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HOUSE BILL 2819

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State of Washington                      65th Legislature                      2018 Regular Session

By Representatives Eslick, Chapman, and Chandler

Read first time 01/17/18. Referred to Committee on Appropriations.

1            AN ACT Relating to public employees' retirement system eligible  
2 positions, including when an employer must report a retiree to the  
3 department of retirement systems; and amending RCW 41.40.010 and  
4 41.50.139.

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

6            **Sec. 1.** RCW 41.40.010 and 2012 c 236 s 6 are each amended to  
7 read as follows:

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

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

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

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

19            (4) "Annual increase" means, initially, fifty-nine cents per  
20 month per year of service which amount shall be increased each July  
21 1st by 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  
6 during any consecutive two year period of service credit months for  
7 which service credit is allowed; or if the member has less than two  
8 years of service credit months then the annual average compensation  
9 earnable during the total years of service for which service credit  
10 is allowed.

11 (b) "Average final compensation" for plan 2 and plan 3 members,  
12 means the member's average compensation earnable of the highest  
13 consecutive sixty months of service credit months prior to such  
14 member's retirement, termination, or death. Periods constituting  
15 authorized leaves of absence may not be used in the calculation of  
16 average final compensation except under RCW 41.40.710(2) or (c) of  
17 this subsection.

18 (c) In calculating average final compensation under this  
19 subsection for a member of plan 1, 2, or 3, the department of  
20 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  
28 or a local government during the 2011-2013 fiscal biennium as a  
29 result of reduced work hours, mandatory leave without pay, temporary  
30 layoffs, or reductions to current pay if the reduced compensation is  
31 an integral part of the employer's expenditure reduction efforts, as  
32 certified by the employer. Reductions to current pay shall not  
33 include elimination of previously agreed upon future salary  
34 increases.

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

38 (b) "Beneficiary" for plan 2 and plan 3 members, means any person  
39 in receipt of a retirement allowance or other benefit provided by

1 this chapter resulting from service rendered to an employer by  
2 another person.

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

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

11 (A) Retroactive payments to an individual by an employer on  
12 reinstatement of the employee in a position, or payments by an  
13 employer to an individual in lieu of reinstatement in a position  
14 which are awarded or granted as the equivalent of the salary or wage  
15 which the individual would have earned during a payroll period shall  
16 be considered compensation earnable and the individual shall receive  
17 the equivalent service credit;

18 (B) If a leave of absence is taken by an individual for the  
19 purpose of serving in the state legislature, the salary which would  
20 have been received for the position from which the leave of absence  
21 was taken, shall be considered as compensation earnable if the  
22 employee's contribution is paid by the employee and the employer's  
23 contribution is paid by the employer or employee;

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

26 (D) Compensation that a member would have received but for a  
27 disability occurring in the line of duty only as authorized by RCW  
28 41.40.038;

29 (E) Compensation that a member receives due to participation in  
30 the leave sharing program only as authorized by RCW 41.04.650 through  
31 41.04.670; and

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

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

38 (A) Remuneration for unused sick leave authorized under RCW  
39 41.04.340, 28A.400.210, or 28A.310.490;

1 (B) Remuneration for unused annual leave in excess of (~~thirty~~  
2 ~~days~~) two hundred forty hours as authorized by RCW 43.01.044 and  
3 43.01.041.

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

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

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

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

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

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

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

37 (iv) Compensation that a member would have received but for a  
38 disability occurring in the line of duty only as authorized by RCW  
39 41.40.038;

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

4 (vi) 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 (9) "Department" means the department of retirement systems  
10 created in chapter 41.50 RCW.

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

12 (11)(a) "Eligible position" means:

13 (~~(a)~~) (i) Any position that, as defined by the employer,  
14 normally requires five or more months of service a year for which  
15 regular compensation for at least seventy hours is earned by the  
16 occupant thereof, provided that in cities and towns with a population  
17 of ten thousand or less a position is not an eligible position unless  
18 it normally requires ten or more months of service a year for which  
19 regular compensation for at least one hundred hours is earned by the  
20 occupant thereof. For purposes of this chapter an employer shall not  
21 define "position" in such a manner that an employee's monthly work  
22 for that employer is divided into more than one position;

23 (~~(b)~~) (ii) Any position occupied by an elected official or  
24 person appointed directly by the governor, or appointed by the chief  
25 justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2),  
26 for which compensation is paid. However, elected officials in cities  
27 and towns with a population of ten thousand or less are not included  
28 under this subsection (11)(a)(ii).

29 (b) An employer that engages the services of a retiree that  
30 previously performed substantially the same duties with that employer  
31 must consider that position an eligible position subject to this  
32 chapter.

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

38 (13)(a) "Employer" for plan 1 members, means every branch,  
39 department, agency, commission, board, and office of the state, any  
40 political subdivision or association of political subdivisions of the

1 state admitted into the retirement system, and legal entities  
2 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and  
3 the term shall also include any labor guild, association, or  
4 organization the membership of a local lodge or division of which is  
5 comprised of at least forty percent employees of an employer (other  
6 than such labor guild, association, or organization) within this  
7 chapter. The term may also include any city of the first class that  
8 has its own retirement system.

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

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

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

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

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

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

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

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

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

4 (21) "Member" means any employee included in the membership of  
5 the retirement system, as provided for in RCW 41.40.023. RCW  
6 41.26.045 does not prohibit a person otherwise eligible for  
7 membership in the retirement system from establishing such membership  
8 effective when he or she first entered an eligible position.

9 (22) "Member account" or "member's account" for purposes of plan  
10 3 means the sum of the contributions and earnings on behalf of the  
11 member in the defined contribution portion of plan 3.

12 (23) "Membership service" means:

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

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

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

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

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

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

38 (a) Any person who became a member of the system prior to April  
39 1, 1949;

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

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

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

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

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

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

32 (27) "Plan 1" means the public employees' retirement system, plan  
33 1 providing the benefits and funding provisions covering persons who  
34 first became members of the system prior to October 1, 1977.

35 (28) "Plan 2" means the public employees' retirement system, plan  
36 2 providing the benefits and funding provisions covering persons who  
37 first became members of the system on and after October 1, 1977, and  
38 are not included in plan 3.

39 (29) "Plan 3" means the public employees' retirement system, plan  
40 3 providing the benefits and funding provisions covering persons who:



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

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

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

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

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

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

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

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

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

1 shall constitute one-quarter service credit month of service. Time  
2 spent in standby status, whether compensated or not, is not service.

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

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

15 (ii) A member shall receive a total of not more than twelve  
16 service credit months of service for such 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 ninety or more hours is rendered.

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

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

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

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

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

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

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

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

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

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

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

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

11 **Sec. 2.** RCW 41.50.139 and 1997 c 254 s 16 are each amended to  
12 read as follows:

13 (1) Retirement system employers shall elicit on a written form  
14 from all new employees to an eligible position as to their having  
15 been retired from a retirement system listed in RCW 41.50.030.  
16 Employers must report any retirees in their employ in an eligible  
17 position to the department. If a retiree in an eligible position  
18 works in excess of applicable postretirement employment restrictions  
19 and the employer failed to report the employment of the retiree, that  
20 employer is liable for the loss to the trust fund.

21 (2) If an employer erroneously reports to the department that an  
22 employee has separated from service such that a person receives a  
23 retirement allowance in contravention of the applicable retirement  
24 system statutes, the person's retirement status shall remain  
25 unaffected and the employer is liable for the resulting overpayments.

26 (3) Upon receipt of a billing from the department, the employer  
27 shall pay into the appropriate retirement system trust fund the  
28 amount of the overpayment plus interest as determined by the  
29 director. The employer's liability under this section shall not  
30 exceed the amount of overpayments plus interest received by the  
31 retiree within three years of the date of discovery, except in the  
32 case of fraud. In the case of fraud, the employer is liable for the  
33 entire overpayment plus interest.

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