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SENATE BILL 5827

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Chase, Conway, and Hasegawa

1 AN ACT Relating to service credit for certain school employee  
2 service workers; and amending RCW 41.35.010, 41.35.400, and 41.35.620.

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

4 **Sec. 1.** RCW 41.35.010 and 2012 c 236 s 4 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter,  
7 unless the context clearly requires otherwise.

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

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

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

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

1 (5)(a) "Average final compensation" for plan 2 and plan 3 members  
2 means the member's average compensation earnable of the highest  
3 consecutive sixty months of service credit months prior to such  
4 member's retirement, termination, or death. Periods constituting  
5 authorized leaves of absence may not be used in the calculation of  
6 average final compensation except under RCW 41.40.710(2).

7 (b) In calculating average final compensation under (a) of this  
8 subsection, the department of retirement systems shall include any  
9 compensation forgone by a member during the 2011-2013 fiscal biennium  
10 as a result of reduced work hours, mandatory leave without pay,  
11 temporary layoffs, or reductions to current pay if the reduced  
12 compensation is an integral part of the employer's expenditure  
13 reduction efforts, as certified by the employer. Reductions to current  
14 pay shall not include elimination of previously agreed upon future  
15 salary reductions.

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

20 (7) "Classified employee" means an employee of a school district or  
21 an educational service district who is not eligible for membership in  
22 the teachers' retirement system established under chapter 41.32 RCW.

23 (8)(a) "Compensation earnable" for plan 2 and plan 3 members, means  
24 salaries or wages earned by a member during a payroll period for  
25 personal services, including overtime payments, and shall include wages  
26 and salaries deferred under provisions established pursuant to sections  
27 403(b), 414(h), and 457 of the United States internal revenue code, but  
28 shall exclude nonmoney maintenance compensation and lump sum or other  
29 payments for deferred annual sick leave, unused accumulated vacation,  
30 unused accumulated annual leave, or any form of severance pay.

31 (b) "Compensation earnable" for plan 2 and plan 3 members also  
32 includes the following actual or imputed payments, which are not paid  
33 for personal services:

34 (i) Retroactive payments to an individual by an employer on  
35 reinstatement of the employee in a position, or payments by an employer  
36 to an individual in lieu of reinstatement, which are awarded or granted  
37 as the equivalent of the salary or wage which the individual would have

1 earned during a payroll period shall be considered compensation  
2 earnable to the extent provided in this subsection, and the individual  
3 shall receive the equivalent service credit;

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

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

9 (B) Such member's actual compensation earnable received for  
10 nonlegislative public employment and legislative service combined. Any  
11 additional contributions to the retirement system required because  
12 compensation earnable under (b)(ii)(A) of this subsection is greater  
13 than compensation earnable under this (b)(ii)(B) of this subsection  
14 shall be paid by the member for both member and employer 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 41.40.038;

20 (v) Compensation that a member receives due to participation in the  
21 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 (9) "Department" means the department of retirement systems created  
29 in chapter 41.50 RCW.

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

31 (11) "Eligible position" means any position that, as defined by the  
32 employer, normally requires five or more months of service a year for  
33 which regular compensation for at least seventy hours is earned by the  
34 occupant thereof. For purposes of this chapter an employer shall not  
35 define "position" in such a manner that an employee's monthly work for  
36 that employer is divided into more than one position.

37 (12) "Employee" or "employed" means a person who is providing  
38 services for compensation to an employer, unless the person is free

1 from the employer's direction and control over the performance of work.  
2 The department shall adopt rules and interpret this subsection  
3 consistent with common law.

4 (13) "Employer," for plan 2 and plan 3 members, means a school  
5 district or an educational service district. Except as otherwise  
6 specifically provided in this chapter, "employer" does not include a  
7 government contractor. For purposes of this subsection, a "government  
8 contractor" is any entity, including a partnership, limited liability  
9 company, for-profit or nonprofit corporation, or person, that provides  
10 services pursuant to a contract with an employer. The determination  
11 whether an employer-employee relationship has been established is not  
12 based on the relationship between a government contractor and an  
13 employer, but is based solely on the relationship between a government  
14 contractor's employee and an employer under this chapter.

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

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

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

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

24 (18) "Ineligible position" means any position which does not  
25 conform with the requirements set forth in subsection (22) of this  
26 section.

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

30 (20) "Member" means any employee included in the membership of the  
31 retirement system, as provided for in RCW 41.35.030.

32 (21) "Member account" or "member's account" for purposes of plan 3  
33 means the sum of the contributions and earnings on behalf of the member  
34 in the defined contribution portion of plan 3.

35 (22) "Membership service" means all service rendered as a member.

36 (23) "Pension" means payments for life derived from contributions  
37 made by the employer. All pensions shall be paid in monthly  
38 installments.

1 (24) "Plan 2" means the Washington school employees' retirement  
2 system plan 2 providing the benefits and funding provisions covering  
3 persons who first became members of the public employees' retirement  
4 system on and after October 1, 1977, and transferred to the Washington  
5 school employees' retirement system under RCW 41.40.750.

6 (25) "Plan 3" means the Washington school employees' retirement  
7 system plan 3 providing the benefits and funding provisions covering  
8 persons who first became members of the system on and after September  
9 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

10 (26) "Regular interest" means such rate as the director may  
11 determine.

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

15 (28) "Retirement" means withdrawal from active service with a  
16 retirement allowance as provided by this chapter.

17 (29) "Retirement allowance" for plan 2 and plan 3 members means  
18 monthly payments to a retiree or beneficiary as provided in this  
19 chapter.

20 (30) "Retirement system" means the Washington school employees'  
21 retirement system provided for in this chapter.

22 (31) "Separation from service" occurs when a person has terminated  
23 all employment with an employer.

24 (32) "Service" for plan 2 and plan 3 members means periods of  
25 employment by a member in an eligible position or positions for one or  
26 more employers for which compensation earnable is paid. Compensation  
27 earnable earned for ninety or more hours in any calendar month shall  
28 constitute one service credit month except as provided in RCW  
29 41.35.180. Compensation earnable earned for at least seventy hours but  
30 less than ninety hours in any calendar month shall constitute one-half  
31 service credit month of service. Compensation earnable earned for less  
32 than seventy hours in any calendar month shall constitute one-quarter  
33 service credit month of service. Time spent in standby status, whether  
34 compensated or not, is not service.

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

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

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

7 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW  
8 28A.400.300 is equal to two service credit months. Use of less than  
9 forty-five days of sick leave is creditable as allowed under this  
10 subsection as follows:

- 11 (i) Less than eleven days equals one-quarter service credit month;
- 12 (ii) Eleven or more days but less than twenty-two days equals one-  
13 half service credit month;
- 14 (iii) Twenty-two days equals one service credit month;
- 15 (iv) More than twenty-two days but less than thirty-three days  
16 equals one and one-quarter service credit month; and
- 17 (v) Thirty-three or more days but less than forty-five days equals  
18 one and one-half service credit month.

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

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

23 (35) "Service worker" means a classified employee who performs a  
24 service for which there are no formal qualifications including  
25 paraprofessionals and nonsupervisory personnel. "Service worker"  
26 includes, but is not limited to, custodians, food service workers,  
27 security personnel, warehouse workers, and delivery personnel.

28 (36) "State actuary" or "actuary" means the person appointed  
29 pursuant to RCW 44.44.010(2).

30 ((+36+)) (37) "State elective position" means any position held by  
31 any person elected or appointed to statewide office or elected or  
32 appointed as a member of the legislature.

33 ((+37+)) (38) "State treasurer" means the treasurer of the state of  
34 Washington.

35 ((+38+)) (39) "Substitute employee" means a classified employee who  
36 is employed by an employer exclusively as a substitute for an absent  
37 employee.

1       **Sec. 2.** RCW 41.35.400 and 1998 c 341 s 101 are each amended to  
2 read as follows:

3       (1) A member of the retirement system shall receive a retirement  
4 allowance equal to two percent of such member's average final  
5 compensation for each service credit year of service.

6       (2) A member of the retirement system who is a service worker shall  
7 receive a retirement allowance equal to two and one-tenth percent of  
8 such member's average final compensation for each service credit year  
9 of service.

10       **Sec. 3.** RCW 41.35.620 and 1998 c 341 s 203 are each amended to  
11 read as follows:

12       (1)(a) A member of the retirement system shall receive a retirement  
13 allowance equal to one percent of such member's average final  
14 compensation for each service credit year.

15       (b) A member of the retirement system who is a service worker shall  
16 receive a retirement allowance equal to one and five one-hundredths  
17 percent of such member's average final compensation for each service  
18 credit year.

19       (2) The retirement allowance payable under RCW 41.35.680 to a  
20 member who separates after having completed at least twenty service  
21 credit years shall be increased by twenty-five one-hundredths of one  
22 percent, compounded for each month from the date of separation to the  
23 date that the retirement allowance commences.

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