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**SENATE BILL 5328**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Van De Wege, Conway, Saldaña, Keiser, Nguyen, Randall, Shewmake, Lovick, Holy, Fortunato, and Lias; by request of Select Committee on Pension Policy

1 AN ACT Relating to public safety employees' retirement plan  
2 membership for public safety telecommunicators; amending RCW  
3 41.37.005 and 41.37.010; adding a new section to chapter 41.37 RCW;  
4 creating a new section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that the  
7 entities that employ public safety telecommunicators can be set up at  
8 many levels, including state, federal, and nonprofit.

9 (2) The legislature intends this act to apply only to:

10 (a) Newly-hired public safety telecommunicators who would  
11 otherwise be eligible for the public employees' retirement system  
12 plan 2 or plan 3 if not for this act; and

13 (b) Existing public safety telecommunicators who are currently  
14 participating in the public employees' retirement system plan 2 or  
15 plan 3.

16 (3) This act is not intended to confer retirement system  
17 membership or benefits to any employees who are not already eligible  
18 for state retirement benefits, such as contract employees, nonprofit  
19 employees, and employees of first-class cities.

1       **Sec. 2.** RCW 41.37.005 and 2006 c 309 s 1 are each amended to  
2 read as follows:

3       It is the intent of the legislature to establish a separate  
4 public safety employees' retirement system for certain public  
5 employees whose jobs contain a high degree of physical or  
6 psychological risk to their own personal safety and who provide  
7 public protection of lives and property, but who are not eligible for  
8 membership in the law enforcement officers' and firefighters'  
9 retirement system.

10       **Sec. 3.** RCW 41.37.010 and 2021 c 12 s 6 are each amended to read  
11 as follows:

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

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

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

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

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

26       (5)(a) "Average final compensation" means the member's average  
27 compensation earnable of the highest consecutive sixty months of  
28 service credit months prior to such member's retirement, termination,  
29 or death. Periods constituting authorized leaves of absence may not  
30 be used in the calculation of average final compensation except under  
31 RCW 41.37.290.

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

34       (i) Any compensation forgone by a member employed by a state  
35 agency or institution during the 2009-2011 fiscal biennium as a  
36 result of reduced work hours, mandatory or voluntary leave without  
37 pay, temporary reduction in pay implemented prior to December 11,  
38 2010, or temporary layoffs if the reduced compensation is an integral

1 part of the employer's expenditure reduction efforts, as certified by  
2 the employer;

3 (ii) Any compensation forgone by a member employed by the state  
4 or a local government employer during the 2011-2013 fiscal biennium  
5 as a result of reduced work hours, mandatory leave without pay,  
6 temporary layoffs, or reductions to current pay if the reduced  
7 compensation is an integral part of the employer's expenditure  
8 reduction efforts, as certified by the employer. Reductions to  
9 current pay shall not include elimination of previously agreed upon  
10 future salary increases; and

11 (iii) Any compensation forgone by a member during the 2019-2021  
12 and 2021-2023 fiscal biennia as a result of reduced work hours,  
13 mandatory leave without pay, temporary layoffs, furloughs, reductions  
14 to current pay, or other similar measures resulting from the COVID-19  
15 budgetary crisis, if the reduced compensation is an integral part of  
16 the employer's expenditure reduction efforts, as certified by the  
17 employer. Reductions to current pay shall not include elimination of  
18 previously agreed upon future salary increases.

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

22 (7)(a) "Compensation earnable" for members, means salaries or  
23 wages earned by a member during a payroll period for personal  
24 services, including overtime payments, and shall include wages and  
25 salaries deferred under provisions established pursuant to sections  
26 403(b), 414(h), and 457 of the United States internal revenue code,  
27 but shall exclude nonmoney maintenance compensation and lump sum or  
28 other payments for deferred annual sick leave, unused accumulated  
29 vacation, unused accumulated annual leave, or any form of severance  
30 pay.

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

34 (i) Retroactive payments to an individual by an employer on  
35 reinstatement of the employee in a position, or payments by an  
36 employer to an individual in lieu of reinstatement, which are awarded  
37 or granted as the equivalent of the salary or wage which the  
38 individual would have earned during a payroll period shall be  
39 considered compensation earnable to the extent provided in this

1 subsection, and the individual shall receive the equivalent service  
2 credit;

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

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

8 (B) Such member's actual compensation earnable received for  
9 nonlegislative public employment and legislative service combined.  
10 Any additional contributions to the retirement system required  
11 because compensation earnable under (b)(ii)(A) of this subsection is  
12 greater than compensation earnable under (b)(ii)(B) of this  
13 subsection shall be paid by the member for both member and employer  
14 contributions;

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

17 (iv) Compensation that a member would have received but for a  
18 disability occurring in the line of duty only as authorized by RCW  
19 41.37.060;

20 (v) Compensation that a member receives due to participation in  
21 the leave sharing program only as authorized by RCW 41.04.650 through  
22 41.04.670; and

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

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

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

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

33 (11) "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 (12) (a) "Employer" means ~~((the))~~;

39 (i) The Washington state department of corrections ~~((, the))~~;

1        (ii) The Washington state parks and recreation commission~~((7~~  
2 ~~the))~~;

3        (iii) The Washington state gambling commission~~((7~~  
4 ~~the))~~;

4        (iv) The Washington state patrol~~((7~~  
5 ~~the))~~;

5        (v) The Washington state department of natural resources~~((7~~  
6 ~~the))~~;

7        (vi) The Washington state liquor and cannabis board~~((7~~  
8 ~~the))~~;

8        (vii) The Washington state department of veterans affairs~~((7~~  
9 ~~the))~~;

10       (viii) The Washington state department of children, youth, and  
11 families~~((7~~  
12 ~~and the))~~;

12       (ix) The Washington state department of social and health  
13 services~~((7~~  
14 ~~any))~~;

14       (x) Any county corrections department~~((7~~  
15 ~~any))~~;

15       (xi) Any city corrections department not covered under chapter  
16 41.28 RCW~~((7~~  
17 ~~and any))~~;

17       (xii) Any public corrections entity created under RCW 39.34.030  
18 by counties, cities not covered under chapter 41.28 RCW, or both; and

19       (xiii) Any employer participating in the public employees'  
20 retirement system in chapter 41.40 RCW, some or all of whose  
21 employees' primary responsibility is to receive, process, transmit,  
22 or dispatch 911 emergency and nonemergency calls for law enforcement,  
23 fire, emergency medical, or other public safety services that is not  
24 already covered by the provisions of this subsection.

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

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

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

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

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

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

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

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

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

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

19 (c) Who is a limited authority Washington peace officer, as  
20 defined in RCW 10.93.020, for an employer;

21 (d) Whose primary responsibility is to provide nursing care to,  
22 or to ensure the custody and safety of, offender, adult probationary,  
23 or patient populations; and who is in a position that requires  
24 completion of defensive tactics training or de-escalation training;  
25 and who is employed by one of the following state institutions or  
26 centers operated by the department of social and health services or  
27 the department of children, youth, and families:

28 (i) Juvenile rehabilitation administration institutions, not  
29 including community facilities;

30 (ii) Mental health hospitals;

31 (iii) Child study and treatment centers; or

32 (iv) Institutions or residential sites that serve developmentally  
33 disabled patients or offenders, or perform competency restoration  
34 services, except for state-operated living alternatives facilities;

35 (e) Whose primary responsibility is to provide nursing care to  
36 offender and patient populations in institutions and centers operated  
37 by the following employers: A city or county corrections department  
38 as set forth in subsection (12) of this section, a public corrections  
39 entity as set forth in subsection (12) of this section, the

1 Washington state department of corrections, or the Washington state  
2 department of veterans affairs; ((~~or~~))

3 (f) Whose primary responsibility is to receive, process,  
4 transmit, or dispatch 911 emergency and nonemergency calls for law  
5 enforcement, fire, emergency medical, or other public safety  
6 services, or to supervise those employees; or

7 (g) Whose primary responsibility is to supervise members eligible  
8 under this subsection.

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

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

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

15 (23) "Regular interest" means such rate as the director may  
16 determine.

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

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

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

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

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

28 (29) "Service" means periods of employment by a member on or  
29 after July 1, 2006, for one or more employers for which compensation  
30 earnable is paid. Compensation earnable earned for ninety or more  
31 hours in any calendar month shall constitute one service credit  
32 month. Compensation earnable earned for at least seventy hours but  
33 less than ninety hours in any calendar month shall constitute one-  
34 half service credit month of service. Compensation earnable earned  
35 for less than seventy hours in any calendar month shall constitute  
36 one-quarter service credit month of service. Time spent in standby  
37 status, whether compensated or not, is not service.

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

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

3 (b) A member shall receive a total of not more than twelve  
4 service credit months of service for such calendar year. If an  
5 individual is employed in an eligible position by one or more  
6 employers the individual shall receive no more than one service  
7 credit month during any calendar month in which multiple service for  
8 ninety or more hours is rendered.

9 (c) Reduction efforts such as furloughs, reduced work hours,  
10 mandatory leave without pay, temporary layoffs, or other similar  
11 situations as contemplated by subsection (5)(b)(iii) of this section  
12 do not result in a reduction in service credit that otherwise would  
13 have been earned for that month of work, and the member shall receive  
14 the full service credit for the hours that were scheduled to be  
15 worked before the reduction.

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

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

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

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

25 (34) "State treasurer" means the treasurer of the state of  
26 Washington.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.37  
28 RCW to read as follows:

29 (1) An employee of an employer as defined in RCW 41.37.010 who  
30 was a member of the public employees' retirement system plan 2 or  
31 plan 3 before June 1, 2024, and on June 1, 2024, meets the  
32 eligibility requirements as set forth in RCW 41.37.010(19)(f) has the  
33 following options during the election period defined in subsection  
34 (2) of this section:

35 (a) To remain in the public employees' retirement system in their  
36 current plan; or

37 (b) To become a member of the public safety employees' retirement  
38 system plan 2 and be a dual member as provided in chapter 41.54 RCW.  
39 Any service credit the employee accrued in the public employees'

1 retirement system service credit may not be transferred to the public  
2 safety employees' retirement system.

3 (2) The "election period" is the period between January 1, 2024,  
4 and March 1, 2024.

5 (3) During the election period, employees who are employed by an  
6 employer as defined in RCW 41.37.010 remain members of the public  
7 employees' retirement system plan 2 or plan 3 until they  
8 affirmatively elect to join the public safety employees' retirement  
9 system. Members who elect to join the public safety employees'  
10 retirement system as described in this section will have their  
11 membership begin prospectively from the date of their election.

12 (4) If, after September 1, 2024, the member has not made an  
13 election to join the public safety employees' retirement system, he  
14 or she will remain in his or her current plan in the public  
15 employees' retirement system.

16 (5) An employee who was a member of the public employees'  
17 retirement system plan 1 on or before June 1, 2019, and on or after  
18 June 1, 2024, is employed by an employer as defined in RCW 41.37.010  
19 as an employee who meets the eligibility requirements included in RCW  
20 41.37.010(19)(f), shall remain a member of the public employees'  
21 retirement system plan 1.

22 (6) All new employees hired on or after June 1, 2024, who become  
23 employed by an employer as defined in RCW 41.37.010 as an employee  
24 who meets the eligibility requirements included in RCW  
25 41.37.010(19)(f) will become members of the public safety employees'  
26 retirement system.

27 NEW SECTION. **Sec. 5.** This act takes effect June 1, 2024.

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