
SENATE BILL 5352

State of Washington 67th Legislature 2021 Regular Session

By Senators Braun, Dozier, King, and Wilson, J.

Read first time 01/26/21. Referred to Committee on Ways & Means.

1 AN ACT Relating to allowing new government employees the option
2 of opting out of retirement system membership if the employee is age
3 sixty or older when first hired, or when the employee's employer opts
4 into retirement plan participation; amending RCW 41.40.023,
5 41.35.030, and 41.32.032; adding new sections to chapter 41.40 RCW;
6 adding new sections to chapter 41.35 RCW; adding a new section to
7 chapter 41.32 RCW; adding a new section to chapter 41.50 RCW;
8 creating a new section; and providing an effective date.

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

10 NEW SECTION. **Sec. 1.** The legislature intends to allow certain
11 employees a one-time, irrevocable opportunity to opt out of
12 participation in the retirement plan. This opportunity is not
13 retroactive, and applies only to the following two types of
14 employees:

15 (1) Employees with no prior service in one of the retirement
16 systems listed in RCW 41.50.030 who are age 60 or older when newly
17 hired into a public employees' retirement system, school employees'
18 retirement system, or teachers' retirement system position. For these
19 employees, the decision must be made prior to the first date the
20 employer would be required to report the employee to the department
21 of retirement systems as a plan member.

1 (2) Existing employees who are age 60 or older when the
2 employee's employer opts into participation in the public employees'
3 retirement system. For these employees, the decision must take place
4 on or before the first day the employer begins participating in the
5 public employees' retirement system.

6 To minimize the cost to the retirement system and the likelihood
7 that employers will create incentives to induce employees to opt out
8 of the retirement system, the legislature intends that employers of
9 employees who opt out of plan participation under this act will
10 continue to make the same retirement contributions toward the normal
11 cost and unfunded actuarial liability based on that employee's salary
12 that the employer would have made if the employee had chosen to join
13 the retirement system. Since the employees who opt out are not plan
14 members and are not eligible for retirement benefits, the employees
15 should make no contributions toward the plan.

16 The legislature intends that the department of retirement systems
17 administer this provision in a way that is consistent with federal
18 tax law.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.40
20 RCW to read as follows:

21 Employees with no prior service in one of the retirement systems
22 listed in RCW 41.50.030 who are age 60 or older when newly hired, or
23 are existing employees of an employer and age 60 or older when that
24 employer opts into participation in the public employees' retirement
25 system, shall be given the opportunity to opt out of participation.
26 For new employees, the decision must be made prior to the first date
27 the employer would be required to report the employee to the
28 department as a plan member. For employees of agencies who opt into
29 public employees' retirement system participation, this decision is
30 irrevocable and must take place on or before the first day the
31 employer begins participating in the public employees' retirement
32 system. Employees who opt out of plan membership under this chapter
33 will make no contributions toward the retirement system, and will not
34 be eligible for retirement benefits. Any employee offered this choice
35 who does not make an affirmative decision becomes a plan member as
36 determined in this chapter.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.40
38 RCW to read as follows:

1 Employers of employees who opt out of plan participation under
2 this chapter will continue to make retirement contributions toward
3 the normal cost under RCW 41.45.155(1) and unfunded actuarial
4 liability under RCW 41.45.150(4) based on that employee's salary as
5 though the employee had chosen to join the public employees'
6 retirement system.

7 **Sec. 4.** RCW 41.40.023 and 2010 c 80 s 1 are each amended to read
8 as follows:

9 Membership in the retirement system shall consist of all
10 regularly compensated employees and appointive and elective officials
11 of employers, as defined in this chapter, with the following
12 exceptions:

13 (1) Persons in ineligible positions;

14 (2) Employees of the legislature except the officers thereof
15 elected by the members of the senate and the house and legislative
16 committees, unless membership of such employees be authorized by the
17 said committee;

18 (3)(a) Persons holding elective offices or persons appointed
19 directly by the governor: PROVIDED, That such persons shall have the
20 option of applying for membership during such periods of employment:
21 AND PROVIDED FURTHER, That any persons holding or who have held
22 elective offices or persons appointed by the governor who are members
23 in the retirement system and who have, prior to becoming such
24 members, previously held an elective office, and did not at the start
25 of such initial or successive terms of office exercise their option
26 to become members, may apply for membership to be effective during
27 such term or terms of office, and shall be allowed to establish the
28 service credit applicable to such term or terms of office upon
29 payment of the employee contributions therefor by the employee with
30 interest as determined by the director and employer contributions
31 therefor by the employer or employee with interest as determined by
32 the director: AND PROVIDED FURTHER, That all contributions with
33 interest submitted by the employee under this subsection shall be
34 placed in the employee's individual account in the employee's savings
35 fund and be treated as any other contribution made by the employee,
36 with the exception that any contributions submitted by the employee
37 in payment of the employer's obligation, together with the interest
38 the director may apply to the employer's contribution, shall not be

1 considered part of the member's annuity for any purpose except
2 withdrawal of contributions;

3 (b) A member holding elective office who has elected to apply for
4 membership pursuant to (a) of this subsection and who later wishes to
5 be eligible for a retirement allowance shall have the option of
6 ending his or her membership in the retirement system. A member
7 wishing to end his or her membership under this subsection must file,
8 on a form supplied by the department, a statement indicating that the
9 member agrees to irrevocably abandon any claim for service for future
10 periods served as an elected official. A member who receives more
11 than fifteen thousand dollars per year in compensation for his or her
12 elective service, adjusted annually for inflation by the director, is
13 not eligible for the option provided by this subsection (3)(b);

14 (4) Employees holding membership in, or receiving pension
15 benefits under, any retirement plan operated wholly or in part by an
16 agency of the state or political subdivision thereof, or who are by
17 reason of their current employment contributing to or otherwise
18 establishing the right to receive benefits from any such retirement
19 plan except as follows:

20 (a) In any case where the retirement system has in existence an
21 agreement with another retirement system in connection with exchange
22 of service credit or an agreement whereby members can retain service
23 credit in more than one system, such an employee shall be allowed
24 membership rights should the agreement so provide;

25 (b) An employee shall be allowed membership if otherwise eligible
26 while receiving survivor's benefits;

27 (c) An employee shall not either before or after June 7, 1984, be
28 excluded from membership or denied service credit pursuant to this
29 subsection solely on account of: (i) Membership in the plan created
30 under chapter 2.14 RCW; or (ii) enrollment under the relief and
31 compensation provisions or the pension provisions of the volunteer
32 firefighters' (~~((and reserve officers'))~~) and reserve officers'
33 relief and pension (~~((principal))~~) principal fund under chapter 41.24
34 RCW;

35 (d) Except as provided in RCW 41.40.109, on or after July 25,
36 1999, an employee shall not be excluded from membership or denied
37 service credit pursuant to this subsection solely on account of
38 participation in a defined contribution pension plan qualified under
39 section 401 of the internal revenue code;

1 (e) Employees who have been reported in the retirement system
2 prior to July 25, 1999, and who participated during the same period
3 of time in a defined contribution pension plan qualified under
4 section 401 of the internal revenue code and operated wholly or in
5 part by the employer, shall not be excluded from previous retirement
6 system membership and service credit on account of such
7 participation;

8 (5) Patient and inmate help in state charitable, penal, and
9 correctional institutions;

10 (6) "Members" of a state veterans' home or state soldiers' home;

11 (7) Persons employed by an institution of higher learning or
12 community college, primarily as an incident to and in furtherance of
13 their education or training, or the education or training of a
14 spouse;

15 (8) Employees of an institution of higher learning or community
16 college during the period of service necessary to establish
17 eligibility for membership in the retirement plans operated by such
18 institutions;

19 (9) Persons rendering professional services to an employer on a
20 fee, retainer, or contract basis or when the income from these
21 services is less than fifty percent of the gross income received from
22 the person's practice of a profession;

23 (10) Persons appointed after April 1, 1963, by the state liquor
24 (~~control~~) and cannabis board as contract liquor store managers;

25 (11) Employees of a labor guild, association, or organization:
26 PROVIDED, That elective officials and employees of a labor guild,
27 association, or organization which qualifies as an employer within
28 this chapter shall have the option of applying for membership;

29 (12) Retirement system retirees: PROVIDED, That following
30 reemployment in an eligible position, a retiree may elect to
31 prospectively become a member of the retirement system if otherwise
32 eligible;

33 (13) Persons employed by or appointed or elected as an official
34 of a first-class city that has its own retirement system: PROVIDED,
35 That any member elected or appointed to an elective office on or
36 after April 1, 1971, shall have the option of continuing as a member
37 of this system in lieu of becoming a member of the city system. A
38 member who elects to continue as a member of this system shall pay
39 the appropriate member contributions and the city shall pay the
40 employer contributions at the rates prescribed by this chapter. The

1 city shall also transfer to this system all of such member's
2 accumulated contributions together with such further amounts as
3 necessary to equal all employee and employer contributions which
4 would have been paid into this system on account of such service with
5 the city and thereupon the member shall be granted credit for all
6 such service. Any city that becomes an employer as defined in RCW
7 41.40.010(13) as the result of an individual's election under this
8 subsection shall not be required to have all employees covered for
9 retirement under the provisions of this chapter. Nothing in this
10 subsection shall prohibit a city of the first-class with its own
11 retirement system from: (a) Transferring all of its current employees
12 to the retirement system established under this chapter, or (b)
13 allowing newly hired employees the option of continuing coverage
14 under the retirement system established by this chapter.

15 Notwithstanding any other provision of this chapter, persons
16 transferring from employment with a first-class city of over four
17 hundred thousand population that has its own retirement system to
18 employment with the state department of agriculture may elect to
19 remain within the retirement system of such city and the state shall
20 pay the employer contributions for such persons at like rates as
21 prescribed for employers of other members of such system;

22 (14) Employees who (a) are not citizens of the United States, (b)
23 do not reside in the United States, and (c) perform duties outside of
24 the United States;

25 (15) Employees who (a) are not citizens of the United States, (b)
26 are not covered by chapter 41.48 RCW, (c) are not excluded from
27 membership under this chapter or chapter 41.04 RCW, (d) are residents
28 of this state, and (e) make an irrevocable election to be excluded
29 from membership, in writing, which is submitted to the director
30 within thirty days after employment in an eligible position;

31 (16) Employees who are citizens of the United States and who
32 reside and perform duties for an employer outside of the United
33 States: PROVIDED, That unless otherwise excluded under this chapter
34 or chapter 41.04 RCW, the employee may apply for membership (a)
35 within thirty days after employment in an eligible position and
36 membership service credit shall be granted from the first day of
37 membership service, and (b) after this thirty-day period, but
38 membership service credit shall be granted only if payment is made
39 for the noncredited membership service under RCW 41.50.165(2),
40 otherwise service shall be from the date of application;

1 (17) The city manager or chief administrative officer of a city
2 or town, other than a retiree, who serves at the pleasure of an
3 appointing authority: PROVIDED, That such persons shall have the
4 option of applying for membership within thirty days from date of
5 their appointment to such positions. Persons serving in such
6 positions as of April 4, 1986, shall continue to be members in the
7 retirement system unless they notify the director in writing prior to
8 December 31, 1986, of their desire to withdraw from membership in the
9 retirement system. A member who withdraws from membership in the
10 system under this section shall receive a refund of the member's
11 accumulated contributions.

12 Persons serving in such positions who have not opted for
13 membership within the specified thirty days, may do so by paying the
14 amount required under RCW 41.50.165(2) for the period from the date
15 of their appointment to the date of acceptance into membership;

16 (18) Persons serving as: (a) The chief administrative officer of
17 a public utility district as defined in RCW 54.16.100; (b) the chief
18 administrative officer of a port district formed under chapter 53.04
19 RCW; or (c) the chief administrative officer of a county who serves
20 at the pleasure of an appointing authority: PROVIDED, That such
21 persons shall have the option of applying for membership within
22 thirty days from the date of their appointment to such positions.
23 Persons serving in such positions as of July 25, 1999, shall continue
24 to be members in the retirement system unless they notify the
25 director in writing prior to December 31, 1999, of their desire to
26 withdraw from membership in the retirement system. A member who
27 withdraws from membership in the system under this section shall
28 receive a refund of the member's accumulated contributions upon
29 termination of employment or as otherwise consistent with the plan's
30 tax qualification status as defined in internal revenue code section
31 401.

32 Persons serving in such positions who have not opted for
33 membership within the specified thirty days, may do so at a later
34 date by paying the amount required under RCW 41.50.165(2) for the
35 period from the date of their appointment to the date of acceptance
36 into membership;

37 (19) Persons enrolled in state-approved apprenticeship programs,
38 authorized under chapter 49.04 RCW, and who are employed by local
39 governments to earn hours to complete such apprenticeship programs,
40 if the employee is a member of a union-sponsored retirement plan and

1 is making contributions to such a retirement plan or if the employee
2 is a member of a Taft-Hartley retirement plan;

3 (20) Beginning on July 22, 2001, persons employed exclusively as
4 trainers or trainees in resident apprentice training programs
5 operated by housing authorities authorized under chapter 35.82 RCW,
6 (a) if the trainer or trainee is a member of a union-sponsored
7 retirement plan and is making contributions to such a retirement plan
8 or (b) if the employee is a member of a Taft-Hartley retirement plan;

9 (21) Employees who are removed from membership under RCW
10 41.40.823 or 41.40.633; (~~and~~)

11 (22) Persons employed as the state director of fire protection
12 under RCW 43.43.938 who were previously members of the law
13 enforcement officers' and firefighters' retirement system plan 2
14 under chapter 41.26 RCW may continue as a member of the law
15 enforcement officers' and firefighters' retirement system in lieu of
16 becoming a member of this system; and

17 (23) Employees who exercise the opt out provision created in
18 section 2 of this act.

19 NEW SECTION. Sec. 5. A new section is added to chapter 41.35
20 RCW to read as follows:

21 Employees with no prior service in one of the retirement systems
22 listed in RCW 41.50.030 who are age 60 or older when newly hired
23 shall be given the opportunity to opt out of participation in the
24 school employees' retirement system. This decision must be made prior
25 to the first date the employer would be required to report the
26 employee to the department as a plan member. Employees who opt out of
27 plan membership under this chapter will make no contributions toward
28 the retirement system, and will not be eligible for retirement
29 benefits. Any employee offered this choice who does not make an
30 affirmative decision becomes a plan member as determined in this
31 chapter.

32 NEW SECTION. Sec. 6. A new section is added to chapter 41.35
33 RCW to read as follows:

34 Employers of employees who opt out of school employees'
35 retirement system plan participation under this chapter will continue
36 to make retirement contributions toward the normal cost under RCW
37 41.45.155(3) and unfunded actuarial liability under RCW 41.45.150(5)

1 based on that employee's salary as though the employee had chosen to
2 join the school employees' retirement system.

3 **Sec. 7.** RCW 41.35.030 and 2005 c 131 s 9 are each amended to
4 read as follows:

5 Membership in the retirement system shall consist of all
6 regularly compensated classified employees and appointive and
7 elective officials of employers, as defined in this chapter, with the
8 following exceptions:

9 (1) Persons in ineligible positions;

10 (2)(a) Persons holding elective offices or persons appointed
11 directly by the governor: PROVIDED, That such persons shall have the
12 option of applying for membership during such periods of employment:
13 AND PROVIDED FURTHER, That any persons holding or who have held
14 elective offices or persons appointed by the governor who are members
15 in the retirement system and who have, prior to becoming such
16 members, previously held an elective office, and did not at the start
17 of such initial or successive terms of office exercise their option
18 to become members, may apply for membership to be effective during
19 such term or terms of office, and shall be allowed to establish the
20 service credit applicable to such term or terms of office upon
21 payment of the employee contributions therefor by the employee with
22 interest as determined by the director and employer contributions
23 therefor by the employer or employee with interest as determined by
24 the director: AND PROVIDED FURTHER, That all contributions with
25 interest submitted by the employee under this subsection shall be
26 placed in the employee's individual account in the employee's savings
27 fund and be treated as any other contribution made by the employee,
28 with the exception that any contributions submitted by the employee
29 in payment of the employer's obligation, together with the interest
30 the director may apply to the employer's contribution, shall not be
31 considered part of the member's annuity for any purpose except
32 withdrawal of contributions;

33 (b) A member holding elective office who has elected to apply for
34 membership pursuant to (a) of this subsection and who later wishes to
35 be eligible for a retirement allowance shall have the option of
36 ending his or her membership in the retirement system. A member
37 wishing to end his or her membership under this subsection must file
38 on a form supplied by the department a statement indicating that the
39 member agrees to irrevocably abandon any claim for service for future

1 periods served as an elected official. A member who receives more
2 than fifteen thousand dollars per year in compensation for his or her
3 elective service, adjusted annually for inflation by the director, is
4 not eligible for the option provided by this subsection (2)(b);

5 (3) Retirement system retirees: PROVIDED, That following
6 reemployment in an eligible position, a retiree may elect to
7 prospectively become a member of the retirement system if otherwise
8 eligible;

9 (4) Persons enrolled in state-approved apprenticeship programs,
10 authorized under chapter 49.04 RCW, and who are employed by employers
11 to earn hours to complete such apprenticeship programs, if the
12 employee is a member of a union-sponsored retirement plan and is
13 making contributions to such a retirement plan or if the employee is
14 a member of a Taft-Hartley retirement plan;

15 (5) Persons rendering professional services to an employer on a
16 fee, retainer, or contract basis or when the income from these
17 services is less than fifty percent of the gross income received from
18 the person's practice of a profession;

19 (6) Substitute employees, except for the purposes of the purchase
20 of service credit under RCW 41.35.033. Upon the return or termination
21 of the absent employee a substitute employee is replacing, that
22 substitute employee shall no longer be ineligible under this
23 subsection;

24 (7) Employees who (a) are not citizens of the United States, (b)
25 do not reside in the United States, and (c) perform duties outside of
26 the United States;

27 (8) Employees who (a) are not citizens of the United States, (b)
28 are not covered by chapter 41.48 RCW, (c) are not excluded from
29 membership under this chapter or chapter 41.04 RCW, (d) are residents
30 of this state, and (e) make an irrevocable election to be excluded
31 from membership, in writing, which is submitted to the director
32 within thirty days after employment in an eligible position;

33 (9) Employees who are citizens of the United States and who
34 reside and perform duties for an employer outside of the United
35 States: PROVIDED, That unless otherwise excluded under this chapter
36 or chapter 41.04 RCW, the employee may apply for membership (a)
37 within thirty days after employment in an eligible position and
38 membership service credit shall be granted from the first day of
39 membership service, and (b) after this thirty-day period, but
40 membership service credit shall be granted only if payment is made

1 for the noncredited membership service under RCW 41.50.165(2),
2 otherwise service shall be from the date of application; (~~and~~)

3 (10) Employees who are removed from membership under RCW
4 41.35.683 or 41.35.423; and

5 (11) Employees who exercise the opt out provision created in
6 section 6 of this act.

7 **Sec. 8.** RCW 41.32.032 and 1995 c 239 s 103 are each amended to
8 read as follows:

9 (1) Any teacher, as defined under RCW 41.32.010, who is first
10 employed by a public school on or after June 7, 1984, shall become a
11 member of the retirement system if otherwise eligible, except as
12 described in subsection (3) of this section.

13 (2) Any person who before June 7, 1984, has established service
14 credit under chapter 41.40 RCW while employed in an educational staff
15 associate position and who is employed in such a position on or after
16 June 7, 1984, has the following options:

17 (a) To remain a member of the public employees' retirement system
18 notwithstanding the provisions of RCW 41.32.240 or 41.32.780; or

19 (b) To irrevocably elect to join the retirement system under this
20 chapter and to receive service credit for previous periods of
21 employment in any position included under RCW 41.32.010. This service
22 credit and corresponding employee contribution shall be computed as
23 though the person had then been a member of the retirement system
24 under this chapter. All employee contributions credited to a member
25 under chapter 41.40 RCW for service now to be credited to the
26 retirement system under this chapter shall be transferred to the
27 system and the member shall not receive any credit nor enjoy any
28 rights under chapter 41.40 RCW for those periods of service. The
29 member shall pay any difference between the employee contributions
30 made under chapter 41.40 RCW and transferred under this subsection
31 and what would have been required under this chapter, including
32 interest as set by the director. The member shall be given until July
33 1, 1989, to make the irrevocable election permitted under this
34 section. The election shall be made by submitting written
35 notification as required by the department requesting credit under
36 this section and by remitting any necessary proof of service or
37 payments within the time set by the department.

38 Any person, not employed as an educational staff associate on
39 June 7, 1984, may, before June 30 of the fifth school year after that

1 person's return to employment as a teacher, request and establish
2 membership and credit under this subsection.

3 (3) Teachers with no prior service in one of the retirement
4 systems listed in RCW 41.50.030 who are age 60 or older when newly
5 hired shall be given the opportunity to opt out of participation in
6 the retirement plan. This decision must be made prior to the first
7 date the employer would be required to report the employee to the
8 department as a plan member. Teachers who opt out of plan membership
9 under this chapter will make no contributions toward the retirement
10 system, and will not be eligible for retirement benefits. Any teacher
11 offered this choice who does not make an affirmative decision becomes
12 a plan member as determined in this chapter.

13 NEW SECTION. Sec. 9. A new section is added to chapter 41.32
14 RCW to read as follows:

15 Employers of teachers who opt out of plan participation under
16 this chapter will continue to make retirement contributions toward
17 the normal cost under RCW 41.45.155(4) and unfunded actuarial
18 liability under RCW 41.45.150(6) based on that teacher's salary as
19 though the employee had chosen to join the teachers' retirement
20 system.

21 NEW SECTION. Sec. 10. A new section is added to chapter 41.50
22 RCW to read as follows:

23 (1) The department must administer the opt-out provision in
24 chapters 41.32, 41.35, and 41.40 RCW so as to comply with the
25 internal revenue code, Title 26 U.S.C., and specifically with plan
26 qualification requirements imposed on governmental plans by section
27 401(a) of the internal revenue code. Any section or provision of this
28 act that is susceptible to more than one construction must be
29 interpreted so as to meet this requirement.

30 (2) If the internal revenue service determines that this act is
31 in conflict with the plan qualification requirements for governmental
32 plans in section 401(a) of the internal revenue code, and the
33 conflict cannot be resolved through administrative action or
34 statutory change, then the act is null and void.

35 NEW SECTION. Sec. 11. This act takes effect January 1, 2022.

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