
SUBSTITUTE HOUSE BILL 2644

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Sommers and Silver; by request of Department of Retirement Systems)

Read first time 02/04/94.

1 AN ACT Relating to retirement contributions and recovery of
2 overpayments; amending RCW 41.50.130, 41.32.500, 41.32.510, and
3 41.40.280; amending 1990 c 274 s 18 (uncodified); adding new sections
4 to chapter 41.50 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) Whenever employer or member contributions are not made at the
8 time service is rendered, the state retirement system trust funds lose
9 investment income which is a major source of pension funding. The
10 department of retirement systems has broad authority to charge interest
11 to compensate for the loss to the trust funds, subject only to explicit
12 statutory provisions to the contrary.

13 (2) The inherent authority of the department to recover all
14 overpayments and unauthorized payments from the retirement trust funds,
15 for the benefit of members and taxpayers, should be established clearly
16 in statute.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.50 RCW
18 to read as follows:

1 The department may charge interest, as determined by the director,
2 on member or employer contributions owing to any of the retirement
3 systems listed in RCW 41.50.030. The department's authority to charge
4 interest shall extend to all optional and mandatory billings for
5 contributions where member or employer contributions are paid other
6 than immediately after service is rendered. Except as explicitly
7 limited by statute, the director may delay the imposition of interest
8 charges on late contributions under this section if the delay is
9 necessary to implement required changes in the department's accounting
10 and information systems.

11 **Sec. 3.** RCW 41.50.130 and 1987 c 490 s 1 are each amended to read
12 as follows:

13 (1) The director may at any time correct errors appearing in the
14 records of the retirement systems listed in RCW 41.50.030. Should any
15 error in such records result in any member ~~((or))~~, beneficiary, or
16 other person or entity receiving more or less than he or she would have
17 been entitled to had the records been correct, the director, subject to
18 the conditions set forth in this section, shall adjust the payment in
19 such a manner that the benefit to which such member ~~((or))~~,
20 beneficiary, or other person or entity was correctly entitled shall be
21 paid in accordance with the following:

22 (a) In the case of underpayments to a member or beneficiary, the
23 retirement system shall correct all future payments from the point of
24 error detection, and shall compute the additional payment due for the
25 allowable prior period which shall be paid in a lump sum by the
26 appropriate retirement system.

27 (b) In the case of overpayments to a member or beneficiary, the
28 retirement system shall adjust the payment in such a manner that the
29 benefit to which such member or beneficiary was correctly entitled
30 shall be reduced by an amount equal to the actuarial equivalent of the
31 amount of overpayment. Alternatively the member shall have the option
32 of repaying the overpayment in a lump sum within ninety days of
33 notification and receive the proper benefit in the future. In the case
34 of overpayments to a member ~~((or))~~, beneficiary, or other person or
35 entity resulting from actual fraud on the part of the member ~~((or))~~,
36 beneficiary, or other person or entity, the benefits shall be adjusted
37 to reflect the full amount of such overpayment, plus interest at the
38 ~~((maximum rate allowed under RCW 19.52.020(1) as it was in effect the~~

1 ~~first month the overpayment occurred~~) rate of one percent per month on
2 the outstanding balance.

3 (c) In the case of overpayments to a person or entity other than a
4 member or beneficiary, the overpayment shall constitute a debt from the
5 person or entity to the department, recovery of which shall not be
6 barred by laches or statute of limitations.

7 (2) Except in the case of actual fraud, in the case of overpayments
8 to a member or beneficiary, the benefits shall be adjusted to reflect
9 only the amount of overpayments made within three years of discovery of
10 the error, notwithstanding any provision to the contrary in chapter
11 4.16 RCW.

12 (3)(a) The employer shall elicit on a written form from all new
13 employees as to their having been retired from a retirement system
14 listed in RCW 41.50.030.

15 (b) In the case of overpayments which result from the failure of an
16 employer to report properly to the department the employment of a
17 retiree from information received in subparagraph (a), the employer
18 shall, upon receipt of a billing from the department, pay into the
19 appropriate retirement system the amount of the overpayment plus
20 interest as determined by the director. However, except in the case of
21 actual employer fraud, the overpayments charged to the employer under
22 this subsection shall not exceed five thousand dollars for each year of
23 overpayments received by a retiree. The retiree's benefits upon
24 reretirement shall not be reduced because of such overpayment except as
25 necessary to recapture contributions required for periods of
26 employment.

27 (c) The provision of this subsection regarding the reduction of
28 retirees' benefits shall apply to recovery actions commenced on or
29 after January 1, 1986, even though the overpayments resulting from
30 retiree employment were discovered by the department prior to that
31 date. The provisions of this subsection regarding the billing of
32 employers for overpayments shall apply to overpayments made after
33 January 1, 1986.

34 (4) Except in the case of actual fraud, no monthly benefit shall be
35 reduced by more than fifty percent of the member's or beneficiary's
36 corrected benefit. Any overpayment not recovered due to the inability
37 to actuarially reduce a member's benefit due to: (a) The provisions of
38 this subsection; or (b) the fact that the retiree's monthly retirement
39 allowance is less than the monthly payment required to effectuate an

1 actuarial reduction, shall constitute a claim against the estate of a
2 member, beneficiary, or other person or entity in receipt of an
3 overpayment.

4 (5) Except as provided in subsection (2) of this section,
5 obligations of employers or members until paid to the department shall
6 constitute a debt from the employer or member to the department,
7 recovery of which shall not be barred by laches or statutes of
8 limitation.

9 NEW SECTION. Sec. 4. A new section is added to chapter 41.50 RCW
10 to read as follows:

11 (1) If a person receives a withdrawal of accumulated contributions
12 from any of the retirement systems listed in RCW 41.50.030 in
13 contravention of the restrictions on withdrawal for the particular
14 system, the member shall no longer be entitled to credit for the period
15 of service represented by the withdrawn contributions. The erroneous
16 withdrawal shall be treated as an authorized withdrawal, subject to all
17 conditions imposed by the member's system for restoration of withdrawn
18 contributions. Failure to restore the contributions within the time
19 permitted by the system shall constitute a waiver by the member of any
20 right to receive a retirement allowance based upon the period of
21 service represented by the withdrawn contributions.

22 (2) All erroneous withdrawals occurring prior to the effective date
23 of this section shall be subject to the provisions of this section.
24 The deadline for restoring the prior erroneous withdrawals shall be
25 five years from the effective date of this section for members who are
26 currently active members of a system.

27 **Sec. 5.** RCW 41.32.500 and 1991 c 35 s 57 are each amended to read
28 as follows:

29 (1) Membership in the retirement system is terminated when a member
30 retires for service or disability, dies, or withdraws ~~((the))~~ his or
31 her accumulated contributions ~~((or does not establish service credit~~
32 ~~with the retirement system for five consecutive years; however, a~~
33 ~~member may retain membership in the teachers' retirement system by~~
34 ~~leaving the accumulated contributions in the teachers' retirement fund~~
35 ~~under one of the following conditions:~~

36 ~~(a) If he or she is eligible for retirement;~~

1 ~~(b) If he or she is a member of another public retirement system in~~
2 ~~the state of Washington by reason of change in employment and has~~
3 ~~arranged to have membership extended during the period of such~~
4 ~~employment;~~

5 ~~(c) If he or she is not eligible for retirement but has established~~
6 ~~five or more years of Washington membership service credit.))~~

7 The prior service certificate becomes void when a member dies((~~7~~))
8 ~~or~~ withdraws the accumulated contributions ((~~or does not establish~~
9 ~~service credit with the retirement system for five consecutive years~~)),
10 and any prior administrative interpretation of the board of trustees,
11 consistent with this section, is hereby ratified, affirmed and
12 approved.

13 (2) ((~~Any member, except an elected official, who reentered service~~
14 ~~and who failed to restore withdrawn contributions, shall now have from~~
15 ~~April 4, 1986, through June 30, 1987, to restore the contributions,~~
16 ~~with interest as determined by the director.~~

17 ~~(3))~~) Within the ninety days following the employee's resumption of
18 employment, the employer shall notify the department of the resumption
19 and the department shall then return to the employer a statement of the
20 potential service credit to be restored, the amount of funds required
21 for restoration, and the date when the restoration must be
22 accomplished. The employee shall be given a copy of the statement and
23 shall sign a copy of the statement which signed copy shall be placed in
24 the employee's personnel file.

25 **Sec. 6.** RCW 41.32.510 and 1982 1st ex.s. c 52 s 15 are each
26 amended to read as follows:

27 Should a member cease to be employed by an employer and request
28 upon a form provided by the department a refund of the member's
29 accumulated contributions with interest, this amount shall be paid to
30 the individual less any withdrawal fee which may be assessed by the
31 director which shall be deposited in the department of retirement
32 systems expense fund. The amount withdrawn, together with interest as
33 determined by the director must be paid if the member desires to
34 reestablish the former service credits. ((~~Termination of employment~~
35 ~~with one employer for the specific purpose of accepting employment with~~
36 ~~another employer or termination with one employer and reemployment with~~
37 ~~the same employer, whether for the same school year or for the ensuing~~
38 ~~school year, shall not qualify a member for a refund of the member's~~

1 accumulated contributions. A member who files an application for a
2 refund of the member's accumulated contributions and subsequently
3 enters into a contract for or resumes public school employment before
4 a refund payment has been made shall not be eligible for such
5 payment.)) A member who files a request for a refund and subsequently
6 enters into employment with an employer prior to the refund being made
7 shall not be eligible for a refund. For purposes of this section, a
8 written or oral employment agreement shall be considered entering into
9 employment.

10 **Sec. 7.** RCW 41.40.280 and 1991 c 35 s 86 are each amended to read
11 as follows:

12 The department may, in its discretion, withhold payment of all or
13 part of a member's contributions for not more than six months after a
14 member has ceased to be an employee. (~~Termination of employment with~~
15 ~~one employer for the purpose of accepting employment with another~~
16 ~~employer or termination with one employer and reemployment with the~~
17 ~~same employer within a period of thirty days shall not qualify a member~~
18 ~~for a refund of his or her accumulated contributions. In addition, a~~
19 ~~member who files an application for a refund of his or her accumulated~~
20 ~~contributions and subsequently becomes employed in an eligible position~~
21 ~~before the expiration of thirty days or before a refund payment has~~
22 ~~been made, shall not be eligible for the refund payment.)) A member
23 who files a request for a refund and subsequently enters into
24 employment with an employer prior to the refund being made shall not be
25 eligible for a refund. For purposes of this section, a written or oral
26 employment agreement shall be considered entering into employment.~~

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 41.50 RCW
28 to read as follows:

29 (1) Notwithstanding RCW 41.50.130, the department is not required
30 to correct, nor to cause any employer to correct the reporting error
31 described in subsection (2) of this section.

32 (2) Standby pay and other similar forms of compensation that are
33 not pay for time worked are not and have never been, a salary or wage
34 for personal services within the meaning of RCW 41.40.010(8),
35 41.32.010(10), or 43.43.120(15), unless otherwise specifically
36 included. Without the department's knowledge, and contrary to RCW
37 41.40.010(8), 41.32.010(10), and 43.43.120(15) some employers have been

1 reporting standby pay to the department as allowable compensation. To
2 avoid unduly impacting the retirement allowances of persons who have
3 retired from the retirement systems authorized by chapter 41.32, 41.40,
4 or 43.43 RCW on or before the effective date of this act, the
5 department will not correct, nor cause to be corrected, any
6 misreporting of standby pay earned through February 28, 1994. Any
7 erroneous reporting of standby pay earned on or after March 1, 1994, to
8 the department as allowable compensation shall be corrected as an error
9 under RCW 41.50.130.

10 (3) The forgiveness of past misreporting under subsection (2) of
11 this section constitutes a benefit enhancement for those individuals
12 whose standby pay was misreported to the department. Prior to the
13 effective date of this act no retirement system member had any right,
14 contractual or otherwise, to have standby pay included as compensation
15 earnable. Under this section, only those individuals identified under
16 subsection (2) of this section may receive compensation credit for
17 standby pay.

18 (4) For purposes of this section, "standby pay" means pay for time
19 not actually worked when the employer requires an employee to be
20 prepared to report for work if the need arises although the need might
21 not arise.

22 **Sec. 9.** 1990 c 274 s 18 (uncodified) is amended to read as
23 follows:

24 (1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are
25 intended by the legislature to effect administrative, rather than
26 substantive, changes to the affected retirement plan. The legislature
27 therefore reserves the right to revoke or amend the 1990 amendments to
28 RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his
29 or her service credit calculated under the 1990 amendments to RCW
30 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

31 (2) The department's retroactive application of the changes made in
32 RCW 41.32.010(27)(b) to all service rendered between October 1, 1977,
33 and August 31, 1990, is consistent with the legislative intent of the
34 1990 changes to RCW 41.32.010(27)(b). If the retroactive application
35 of the 1990 changes resulted in an employer under chapter 28A.310 RCW
36 owing additional employer or employee contributions in excess of the
37 contributions which were payable to the employer under RCW 41.50.132,
38 and the employer has not transmitted the additional contributions as of

1 the effective date of this act, the department shall waive collection
2 of the additional contributions.

--- END ---