HOUSE BILL ANALYSIS
HB 1104

Brief Description: Clarifies definition of retiree– for members of TRS and PERS, and changes limitations on post-retirement employment.

Background:

Limitations on Post-Retirement Employment
Retirement benefits in PERS, TRS, and LEOFF begin accruing on the first day of the month following job termination. However, for PERS and TRS, a person does not become a retiree– until they receive their first benefit check at the end of the month. Persons may not be employed by a retirement system employer during the approximate 30 day period between when they terminate their job and they receive their first retirement benefit in order to meet the requirement that they separate from service.– The federal Internal Revenue Code also restricts tax-qualified plans, such as PERS and TRS, from paying pension benefits unless a separation from service has taken place.

Public retirees are entitled to return to work on a limited basis, but they must first fully separate from service. If an individual returns to state employment even for a limited time prior to fully separating from service, they are required to rejoin the retirement system, repay all retirement benefits received, and make retirement contributions for the period in question.

Determination of Employee Status
To be a member of a Washington State retirement system, a worker must be an employee of a retirement system employer. The prohibitions against receiving retirement benefits while providing services to an employer only apply to retirees who are employees of an employer. Some retirees have had to repay retirement benefits received in error due to the employer's misclassification of them as independent contractors rather than employees.

The Department of Retirement Systems (DRS) uses the common law right of control test adopted by the courts of Washington to determine if a worker is an employee. This test examines whether the employer retained the right to control and direct the worker. If the employer retains that control, the worker is an employee, not an independent contractor. This is the agency practice, but it is not reflected in statute.

If a retiree or beneficiary does receive an overpayment of benefits, the retiree can repay the overpayment as a lump sum or as an actuarial reduction to their continuing benefit. If the overpayment was due to the failure of the employer to properly report the employment status of the employee, the employer must pay the amount of the overpayment plus interest to the appropriate retirement system. The overpayment charged to the employer is limited to $5,000 for each year of overpayments. The limit does not apply in cases of employer fraud.

Prepared by Elissa Benson (786-7191)
House Appropriations Committee
February 4, 1997

Summary:

Limitations on Post-Retirement Employment
For PERS and TRS, a person is considered to be a retiree when his or her benefit begins to accrue. The benefit begins to accrue the first day of the calendar month following the member's separation from service.

Separation from service is defined consistently across the TRS, PERS, and LEOFF statutes as the date a person has terminated all employment with an employer.

The retiree's benefit will be reduced if the retiree returns to work sooner than a full month after their benefit accrual date. The benefit is reduced 5½ percent for every seven hours worked in the month for a maximum of 20 days per month. The reduction will continue until the retiree has remained absent from employment for a full calendar month.

Determination of Employee Status
For the TRS and PERS, the definition of being employed and employee are clarified with specific reference to the common law right of control test. The DRS is directed to adopt rules consistent with common law.

Employers must report to the DRS any retirees in their employ within 10 working days of the retiree's first day of work. If the employer fails to report that the retiree has worked more than the time permitted within applicable post retirement employment restrictions, the employer is liable for the loss to the retirement trust fund.

For the PERS system, the new definitions apply retroactively to any person who retired under the early retirement window enacted in 1992.

Fiscal Note: Available.