
SENATE BILL 6439

State of Washington 64th Legislature 2016 Regular Session

By Senators Bailey, Conway, Schoesler, Hewitt, and Roach

Read first time 01/20/16. Referred to Committee on Ways & Means.

1 AN ACT Relating to volunteer firefighters and reserve officers
2 assisting with multiregional state emergencies; amending RCW
3 41.40.010; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends that when members
6 of the volunteer firefighters' and reserve officers' retirement plan
7 in chapter 41.24 RCW are fighting state wildfires or assisting with
8 other large-scale multiregional state emergencies, any service
9 rendered toward these emergencies shall not negatively impact the
10 relief and pension benefits provided to those volunteers.

11 **Sec. 2.** RCW 41.40.010 and 2012 c 236 s 6 are each amended to
12 read as follows:

13 As used in this chapter, unless a different meaning is plainly
14 required by the context:

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

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

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

6 (4) "Annual increase" means, initially, fifty-nine cents per
7 month per year of service which amount shall be increased each July
8 1st by three percent, rounded to the nearest cent.

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

12 (6)(a) "Average final compensation" for plan 1 members, means the
13 annual average of the greatest compensation earnable by a member
14 during any consecutive two year period of service credit months for
15 which service credit is allowed; or if the member has less than two
16 years of service credit months then the annual average compensation
17 earnable during the total years of service for which service credit
18 is allowed.

19 (b) "Average final compensation" for plan 2 and plan 3 members,
20 means the member's average compensation earnable of the highest
21 consecutive sixty months of service credit months prior to such
22 member's retirement, termination, or death. Periods constituting
23 authorized leaves of absence may not be used in the calculation of
24 average final compensation except under RCW 41.40.710(2) or (c) of
25 this subsection.

26 (c) In calculating average final compensation under this
27 subsection for a member of plan 1, 2, or 3, the department of
28 retirement systems shall include:

29 (i) Any compensation forgone by the member during the 2009-2011
30 fiscal biennium as a result of reduced work hours, voluntary leave
31 without pay, temporary reduction in pay implemented prior to December
32 11, 2010, or temporary furloughs if the reduced compensation is an
33 integral part of the employer's expenditure reduction efforts, as
34 certified by the employer; and

35 (ii) Any compensation forgone by a member employed by the state
36 or a local government during the 2011-2013 fiscal biennium as a
37 result of reduced work hours, mandatory leave without pay, temporary
38 layoffs, or reductions to current pay if the reduced compensation is
39 an integral part of the employer's expenditure reduction efforts, as
40 certified by the employer. Reductions to current pay shall not

1 include elimination of previously agreed upon future salary
2 increases.

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

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

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

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

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

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

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

33 (D) Compensation that a member would have received but for a
34 disability occurring in the line of duty only as authorized by RCW
35 41.40.038;

36 (E) Compensation that a member receives due to participation in
37 the leave sharing program only as authorized by RCW 41.04.650 through
38 41.04.670; and

39 (F) Compensation that a member receives for being in standby
40 status. For the purposes of this section, a member is in standby

1 status when not being paid for time actually worked and the employer
2 requires the member to be prepared to report immediately for work, if
3 the need arises, although the need may not arise.

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

5 (A) Remuneration for unused sick leave authorized under RCW
6 41.04.340, 28A.400.210, or 28A.310.490;

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

9 (b) "Compensation earnable" for plan 2 and plan 3 members, means
10 salaries or wages earned by a member during a payroll period for
11 personal services, including overtime payments, and shall include
12 wages and salaries deferred under provisions established pursuant to
13 sections 403(b), 414(h), and 457 of the United States Internal
14 Revenue Code, but shall exclude nonmoney maintenance compensation and
15 lump sum or other payments for deferred annual sick leave, unused
16 accumulated vacation, unused accumulated annual leave, or any form of
17 severance pay.

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

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

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

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

33 (B) Such member's actual compensation earnable received for
34 nonlegislative public employment and legislative service combined.
35 Any additional contributions to the retirement system required
36 because compensation earnable under (b)(ii)(A) of this subsection is
37 greater than compensation earnable under (b)(ii)(B) of this
38 subsection shall be paid by the member for both member and employer
39 contributions;

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

3 (iv) Compensation that a member would have received but for a
4 disability occurring in the line of duty only as authorized by RCW
5 41.40.038;

6 (v) Compensation that a member receives due to participation in
7 the leave sharing program only as authorized by RCW 41.04.650 through
8 41.04.670; and

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

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

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

17 (11) "Eligible position" means:

18 (a) Any position that, as defined by the employer, normally
19 requires five or more months of service a year for which regular
20 compensation for at least seventy hours is earned by the occupant
21 thereof.

22 (i) For purposes of this chapter an employer shall not define
23 "position" in such a manner that an employee's monthly work for that
24 employer is divided into more than one position;

25 (ii) For purposes of this chapter service earned by any
26 firefighter or reserve officer who is enrolled as a member of the
27 relief and compensation provisions or the pension provisions of the
28 volunteer firefighters' and reserve officers' relief and pension
29 principal fund under chapter 41.24 RCW while serving in a
30 multiregional emergency shall not apply toward determining if a
31 position meets the definition in this subsection;

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

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

1 (13)(a) "Employer" for plan 1 members, means every branch,
2 department, agency, commission, board, and office of the state, any
3 political subdivision or association of political subdivisions of the
4 state admitted into the retirement system, and legal entities
5 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and
6 the term shall also include any labor guild, association, or
7 organization the membership of a local lodge or division of which is
8 comprised of at least forty percent employees of an employer (other
9 than such labor guild, association, or organization) within this
10 chapter. The term may also include any city of the first class that
11 has its own retirement system.

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

20 (c) Except as otherwise specifically provided in this chapter,
21 "employer" does not include a government contractor. For purposes of
22 this subsection, a "government contractor" is any entity, including a
23 partnership, limited liability company, for-profit or nonprofit
24 corporation, or person, that provides services pursuant to a contract
25 with an "employer." The determination whether an employer-employee
26 relationship has been established is not based on the relationship
27 between a government contractor and an "employer," but is based
28 solely on the relationship between a government contractor's employee
29 and an "employer" under this chapter.

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

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

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

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

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

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

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

7 (21) "Member" means any employee included in the membership of
8 the retirement system, as provided for in RCW 41.40.023. RCW
9 41.26.045 does not prohibit a person otherwise eligible for
10 membership in the retirement system from establishing such membership
11 effective when he or she first entered an eligible position.

12 (22) "Member account" or "member's account" for purposes of plan
13 3 means the sum of the contributions and earnings on behalf of the
14 member in the defined contribution portion of plan 3.

15 (23) "Membership service" means:

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

17 (b) All service after October 1, 1947, to any employer prior to
18 the time of its admission into the retirement system for which member
19 and employer contributions, plus interest as required by RCW
20 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

21 (c) Service not to exceed six consecutive months of probationary
22 service rendered after April 1, 1949, and prior to becoming a member,
23 in the case of any member, upon payment in full by such member of the
24 total amount of the employer's contribution to the retirement fund
25 which would have been required under the law in effect when such
26 probationary service was rendered if the member had been a member
27 during such period, except that the amount of the employer's
28 contribution shall be calculated by the director based on the first
29 month's compensation earnable as a member;

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

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

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

1 (a) Any person who became a member of the system prior to April
2 1, 1949;

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

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

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

15 (e) Any member who has restored all contributions that may have
16 been withdrawn as provided by RCW 41.40.150 and who on the effective
17 date of the individual's retirement becomes entitled to be credited
18 with ten years or more of membership service except that the
19 provisions relating to the minimum amount of retirement allowance for
20 the member upon retirement at age seventy as found in RCW
21 41.40.190(4) shall not apply to the member;

22 (f) Any member who has been a contributor under the system for
23 two or more years and who has restored all contributions that may
24 have been withdrawn as provided by RCW 41.40.150 and who on the
25 effective date of the individual's retirement has rendered five or
26 more years of service for the state or any political subdivision
27 prior to the time of the admission of the employer into the system;
28 except that the provisions relating to the minimum amount of
29 retirement allowance for the member upon retirement at age seventy as
30 found in RCW 41.40.190(4) shall not apply to the member.

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

34 (27) "Plan 1" means the public employees' retirement system, plan
35 1 providing the benefits and funding provisions covering persons who
36 first became members of the system prior to October 1, 1977.

37 (28) "Plan 2" means the public employees' retirement system, plan
38 2 providing the benefits and funding provisions covering persons who
39 first became members of the system on and after October 1, 1977, and
40 are not included in plan 3.

1 (29) "Plan 3" means the public employees' retirement system, plan
2 3 providing the benefits and funding provisions covering persons who:
3 (a) First become a member on or after:
4 (i) March 1, 2002, and are employed by a state agency or
5 institute of higher education and who did not choose to enter plan 2;
6 or
7 (ii) September 1, 2002, and are employed by other than a state
8 agency or institute of higher education and who did not choose to
9 enter plan 2; or
10 (b) Transferred to plan 3 under RCW 41.40.795.
11 (30) "Prior service" means all service of an original member
12 rendered to any employer prior to October 1, 1947.
13 (31) "Regular interest" means such rate as the director may
14 determine.
15 (32) "Retiree" means any person who has begun accruing a
16 retirement allowance or other benefit provided by this chapter
17 resulting from service rendered to an employer while a member.
18 (33) "Retirement" means withdrawal from active service with a
19 retirement allowance as provided by this chapter.
20 (34) "Retirement allowance" means the sum of the annuity and the
21 pension.
22 (35) "Retirement system" means the public employees' retirement
23 system provided for in this chapter.
24 (36) "Separation from service" occurs when a person has
25 terminated all employment with an employer. Separation from service
26 or employment does not occur, and if claimed by an employer or
27 employee may be a violation of RCW 41.40.055, when an employee and
28 employer have a written or oral agreement to resume employment with
29 the same employer following termination. Mere expressions or
30 inquiries about postretirement employment by an employer or employee
31 that do not constitute a commitment to reemploy the employee after
32 retirement are not an agreement under this subsection.
33 (37)(a) "Service" for plan 1 members, except as provided in RCW
34 41.40.088, means periods of employment in an eligible position or
35 positions for one or more employers rendered to any employer for
36 which compensation is paid, and includes time spent in office as an
37 elected or appointed official of an employer. Compensation earnable
38 earned in full time work for seventy hours or more in any given
39 calendar month shall constitute one service credit month except as
40 provided in RCW 41.40.088. Compensation earnable earned for less than

1 seventy hours in any calendar month shall constitute one-quarter
2 service credit month of service except as provided in RCW 41.40.088.
3 Only service credit months and one-quarter service credit months
4 shall be counted in the computation of any retirement allowance or
5 other benefit provided for in this chapter. Any fraction of a year of
6 service shall be taken into account in the computation of such
7 retirement allowance or benefits. Time spent in standby status,
8 whether compensated or not, is not service.

9 (i) Service by a state employee officially assigned by the state
10 on a temporary basis to assist another public agency, shall be
11 considered as service as a state employee: PROVIDED, That service to
12 any other public agency shall not be considered service as a state
13 employee if such service has been used to establish benefits in any
14 other public retirement system.

15 (ii) An individual shall receive no more than a total of twelve
16 service credit months of service during any calendar year. If an
17 individual is employed in an eligible position by one or more
18 employers the individual shall receive no more than one service
19 credit month during any calendar month in which multiple service for
20 seventy or more hours is rendered.

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

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

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

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

33 (b) "Service" for plan 2 and plan 3 members, means periods of
34 employment by a member in an eligible position or positions for one
35 or more employers for which compensation earnable is paid.
36 Compensation earnable earned for ninety or more hours in any calendar
37 month shall constitute one service credit month except as provided in
38 RCW 41.40.088. Compensation earnable earned for at least seventy
39 hours but less than ninety hours in any calendar month shall
40 constitute one-half service credit month of service. Compensation

1 earnable earned for less than seventy hours in any calendar month
2 shall constitute one-quarter service credit month of service. Time
3 spent in standby status, whether compensated or not, is not service.

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

6 (i) Service in any state elective position shall be deemed to be
7 full time service, except that persons serving in state elective
8 positions who are members of the Washington school employees'
9 retirement system, teachers' retirement system, public safety
10 employees' retirement system, or law enforcement officers' and
11 firefighters' retirement system at the time of election or
12 appointment to such position may elect to continue membership in the
13 Washington school employees' retirement system, teachers' retirement
14 system, public safety employees' retirement system, or law
15 enforcement officers' and firefighters' retirement system.

16 (ii) A member shall receive a total of not more than twelve
17 service credit months of service for such calendar year. If an
18 individual is employed in an eligible position by one or more
19 employers the individual shall receive no more than one service
20 credit month during any calendar month in which multiple service for
21 ninety or more hours is rendered.

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

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

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

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

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

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

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

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

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

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

8 (42) "State treasurer" means the treasurer of the state of
9 Washington.

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

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