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Subject: PSERS Draft Agency Request Legislation

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Hello members and staff of the Select Committee on Pension Policy,

The Department of Social and Health Services has been drafting legislation this interim to create continuity in the retirement services available to staff at our Residential Treatment Facilities. The current draft of the request legislation is attached for your review.

We kindly ask for feedback on the draft legislation to be shared by Friday, August 18th.

Information regarding the purpose of this legislation is below.

PSERS Request Legislation

Problem statement

The Public Safety Employees' Retirement system does not currently include staff of the Residential Treatment Facilities (RTFs). As the Behavioral Health Administration has opened the Civil Center for Behavioral Health at Maple Lane (Oak Cottage) and are getting ready to open the Maple Lane Forensic Recovery Program (NGRI) in 2023 and both are RTFs, the RCW language requires an update so all our RTF staff will be able to fall under PSERS as well. This should also impact the 48 beds in Clark County scheduled for late 2024/early 2025. None of these facilities are considered "mental health hospitals" and thus are excluded from the current definition. We seek consistency in the retirement options available to staff.

This aligns with the Governor's priority of treating individuals with behavioral health needs in smaller, community-based facilities. This legislation would support the staff of those facilities.

Consequence statement

Staff at the RTFs have already raised this issue. This will ensure consistency with all staff working within RTFs to be afforded the same retirement option.

Please let me know if you have any questions.

Best,
Erin

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Transforming Lives

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AN ACT Relating to including specified competency restoration workers at department of social and health services institutional and residential sites that serve civilly committed residents and/or serve patients under Not Guilty by Reason of Insanity findings in the public safety employees retirement system; amending RCW 41.37.010; and creating a new section.

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

1 **Sec. 1.** RCW 41.37.010 and 2021 c 12 s 6 are each amended to read
2 as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

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

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

17 (5)(a) "Average final compensation" means the member's average
18 compensation earnable of the highest consecutive sixty months of
19 service credit months prior to such member's retirement, termination,
20 or death. Periods constituting authorized leaves of absence may not
21 be used in the calculation of average final compensation except under
22 RCW 41.37.290.

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

25 (i) Any compensation forgone by a member employed by a state
26 agency or institution during the 2009-2011 fiscal biennium as a
27 result of reduced work hours, mandatory or voluntary leave without
28 pay, temporary reduction in pay implemented prior to December 11,
29 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:

39 (i) The Washington state department of corrections;

1 (ii) The Washington state parks and recreation commission;
2 (iii) The Washington state gambling commission;
3 (iv) The Washington state patrol;
4 (v) The Washington state department of natural resources;
5 (vi) The Washington state liquor and cannabis board;
6 (vii) The Washington state department of veterans affairs;
7 (viii) The Washington state department of children, youth, and
8 families;
9 (ix) The Washington state department of social and health
10 services;
11 (x) Any county corrections department;
12 (xi) Any city corrections department not covered under chapter
13 41.28 RCW;
14 (xii) Any public corrections entity created under RCW 39.34.030
15 by counties, cities not covered under chapter 41.28 RCW, or both; and
16 (xiii) Any employer participating in the public employees'
17 retirement system in chapter 41.40 RCW, some or all of whose
18 employees' primary responsibility is to receive, process, transmit,
19 or dispatch 911 emergency and nonemergency calls for law enforcement,
20 fire, emergency medical, or other public safety services that is not
21 already covered by the provisions of this subsection.
22 (b) Except as otherwise specifically provided in this chapter,
23 "employer" does not include a government contractor. For purposes of
24 this subsection, a "government contractor" is any entity, including a
25 partnership, limited liability company, for-profit or nonprofit
26 corporation, or person, that provides services pursuant to a contract
27 with an employer. The determination whether an employer-employee
28 relationship has been established is not based on the relationship
29 between a government contractor and an employer, but is based solely
30 on the relationship between a government contractor's employee and an
31 employer under this chapter.
32 (13) "Final compensation" means the annual rate of compensation
33 earnable by a member at the time of termination of employment.
34 (14) "Index" means, for any calendar year, that year's annual
35 average consumer price index, Seattle, Washington area, for urban
36 wage earners and clerical workers, all items, compiled by the bureau
37 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, or
35 serve civilly committed residents, and/or serve patients under Not
36 Guilty by Reason of Insanity findings.†

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

41 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. 2.** 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, 2025, and on June 1, 2025, 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 June 1, 2025,
4 and September 1, 2025.

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, 2025, 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, 2025, 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, 2025, 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. 3.** Section 2 of this act takes effect June 1, 2025.

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