

(1) For purposes of a prosecution under RCW 9.46.230(4) or a seizure, confiscation, or destruction order under RCW 9.46.230(1), it shall be a defense that the gambling device involved is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or defendant's possession. Operation of an antique slot machine shall be only by free play or with coins provided at no cost by the owner. No slot machine, having been seized under this chapter, may be altered, destroyed, or disposed of without affording the owner thereof an opportunity to present a defense under this section. If the defense is applicable, the antique slot machine shall be returned to the owner or defendant, as the court may direct.

(2) RCW 9.46.230(2) shall have no application to any antique slot machine that has not been operated for gambling purposes while in the owner's possession.

(3) For the purposes of this section, a slot machine shall be conclusively presumed to be an antique slot machine if it (~~was manufactured prior to January 1, 1941~~) is at least twenty-five years old.

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CHAPTER 192

[Engrossed Substitute Senate Bill No. 5150]

PORTABILITY OF PUBLIC EMPLOYMENT RETIREMENT BENEFITS

AN ACT Relating to the portability of public employment retirement benefits; amending RCW 41.04.270; adding a new chapter to Title 41 RCW; declaring an emergency; and providing effective dates.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actuary" means the state actuary as established under chapter 44.44 RCW.

(2) "Base salary" means salaries or wages earned by a member of a system during a payroll period for personal services and includes wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude overtime payments, nonmoney maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for voluntary retirement, any other form of leave, or any similar lump sum payment.

(3) "Average compensation" means, respectively, "final compensation" as defined in RCW 41.28.010 and 41.44.030(14), "average final compensation" as defined in RCW 41.32.010 and 41.40.010, "average earnable compensation" as used in RCW 41.32.498, and "average final salary" as defined in RCW 43.43.120.

(4) "Service retirement allowance" means, respectively, "retirement allowance" as used or defined in RCW 41.28.130, 41.32.010, 41.40.010, 41.44.030(22), and 43.43.260.

(5) "Current system average final compensation" means that compensation or average compensation used in the service retirement benefit calculation of the current system with compensation being either that earned in the current system or the base salary earned in a prior system, whichever produces the greater benefit.

(6) "Prior system average final compensation" means the compensation or average compensation used in the service retirement benefit calculation of the prior system, with compensation being either that earned in the prior system or the base salary earned in any system in which dual membership is held, whichever produces the greater benefit.

(7) "Compensation" means, respectively, "compensation earnable" as defined in RCW 41.28.010, "earnable compensation" as defined in RCW 41.32.010, "compensation earnable" as defined in RCW 41.40.010, "compensation earnable" as defined in RCW 41.44.030, and "average final salary" as used in RCW 43.43.120(15).

(8) "Current system" means the system in which a member is currently making contributions and accruing service credit.

(9) "Department" means the department of retirement systems.

(10) "Director" means the director of retirement systems.

(11) "Dual member" means a person who (a) is or becomes a member of a system on or after July 1, 1988, (b) has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from a prior system.

(12) "Prior system" means a system in which a person had previous membership but is no longer making member contributions.

(13) "Service" means the same as it may be defined in each respective system. For the purposes of section 3 of this act, military service granted under RCW 41.40.170(3) or 43.43.260 may only be based on service accrued under chapter 41.40 or 43.43 RCW, respectively.

(14) "System" means the retirement systems established under chapters 41.28, 41.32, 41.40, 41.44, and 43.43 RCW. The inclusion of an individual first class city system is subject to the procedure set forth in section 6 of this act.

NEW SECTION. Sec. 2. (1) Those persons who are dual members on or after July 1, 1988, shall not receive a retirement benefit from any prior

system while dual members without the loss of all benefits under this chapter. Retroactive retirement in any prior system will cancel membership in any subsequent systems except as allowed under RCW 41.04.270 and will result in the refund of all employee and employer contributions made to such systems.

(2) If a member has withdrawn contributions from a prior system, the member may restore the contributions, together with interest since the date of withdrawal as determined by the system, and recover the service represented by the contributions. Such restoration must be completed within two years of establishing dual membership or prior to retirement, whichever occurs first.

(3) A member of the retirement system under chapter 41.32 RCW who is serving in office pursuant to Article II or III of the state Constitution may, notwithstanding the provisions of RCW 41.40.120(4), within one year from the effective date of this section make an irrevocable election to become a member of the retirement system under chapter 41.40 RCW. A member who makes this election shall receive service credit under chapter 41.32 RCW for all prior and future periods of employment which are, or otherwise would be, credited under chapter 41.32 RCW. Such a member who established membership under chapter 41.32 RCW prior to June 30, 1977, shall be granted membership under chapter 41.40 RCW as if he or she had been a member of that system prior to June 30, 1977.

All contributions credited to such member under chapter 41.32 RCW for service now to be credited in the retirement system under chapter 41.40 RCW shall be transferred to the system and the member shall not receive any credit nor enjoy any rights under chapter 41.32 RCW for those periods of service.

(4) Any service accrued in one system by the member shall not accrue in any other system.

NEW SECTION. Sec. 3. (1) As used in this section, the percentage factor to be used in calculating a benefit under chapter 41.28 RCW shall be determined using only the service earned in a retirement system created under that chapter.

(2) The service retirement allowances to be paid to a dual member upon retiring from the current system because of service shall be the sum of:

(a) The service retirement allowance received under the current system as a result of multiplying the current system average final compensation by the percentage factor of the current system and the service earned under the current system; and

(b) The sum of the respective service retirement allowances received under prior systems as a result of multiplying each prior system's average final compensation by the percentage factor of that prior system and the service earned under that prior system.

(3) Eligibility to receive a service benefit under this chapter shall be based on (a) the criteria of any system in which dual membership is held, and (b) the dual member's combined systems' service. The service retirement allowances from a system which, but for this chapter, would not be allowed to be paid at this date based on the dual member's age shall be either actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system, or the dual member may choose to defer the benefit until fully eligible.

NEW SECTION. Sec. 4. (1) The retirement allowances calculated under section 3 of this act shall be paid separately by each respective current and prior system. Any deductions from such separate payments shall be according to the provisions of the respective systems.

(2) Postretirement adjustments, if any, shall be applied by the respective systems based on the payments made under subsection (1) of this section.

(3) If a dual member dies in service in any system, the surviving spouse shall receive the same benefit from each system that would have been received if the member were active in the system at the time of death based on service actually established in that system.

NEW SECTION. Sec. 5. A person who was eligible to establish membership under RCW 41.40.120(3) prior to October 1, 1977, but failed to do so by that date, is authorized to elect to do so as if such election had been made prior to that date. Such an election must be made not later than June 30, 1988, and all other terms and conditions of RCW 41.40.120(3) shall apply.

NEW SECTION. Sec. 6. A system authorized under chapter 41.28 RCW may petition the legislature for coverage under the provisions of this chapter by the adoption of a resolution by majority vote of those elected or appointed to the legislative body of the respective first class city. This resolution may not be adopted until a public hearing has been held on the proposed entry into coverage under this chapter. If adopted, the resolution shall be transmitted prior to January 1, 1988, to the director and to the joint committee on pension policy created in chapter ... (HB 358), Laws of 1987. The system shall be included only after the legislature enacts legislation specifically including the system under the coverage of this chapter.

NEW SECTION. Sec. 7. The benefit granted by this chapter shall not result in a total benefit less than would have been received absent such benefit. The total sum of the retirement allowances received under this chapter shall not exceed the smallest amount the dual member would receive if all the service had been rendered in any one system.

NEW SECTION. Sec. 8. The benefits provided under sections 1 through 7 of this act are not provided to employees as a matter of contractual right and the legislature retains the right to alter or abolish these benefits at any time prior to a member's retirement.

Sec. 9. Section 1, chapter 105, Laws of 1975-'76 2nd ex. sess. as amended by section 1, chapter 29, Laws of 1980 and RCW 41.04.270 are each amended to read as follows:

(1) Notwithstanding any (~~other~~) provision of (~~law~~) chapter 2.10, 2.12, 41.26, 41.28, 41.32, 41.40, or 43.43 RCW to the contrary, on and after March 19, 1976, any member or former member who (~~(+)~~) (a) receives a retirement allowance earned by said former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (~~(2)~~) (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (~~(3)~~) (c) is the beneficiary of a disability allowance from any public retirement system listed in RCW 41.50.030 shall be estopped from becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030: PROVIDED, That (a) and (b) of this subsection(~~(s(1) and (2) of this section)~~) shall not apply to persons who have accumulated less than fifteen years service credit in any such system.

(2) Nothing in this section is intended to apply to (a) any retirement system except those listed in RCW 41.50.030 and (~~the retirement systems of first class cities~~) chapter 41.28 RCW, or (b) a dual member as defined in section 1 of this 1987 act.

NEW SECTION. Sec. 10. Sections 1 through 8 of this act shall constitute a new chapter in Title 41 RCW.

NEW SECTION. Sec. 11. (1) Section 5 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987.

(2) The remainder of this act shall take effect on July 1, 1988.

Passed the Senate April 15, 1987.

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