

# SENATE BILL REPORT

## SSB 5029

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As Passed Senate, March 16, 1999

**Title:** An act relating to membership in the public employees' retirement system.

**Brief Description:** Establishing membership in the public employees' retirement system.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Franklin, Winsley, Roach, Jacobsen, Long, Fraser, Bauer and Rasmussen; by request of Joint Committee on Pension Policy).

**Brief History:**

**Committee Activity:** Ways & Means: 3/5/99, 3/8/99 [DPS].  
Passed Senate, 3/16/99, 47-0.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5029 be substituted therefor, and the substitute bill do pass.

Signed by Senators Loveland, Chair; Bauer, Vice Chair; Brown, Vice Chair; Fairley, Fraser, Honeyford, Kline, Kohl-Welles, Long, McDonald, Rasmussen, Roach, Rossi, B. Sheldon, Snyder, Spanel, Thibaudeau, West, Winsley, Wojahn and Zarelli.

**Staff:** Pete Cutler (786-7454)

**Background:** Current law prohibits membership in the Public Employees' Retirement System (PERS) if an employee is a member of a retirement system "operated wholly or in part by an agency of the state or a political subdivision." This statute has the effect of excluding from PERS those employees who are covered by another state-administered retirement system such as the Teachers' Retirement System or the Law Enforcement Officers' and Fire Fighters' Retirement System. It also excludes employees covered by the Seattle, Tacoma or Spokane city employee retirement systems; employees covered by the higher education retirement programs; and employees covered by other retirement plans operated by a political subdivision.

Whether an employee is excluded from PERS membership depends on whether the Department of Retirement Systems (DRS) determines that the employees' second retirement plan is "operated wholly or in part" by the employer. The Attorney General's Office has developed guidelines for DRS to use in evaluating whether an employer's involvement with a particular plan is significant enough to constitute the operation, in whole or in part, of the retirement plan.

Several local government employers have been reporting employees as members of PERS even though those employees are also enrolled in qualified defined contribution plans under Section 401 of the Internal Revenue Code (IRC) that are, or appear to be, operated by these employers. The Attorney General's Office has determined that there is no clear statutory

authorization for local government employees to participate in Section 401 defined contribution plans and PERS for the same period of employment.

A number of Washington cities, public utility districts and transit authorities provide defined contribution plans for their employees in addition to being PERS employers. A small number of local districts received guidance from DRS that if they became PERS employees they would be able to exclude from PERS membership any of their employees who elected to be covered by the employer's defined contribution pension plan.

**Summary of Bill:** Participation in an employer-operated defined contribution plan qualified under Section 401 of the IRC does not cause an employee to be excluded from PERS membership. This change applies on a retroactive basis to those employees who have been previously reported as PERS members. Certain PERS employers that have excluded some of their employees from PERS membership due to participation in Section 401 defined contribution plans have the option to terminate their status as a PERS employer by December 31, 1999, with regards to persons employed after the date of their election. If they do not leave PERS, they must cover all their eligible employees in PERS, except that they may continue to exclude employees who are currently excluded or may begin, prospectively, to include such employees in PERS membership.

Current law is also clarified that if a unit of government becomes a PERS employer, it must include all eligible employees in PERS, and may not thereafter withdraw from PERS.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This provides reasonable flexibility to PERS employers and provides useful clarification of the law.

**Testimony Against:** None.

**Testified:** Jim Justin, AWC (pro).