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SENATE BILL 6459

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State of Washington

63rd Legislature

2014 Regular Session

By Senator Tom

Read first time 01/27/14. Referred to Committee on Ways & Means.

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 all months of  
4 service as an elected official when calculating the member's retirement  
5 benefit for all periods of service as an elected official.

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

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

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

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

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

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

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

36 (D) Compensation that a member would have received but for a  
37 disability occurring in the line of duty only as authorized by RCW  
38 41.40.038;

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

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

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

10 (A) Remuneration for unused sick leave authorized under RCW  
11 41.04.340, 28A.400.210, or 28A.310.490;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (11) "Eligible position" means:

34 (a) Any position that, as defined by the employer, normally  
35 requires five or more months of service a year for which regular  
36 compensation for at least seventy hours is earned by the occupant  
37 thereof. For purposes of this chapter an employer shall not define

1 "position" in such a manner that an employee's monthly work for that  
2 employer is divided into more than one position;

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

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

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

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

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

1 on the relationship between a government contractor's employee and an  
2 "employer" under this chapter.

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

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

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

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

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

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

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

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

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

28 (23) "Membership service" means:

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

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

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

1 probationary service was rendered if the member had been a member  
2 during such period, except that the amount of the employer's  
3 contribution shall be calculated by the director based on the first  
4 month's compensation earnable as a member;

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

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

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

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

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

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

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

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

36 (f) Any member who has been a contributor under the system for two  
37 or more years and who has restored all contributions that may have been  
38 withdrawn as provided by RCW 41.40.150 and who on the effective date of



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

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

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

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

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

19 (a) First become a member on or after:

20 (i) March 1, 2002, and are employed by a state agency or institute  
21 of higher education and who did not choose to enter plan 2; or

22 (ii) September 1, 2002, and are employed by other than a state  
23 agency or institute of higher education and who did not choose to enter  
24 plan 2; or

25 (b) Transferred to plan 3 under RCW 41.40.795.

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

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

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

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

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

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

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

10 (37)(a) "Service" for plan 1 members, except as provided in RCW  
11 41.40.088, means periods of employment in an eligible position or  
12 positions for one or more employers rendered to any employer for which  
13 compensation is paid, and includes time spent in office as an elected  
14 or appointed official of an employer. Compensation earnable earned in  
15 full time work for seventy hours or more in any given calendar month  
16 shall constitute one service credit month except as provided in RCW  
17 41.40.088. Compensation earnable earned for less than seventy hours in  
18 any calendar month shall constitute one-quarter service credit month of  
19 service except as provided in RCW 41.40.088. Only service credit  
20 months and one-quarter service credit months shall be counted in the  
21 computation of any retirement allowance or other benefit provided for  
22 in this chapter. Any fraction of a year of service shall be taken into  
23 account in the computation of such retirement allowance or benefits.  
24 Time spent in standby status, whether compensated or not, is not  
25 service.

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

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

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

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

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

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

13 (b) "Service" for plan 2 and plan 3 members, means periods of  
14 employment by a member in an eligible position or positions for one or  
15 more employers for which compensation earnable is paid. Compensation  
16 earnable earned for ninety or more hours in any calendar month shall  
17 constitute one service credit month except as provided in RCW  
18 41.40.088. Compensation earnable earned for at least seventy hours but  
19 less than ninety hours in any calendar month shall constitute one-half  
20 service credit month of service. Compensation earnable earned for less  
21 than seventy hours in any calendar month shall constitute one-quarter  
22 service credit month of service. Time spent in standby status, whether  
23 compensated or not, is 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 (i) Service in any state elective position shall be deemed to be  
27 full time service, except that persons serving in state elective  
28 positions who are members of the Washington school employees'  
29 retirement system, teachers' retirement system, public safety  
30 employees' retirement system, or law enforcement officers' and  
31 firefighters' retirement system at the time of election or appointment  
32 to such position may elect to continue membership in the Washington  
33 school employees' retirement system, teachers' retirement system,  
34 public safety employees' retirement system, or law enforcement  
35 officers' and firefighters' retirement system.

36 (ii) A member shall receive a total of not more than twelve service  
37 credit months of service for such calendar year. If an individual is  
38 employed in an eligible position by one or more employers the

1 individual shall receive no more than one service credit month during  
2 any calendar month in which multiple service for ninety or more hours  
3 is rendered.

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

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

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

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

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

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

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

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

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

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

27 (42) "State treasurer" means the treasurer of the state of  
28 Washington.

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

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