 individual would have earned during a payroll period shall be
27 considered compensation earnable and the individual shall receive the
28 equivalent service credit;

29 (B) If a leave of absence is taken by an individual for the purpose
30 of serving in the state legislature, the salary which would have been
31 received for the position from which the leave of absence was taken,
32 shall be considered as compensation earnable if the employee's
33 contribution is paid by the employee and the employer's contribution is
34 paid by the employer or employee;

35 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
36 72.09.240;

37 (D) Compensation that a member would have received but for a

1 disability occurring in the line of duty only as authorized by RCW
2 41.40.038;

3 (E) Compensation that a member receives due to participation in the
4 leave sharing program only as authorized by RCW 41.04.650 through
5 41.04.670; and

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

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

12 (A) Remuneration for unused sick leave authorized under RCW
13 41.04.340, 28A.400.210, or 28A.310.490;

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

16 (b) "Compensation earnable" for plan 2 and plan 3 members who are
17 not elected to a state or local government position, including a
18 position as an elected judge or justice, after July 1, 2015, means
19 salaries or wages earned by a member during a payroll period for
20 personal services, including overtime payments, and shall include wages
21 and salaries deferred under provisions established pursuant to sections
22 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
23 shall exclude nonmoney maintenance compensation and lump sum or other
24 payments for deferred annual sick leave, unused accumulated vacation,
25 unused accumulated annual leave, or any form of severance pay.

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

29 (i) Retroactive payments to an individual by an employer on
30 reinstatement of the employee in a position, or payments by an employer
31 to an individual in lieu of reinstatement in a position which are
32 awarded or granted as the equivalent of the salary or wage which the
33 individual would have earned during a payroll period shall be
34 considered compensation earnable to the extent provided above, and the
35 individual shall receive the equivalent service credit;

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

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

3 (B) Such member's actual compensation earnable received for
4 nonlegislative public employment and legislative service combined. Any
5 additional contributions to the retirement system required because
6 compensation earnable under (b)(ii)(A) of this subsection is greater
7 than compensation earnable under (b)(ii)(B) of this subsection shall be
8 paid by the member for both member and employer contributions;

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

11 (iv) Compensation that a member would have received but for a
12 disability occurring in the line of duty only as authorized by RCW
13 41.40.038;

14 (v) Compensation that a member receives due to participation in the
15 leave sharing program only as authorized by RCW 41.04.650 through
16 41.04.670; and

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

22 (c) "Compensation earnable" for plan 2 and plan 3 members who are
23 elected to a state or local government position, including a position
24 as an elected judge or justice, after July 1, 2015, means:

25 (i) The same as provided in (b) of this subsection for all service
26 other than as an elected official; and

27 (ii) Only the salaries earned by a member for service in an elected
28 office for all service as an elected official. Compensation earnable
29 as defined in this subsection (8)(c) shall be used in determining a
30 member's average final compensation for subsection (6)(d)(ii) of this
31 section.

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

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

35 (11) "Eligible position" means:

36 (a) Any position that, as defined by the employer, normally
37 requires five or more months of service a year for which regular
38 compensation for at least seventy hours is earned by the occupant

1 thereof. For purposes of this chapter an employer shall not define
2 "position" in such a manner that an employee's monthly work for that
3 employer is divided into more than one position;

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

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

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

24 (b) "Employer" for plan 2 and plan 3 members, means every branch,
25 department, agency, commission, board, and office of the state, and any
26 political subdivision and municipal corporation of the state admitted
27 into the retirement system, including public agencies created pursuant
28 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
29 31, 2000, school districts and educational service districts will no
30 longer be employers for the public employees' retirement system plan 2.

31 (c) Except as otherwise specifically provided in this chapter,
32 "employer" does not include a government contractor. For purposes of
33 this subsection, a "government contractor" is any entity, including a
34 partnership, limited liability company, for-profit or nonprofit
35 corporation, or person, that provides services pursuant to a contract
36 with an "employer." The determination whether an employer-employee
37 relationship has been established is not based on the relationship

1 between a government contractor and an "employer," but is based solely
2 on the relationship between a government contractor's employee and an
3 "employer" under this chapter.

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

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

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

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

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

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

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

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

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

29 (23) "Membership service" means:

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

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

35 (c) Service not to exceed six consecutive months of probationary
36 service rendered after April 1, 1949, and prior to becoming a member,
37 in the case of any member, upon payment in full by such member of the
38 total amount of the employer's contribution to the retirement fund

1 which would have been required under the law in effect when such
2 probationary service was rendered if the member had been a member
3 during such period, except that the amount of the employer's
4 contribution shall be calculated by the director based on the first
5 month's compensation earnable as a member;

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

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

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

16 (a) Any person who became a member of the system prior to April 1,
17 1949;

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

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

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

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

37 (f) Any member who has been a contributor under the system for two
38 or more years and who has restored all contributions that may have been

1 withdrawn as provided by RCW 41.40.150 and who on the effective date of
2 the individual's retirement has rendered five or more years of service
3 for the state or any political subdivision prior to the time of the
4 admission of the employer into the system; except that the provisions
5 relating to the minimum amount of retirement allowance for the member
6 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
7 apply to the member.

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

11 (27) "Plan 1" means the public employees' retirement system, plan
12 1 providing the benefits and funding provisions covering persons who
13 first became members of the system prior to October 1, 1977.

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

18 (29) "Plan 3" means the public employees' retirement system, plan
19 3 providing the benefits and funding provisions covering persons who:

- 20 (a) First become a member on or after:
 - 21 (i) March 1, 2002, and are employed by a state agency or institute
22 of higher education and who did not choose to enter plan 2; or
 - 23 (ii) September 1, 2002, and are employed by other than a state
24 agency or institute of higher education and who did not choose to enter
25 plan 2; or
- 26 (b) Transferred to plan 3 under RCW 41.40.795.

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

29 (31) "Regular interest" means such rate as the director may
30 determine.

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

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

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

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

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

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

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

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

1 during any calendar month in which multiple service for seventy or more
2 hours is rendered.

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

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

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

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

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

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

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

1 (ii) A member shall receive a total of not more than twelve service
2 credit months of service for such calendar year. If an individual is
3 employed in an eligible position by one or more employers the
4 individual shall receive no more than one service credit month during
5 any calendar month in which multiple service for ninety or more hours
6 is rendered.

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

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

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

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

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

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

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

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

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

27 (41) "State elective position" means any position held by any
28 person elected or appointed to statewide office or elected or appointed
29 as a member of the legislature.

30 (42) "State treasurer" means the treasurer of the state of
31 Washington.

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

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