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HOUSE BILL 1923

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By Representatives Ormsby, Sullivan, Hayes, Pollet, Blake, Hope, Orcutt, Alexander, Moscoso, Bergquist, Santos, and Freeman

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1 AN ACT Relating to membership in the Washington public safety  
2 employees' retirement system for employees at city and county  
3 corrections departments, public corrections entities, the department of  
4 corrections, and the department of social and health services who  
5 provide direct care to, or ensure the custody and safety of, offender  
6 and patient populations; amending RCW 41.37.010; and adding a new  
7 section to chapter 41.37 RCW.

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

9 **Sec. 1.** RCW 41.37.010 and 2012 c 236 s 5 are each amended to read  
10 as follows:

11 The definitions in this section apply throughout this chapter,  
12 unless the context clearly requires otherwise.

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

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

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

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

6 (5)(a) "Average final compensation" means the member's average  
7 compensation earnable of the highest consecutive sixty months of  
8 service credit months prior to such member's retirement, termination,  
9 or death. Periods constituting authorized leaves of absence may not be  
10 used in the calculation of average final compensation except under RCW  
11 41.37.290.

12 (b) In calculating average final compensation under (a) of this  
13 subsection, the department of retirement systems shall include:

14 (i) Any compensation forgone by a member employed by a state agency  
15 or institution during the 2009-2011 fiscal biennium as a result of  
16 reduced work hours, mandatory or voluntary leave without pay, temporary  
17 reduction in pay implemented prior to December 11, 2010, or temporary  
18 layoffs if the reduced compensation is an integral part of the  
19 employer's expenditure reduction efforts, as certified by the employer;  
20 and

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

28 (6) "Beneficiary" means any person in receipt of a retirement  
29 allowance or other benefit provided by this chapter resulting from  
30 service rendered to an employer by another person.

31 (7)(a) "Compensation earnable" for members, means salaries or wages  
32 earned by a member during a payroll period for personal services,  
33 including overtime payments, and shall include wages and salaries  
34 deferred under provisions established pursuant to sections 403(b),  
35 414(h), and 457 of the United States internal revenue code, but shall  
36 exclude nonmoney maintenance compensation and lump sum or other  
37 payments for deferred annual sick leave, unused accumulated vacation,  
38 unused accumulated annual leave, or any form of severance pay.

1 (b) "Compensation earnable" for members also includes the following  
2 actual or imputed payments, which are not paid for personal services:

3 (i) Retroactive payments to an individual by an employer on  
4 reinstatement of the employee in a position, or payments by an employer  
5 to an individual in lieu of reinstatement, which are awarded or granted  
6 as the equivalent of the salary or wage which the individual would have  
7 earned during a payroll period shall be considered compensation  
8 earnable to the extent provided in this subsection, and the individual  
9 shall receive the equivalent service credit;

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

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

15 (B) Such member's actual compensation earnable received for  
16 nonlegislative public employment and legislative service combined. Any  
17 additional contributions to the retirement system required because  
18 compensation earnable under (b)(ii)(A) of this subsection is greater  
19 than compensation earnable under (b)(ii)(B) of this subsection shall be  
20 paid by the member for both member and employer contributions;

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

23 (iv) Compensation that a member would have received but for a  
24 disability occurring in the line of duty only as authorized by RCW  
25 41.37.060;

26 (v) Compensation that a member receives due to participation in the  
27 leave sharing program only as authorized by RCW 41.04.650 through  
28 41.04.670; and

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

34 (8) "Department" means the department of retirement systems created  
35 in chapter 41.50 RCW.

36 (9) "Director" means the director of the department.

37 (10) "Eligible position" means any permanent, full-time position  
38 included in subsection (19) of this section.

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

6 (12) "Employer" means the Washington state department of  
7 corrections, the Washington state parks and recreation commission, the  
8 Washington state gambling commission, the Washington state patrol, the  
9 Washington state department of natural resources, ((and)) the  
10 Washington state liquor control board, and the Washington state  
11 department of social and health services; any county corrections  
12 department; any city corrections department not covered under chapter  
13 41.28 RCW; and any public corrections entity created under RCW  
14 39.34.030 by counties, cities not covered under chapter 41.28 RCW, or  
15 both. Except as otherwise specifically provided in this chapter,  
16 "employer" does not include a government contractor. For purposes of  
17 this subsection, a "government contractor" is any entity, including a  
18 partnership, limited liability company, for-profit or nonprofit  
19 corporation, or person, that provides services pursuant to a contract  
20 with an employer. The determination whether an employer-employee  
21 relationship has been established is not based on the relationship  
22 between a government contractor and an employer, but is based solely on  
23 the relationship between a government contractor's employee and an  
24 employer under this chapter.

25 (13) "Final compensation" means the annual rate of compensation  
26 earnable by a member at the time of termination of employment.

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

31 (15) "Index A" means the index for the year prior to the  
32 determination of a postretirement adjustment.

33 (16) "Index B" means the index for the year prior to index A.

34 (17) "Ineligible position" means any position which does not  
35 conform with the requirements set forth in subsection (10) of this  
36 section.

37 (18) "Leave of absence" means the period of time a member is

1 authorized by the employer to be absent from service without being  
2 separated from membership.

3 (19) "Member" means any employee employed by an employer on a full-  
4 time basis:

5 (a) Who is in a position that requires completion of a certified  
6 criminal justice training course and is authorized by their employer to  
7 arrest, conduct criminal investigations, enforce the criminal laws of  
8 the state of Washington, and carry a firearm as part of the job;

9 (b) Whose primary responsibility is to ensure the custody and  
10 security of incarcerated or probationary individuals as a corrections  
11 officer, probation officer, or jailer;

12 (c) Who is a limited authority Washington peace officer, as defined  
13 in RCW 10.93.020, for an employer; ((~~or~~))

14 (d) Whose primary responsibility is to provide direct care to, or  
15 ensure the custody and safety of, offender and patient populations, and  
16 who is in a position that requires completion of defensive tactics  
17 training or de-escalation training, and who is employed by one of the  
18 following state institutions or centers:

19 (i) Juvenile rehabilitation administration;

20 (ii) Mental health hospitals;

21 (iii) Child study and treatment center;

22 (iv) Special commitment center;

23 (v) Institutions or residential sites that serve developmentally  
24 disabled patients or offenders;

25 (e) Whose primary responsibility is to provide direct care to, or  
26 ensure the custody and safety of, offender and patient populations, and  
27 who is employed by a city or county corrections department as set forth  
28 in subsection (12) of this section, a public corrections entity as set  
29 forth in subsection (12) of this section, or the Washington state  
30 department of corrections; or

31 (f) Whose primary responsibility is to supervise members eligible  
32 under this subsection.

33 (20) "Membership service" means all service rendered as a member.

34 (21) "Pension" means payments for life derived from contributions  
35 made by the employer. All pensions shall be paid in monthly  
36 installments.

37 (22) "Plan" means the Washington public safety employees'  
38 retirement system plan 2.

1 (23) "Regular interest" means such rate as the director may  
2 determine.

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

6 (25) "Retirement" means withdrawal from active service with a  
7 retirement allowance as provided by this chapter.

8 (26) "Retirement allowance" means monthly payments to a retiree or  
9 beneficiary as provided in this chapter.

10 (27) "Retirement system" means the Washington public safety  
11 employees' retirement system provided for in this chapter.

12 (28) "Separation from service" occurs when a person has terminated  
13 all employment with an employer.

14 (29) "Service" means periods of employment by a member on or after  
15 July 1, 2006, for one or more employers for which compensation earnable  
16 is paid. Compensation earnable earned for ninety or more hours in any  
17 calendar month shall constitute one service credit month. Compensation  
18 earnable earned for at least seventy hours but less than ninety hours  
19 in any calendar month shall constitute one-half service credit month of  
20 service. Compensation earnable earned for less than seventy hours in  
21 any calendar month shall constitute one-quarter service credit month of  
22 service. Time spent in standby status, whether compensated or not, is  
23 not service.

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

26 (a) Service in any state elective position shall be deemed to be  
27 full-time service.

28 (b) A member shall receive a total of not more than twelve service  
29 credit months of service for such calendar year. If an individual is  
30 employed in an eligible position by one or more employers the  
31 individual shall receive no more than one service credit month during  
32 any calendar month in which multiple service for ninety or more hours  
33 is rendered.

34 (30) "Service credit month" means a month or an accumulation of  
35 months of service credit which is equal to one.

36 (31) "Service credit year" means an accumulation of months of  
37 service credit which is equal to one when divided by twelve.

1 (32) "State actuary" or "actuary" means the person appointed  
2 pursuant to RCW 44.44.010(2).

3 (33) "State elective position" means any position held by any  
4 person elected or appointed to statewide office or elected or appointed  
5 as a member of the legislature.

6 (34) "State treasurer" means the treasurer of the state of  
7 Washington.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.37 RCW  
9 to read as follows:

10 (1) An employee of an employer as defined in RCW 41.37.010(12) who  
11 was a member of the public employees' retirement system plan 2 or plan  
12 3 before January 1, 2014, and on January 1, 2014, meets the eligibility  
13 requirements as set forth in RCW 41.37.010(19), has the following  
14 options during the election period defined in subsection (2) of this  
15 section:

16 (a) Remain in the public employees' retirement system; or

17 (b) Become a member of the public safety employees' retirement  
18 system plan 2 and, be a dual member as provided in chapter 41.54 RCW,  
19 and public employees' retirement system service credit may not be  
20 transferred to the public safety employees' retirement system.

21 (2) The "election period" is the period between January 1, 2014,  
22 and March 1, 2014.

23 (3) A member of the public employees' retirement system plan 2 or  
24 plan 3 who has previously had the opportunity to transfer to the public  
25 safety employees' retirement system is not eligible to become a member  
26 of the public safety employees' retirement system during the election  
27 period.

28 (4) During the election period, employees who are employed by an  
29 employer as defined in RCW 41.37.010(12) remain members of the public  
30 employees' retirement system plan 2 or plan 3, until they elect to join  
31 the public safety employees' retirement system. Members who elect to  
32 join the public safety employees' retirement system as described in  
33 this section will have their membership begin prospectively from the  
34 date of their election.

35 (5) If after March 1, 2014, the member has not made an election to  
36 join the public safety employees' retirement system he or she will  
37 remain in the public employees' retirement system plan 2 or plan 3.

1           (6) An employee who was a member of the public employees'  
2 retirement system plan 1 on or before January 1, 2014, and on or after  
3 January 1, 2014, is employed by an employer as defined in RCW  
4 41.37.010(12) as an employee who meets the eligibility requirements  
5 included in RCW 41.37.010(19), shall remain a member of the public  
6 employees' retirement system plan 1.

7           (7) All new employees hired on or after January 1, 2014, who become  
8 employed by an employer as defined in RCW 41.37.010(12) as an employee  
9 who meets the eligibility requirements included in RCW 41.37.010(19)  
10 will become members of the public safety employees' retirement system.

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