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**SUBSTITUTE SENATE BILL 5687**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Bailey, Braun, Holy, Becker, Brown, Warnick, and Walsh)

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 sixty 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 sixty 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 sixty or older when newly hired,  
23 or are existing employees of an employer and age sixty or older when  
24 that employer opts into participation in the public employees'  
25 retirement system, shall be given the opportunity to opt out of  
26 participation. For new employees, the decision must be made prior to  
27 the first date the employer would be required to report the employee  
28 to the department as a plan member. For employees of agencies who opt  
29 into public employees' retirement system participation, this decision  
30 is 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 sixty 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 sixty 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, 2020.

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