
SENATE BILL 6543

State of Washington

62nd Legislature

2012 Regular Session

By Senators Tom, Baumgartner, Kastama, Holmquist Newbry, Sheldon, Schoesler, and Hewitt

Read first time 01/30/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to the use of overtime when calculating pension
2 benefits; amending RCW 41.26.030, 41.32.010, 41.40.010, 41.80.040, and
3 43.43.120; reenacting and amending RCW 41.37.010; adding a new section
4 to chapter 41.45 RCW; and providing an effective date.

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

6 **Sec. 1.** RCW 41.26.030 and 2011 1st sp.s. c 5 s 1 are each amended
7 to read as follows:

8 As used in this chapter, unless a different meaning is plainly
9 required by the context:

10 (1) "Accumulated contributions" means the employee's contributions
11 made by a member, including any amount paid under RCW 41.50.165(2),
12 plus accrued interest credited thereon.

13 (2) "Actuarial reserve" means a method of financing a pension or
14 retirement plan wherein reserves are accumulated as the liabilities for
15 benefit payments are incurred in order that sufficient funds will be
16 available on the date of retirement of each member to pay the member's
17 future benefits during the period of retirement.

18 (3) "Actuarial valuation" means a mathematical determination of the
19 financial condition of a retirement plan. It includes the computation

1 of the present monetary value of benefits payable to present members,
2 and the present monetary value of future employer and employee
3 contributions, giving effect to mortality among active and retired
4 members and also to the rates of disability, retirement, withdrawal
5 from service, salary and interest earned on investments.

6 (4)(a) "Basic salary" for plan 1 members, means the basic monthly
7 rate of salary or wages, including longevity pay but not including
8 overtime earnings or special salary or wages, upon which pension or
9 retirement benefits will be computed and upon which employer
10 contributions and salary deductions will be based.

11 (b) "Basic salary" for plan 2 members, means salaries or wages
12 earned by a member during a payroll period for personal services,
13 including overtime payments made to members who first established
14 membership before the effective date of this section, and shall include
15 wages and salaries deferred under provisions established pursuant to
16 sections 403(b), 414(h), and 457 of the United States Internal Revenue
17 Code, but shall exclude lump sum payments for deferred annual sick
18 leave, unused accumulated vacation, unused accumulated annual leave, or
19 any form of severance pay. For members who first establish membership
20 on or after the effective date of this section, "basic salary" shall
21 exclude overtime payments. In any year in which a member serves in the
22 legislature the member shall have the option of having such member's
23 basic salary be the greater of:

24 (i) The basic salary the member would have received had such member
25 not served in the legislature; or

26 (ii) Such member's actual basic salary received for nonlegislative
27 public employment and legislative service combined. Any additional
28 contributions to the retirement system required because basic salary
29 under (b)(i) of this subsection is greater than basic salary under
30 (b)(ii) of this subsection shall be paid by the member for both member
31 and employer contributions.

32 (5)(a) "Beneficiary" for plan 1 members, means any person in
33 receipt of a retirement allowance, disability allowance, death benefit,
34 or any other benefit described herein.

35 (b) "Beneficiary" for plan 2 members, means any person in receipt
36 of a retirement allowance or other benefit provided by this chapter
37 resulting from service rendered to an employer by another person.

1 (6)(a) "Child" or "children" means an unmarried person who is under
2 the age of eighteen or mentally or physically disabled as determined by
3 the department, except a person who is disabled and in the full time
4 care of a state institution, who is:

5 (i) A natural born child;

6 (ii) A stepchild where that relationship was in existence prior to
7 the date benefits are payable under this chapter;

8 (iii) A posthumous child;

9 (iv) A child legally adopted or made a legal ward of a member prior
10 to the date benefits are payable under this chapter; or

11 (v) An illegitimate child legitimized prior to the date any
12 benefits are payable under this chapter.

13 (b) A person shall also be deemed to be a child up to and including
14 the age of twenty years and eleven months while attending any high
15 school, college, or vocational or other educational institution
16 accredited, licensed, or approved by the state, in which it is located,
17 including the summer vacation months and all other normal and regular
18 vacation periods at the particular educational institution after which
19 the child returns to school.

20 (7) "Department" means the department of retirement systems created
21 in chapter 41.50 RCW.

22 (8) "Director" means the director of the department.

23 (9) "Disability board" for plan 1 members means either the county
24 disability board or the city disability board established in RCW
25 41.26.110.

26 (10) "Disability leave" means the period of six months or any
27 portion thereof during which a member is on leave at an allowance equal
28 to the member's full salary prior to the commencement of disability
29 retirement. The definition contained in this subsection shall apply
30 only to plan 1 members.

31 (11) "Disability retirement" for plan 1 members, means the period
32 following termination of a member's disability leave, during which the
33 member is in receipt of a disability retirement allowance.

34 (12) "Domestic partners" means two adults who have registered as
35 domestic partners under RCW 26.60.020.

36 (13) "Employee" means any law enforcement officer or firefighter as
37 defined in subsections (16) and (18) of this section.

1 (14)(a) "Employer" for plan 1 members, means the legislative
2 authority of any city, town, county, or district or the elected
3 officials of any municipal corporation that employs any law enforcement
4 officer and/or firefighter, any authorized association of such
5 municipalities, and, except for the purposes of RCW 41.26.150, any
6 labor guild, association, or organization, which represents the
7 firefighters or law enforcement officers of at least seven cities of
8 over 20,000 population and the membership of each local lodge or
9 division of which is composed of at least sixty percent law enforcement
10 officers or firefighters as defined in this chapter.

11 (b) "Employer" for plan 2 members, means the following entities to
12 the extent that the entity employs any law enforcement officer and/or
13 firefighter:

14 (i) The legislative authority of any city, town, county, or
15 district;

16 (ii) The elected officials of any municipal corporation;

17 (iii) The governing body of any other general authority law
18 enforcement agency; or

19 (iv) A four-year institution of higher education having a fully
20 operational fire department as of January 1, 1996.

21 (15)(a) "Final average salary" for plan 1 members, means (i) for a
22 member holding the same position or rank for a minimum of twelve months
23 preceding the date of retirement, the basic salary attached to such
24 same position or rank at time of retirement; (ii) for any other member,
25 including a civil service member who has not served a minimum of twelve
26 months in the same position or rank preceding the date of retirement,
27 the average of the greatest basic salaries payable to such member
28 during any consecutive twenty-four month period within such member's
29 last ten years of service for which service credit is allowed, computed
30 by dividing the total basic salaries payable to such member during the
31 selected twenty-four month period by twenty-four; (iii) in the case of
32 disability of any member, the basic salary payable to such member at
33 the time of disability retirement; (iv) in the case of a member who
34 hereafter vests pursuant to RCW 41.26.090, the basic salary payable to
35 such member at the time of vesting.

36 (b) "Final average salary" for plan 2 members, means the monthly
37 average of the member's basic salary for the highest consecutive sixty

1 service credit months of service prior to such member's retirement,
2 termination, or death. Periods constituting authorized unpaid leaves
3 of absence may not be used in the calculation of final average salary.

4 (c) In calculating final average salary under (a) or (b) of this
5 subsection, the department of retirement systems shall include:

6 (i) Any compensation forgone by a member employed by a state agency
7 or institution during the 2009-2011 fiscal biennium as a result of
8 reduced work hours, mandatory or voluntary leave without pay, temporary
9 reduction in pay implemented prior to December 11, 2010, or temporary
10 layoffs if the reduced compensation is an integral part of the
11 employer's expenditure reduction efforts, as certified by the employer;
12 and

13 (ii) Any compensation forgone by a member employed by the state or
14 a local government employer during the 2011-2013 fiscal biennium as a
15 result of reduced work hours, mandatory leave without pay, temporary
16 layoffs, or reductions to current pay if the reduced compensation is an
17 integral part of the employer's expenditure reduction efforts, as
18 certified by the employer. Reductions to current pay shall not include
19 elimination of previously agreed upon future salary increases.

20 (16) "Firefighter" means:

21 (a) Any person who is serving on a full time, fully compensated
22 basis as a member of a fire department of an employer and who is
23 serving in a position which requires passing a civil service
24 examination for firefighter, and who is actively employed as such;

25 (b) Anyone who is actively employed as a full time firefighter
26 where the fire department does not have a civil service examination;

27 (c) Supervisory firefighter personnel;

28 (d) Any full time executive secretary of an association of fire
29 protection districts authorized under RCW 52.12.031. The provisions of
30 this subsection (16)(d) shall not apply to plan 2 members;

31 (e) The executive secretary of a labor guild, association or
32 organization (which is an employer under subsection (14) of this
33 section), if such individual has five years previous membership in a
34 retirement system established in chapter 41.16 or 41.18 RCW. The
35 provisions of this subsection (16)(e) shall not apply to plan 2
36 members;

37 (f) Any person who is serving on a full time, fully compensated

1 basis for an employer, as a fire dispatcher, in a department in which,
2 on March 1, 1970, a dispatcher was required to have passed a civil
3 service examination for firefighter;

4 (g) Any person who on March 1, 1970, was employed on a full time,
5 fully compensated basis by an employer, and who on May 21, 1971, was
6 making retirement contributions under the provisions of chapter 41.16
7 or 41.18 RCW; and

8 (h) Any person who is employed on a full-time, fully compensated
9 basis by an employer as an emergency medical technician.

10 (17) "General authority law enforcement agency" means any agency,
11 department, or division of a municipal corporation, political
12 subdivision, or other unit of local government of this state, and any
13 agency, department, or division of state government, having as its
14 primary function the detection and apprehension of persons committing
15 infractions or violating the traffic or criminal laws in general, but
16 not including the Washington state patrol. Such an agency, department,
17 or division is distinguished from a limited authority law enforcement
18 agency having as one of its functions the apprehension or detection of
19 persons committing infractions or violating the traffic or criminal
20 laws relating to limited subject areas, including but not limited to,
21 the state departments of natural resources and social and health
22 services, the state gambling commission, the state lottery commission,
23 the state parks and recreation commission, the state utilities and
24 transportation commission, the state liquor control board, and the
25 state department of corrections.

26 (18) "Law enforcement officer" beginning January 1, 1994, means any
27 person who is commissioned and employed by an employer on a full time,
28 fully compensated basis to enforce the criminal laws of the state of
29 Washington generally, with the following qualifications:

30 (a) No person who is serving in a position that is basically
31 clerical or secretarial in nature, and who is not commissioned shall be
32 considered a law enforcement officer;

33 (b) Only those deputy sheriffs, including those serving under a
34 different title pursuant to county charter, who have successfully
35 completed a civil service examination for deputy sheriff or the
36 equivalent position, where a different title is used, and those persons
37 serving in unclassified positions authorized by RCW 41.14.070 except a
38 private secretary will be considered law enforcement officers;

1 (c) Only such full time commissioned law enforcement personnel as
2 have been appointed to offices, positions, or ranks in the police
3 department which have been specifically created or otherwise expressly
4 provided for and designated by city charter provision or by ordinance
5 enacted by the legislative body of the city shall be considered city
6 police officers;

7 (d) The term "law enforcement officer" also includes the executive
8 secretary of a labor guild, association or organization (which is an
9 employer under subsection (14) of this section) if that individual has
10 five years previous membership in the retirement system established in
11 chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not
12 apply to plan 2 members; and

13 (e) The term "law enforcement officer" also includes a person
14 employed on or after January 1, 1993, as a public safety officer or
15 director of public safety, so long as the job duties substantially
16 involve only either police or fire duties, or both, and no other duties
17 in a city or town with a population of less than ten thousand. The
18 provisions of this subsection (18)(e) shall not apply to any public
19 safety officer or director of public safety who is receiving a
20 retirement allowance under this chapter as of May 12, 1993.

21 (19) "Medical services" for plan 1 members, shall include the
22 following as minimum services to be provided. Reasonable charges for
23 these services shall be paid in accordance with RCW 41.26.150.

24 (a) Hospital expenses: These are the charges made by a hospital,
25 in its own behalf, for

26 (i) Board and room not to exceed semiprivate room rate unless
27 private room is required by the attending physician due to the
28 condition of the patient.

29 (ii) Necessary hospital services, other than board and room,
30 furnished by the hospital.

31 (b) Other medical expenses: The following charges are considered
32 "other medical expenses", provided that they have not been considered
33 as "hospital expenses".

34 (i) The fees of the following:

35 (A) A physician or surgeon licensed under the provisions of chapter
36 18.71 RCW;

37 (B) An osteopathic physician and surgeon licensed under the
38 provisions of chapter 18.57 RCW;

1 (C) A chiropractor licensed under the provisions of chapter 18.25
2 RCW.

3 (ii) The charges of a registered graduate nurse other than a nurse
4 who ordinarily resides in the member's home, or is a member of the
5 family of either the member or the member's spouse.

6 (iii) The charges for the following medical services and supplies:
7 (A) Drugs and medicines upon a physician's prescription;
8 (B) Diagnostic X-ray and laboratory examinations;
9 (C) X-ray, radium, and radioactive isotopes therapy;
10 (D) Anesthesia and oxygen;
11 (E) Rental of iron lung and other durable medical and surgical
12 equipment;
13 (F) Artificial limbs and eyes, and casts, splints, and trusses;
14 (G) Professional ambulance service when used to transport the
15 member to or from a hospital when injured by an accident or stricken by
16 a disease;
17 (H) Dental charges incurred by a member who sustains an accidental
18 injury to his or her teeth and who commences treatment by a legally
19 licensed dentist within ninety days after the accident;
20 (I) Nursing home confinement or hospital extended care facility;
21 (J) Physical therapy by a registered physical therapist;
22 (K) Blood transfusions, including the cost of blood and blood
23 plasma not replaced by voluntary donors;
24 (L) An optometrist licensed under the provisions of chapter 18.53
25 RCW.

26 (20) "Member" means any firefighter, law enforcement officer, or
27 other person as would apply under subsections (16) or (18) of this
28 section whose membership is transferred to the Washington law
29 enforcement officers' and firefighters' retirement system on or after
30 March 1, 1970, and every law enforcement officer and firefighter who is
31 employed in that capacity on or after such date.

32 (21) "Plan 1" means the law enforcement officers' and firefighters'
33 retirement system, plan 1 providing the benefits and funding provisions
34 covering persons who first became members of the system prior to
35 October 1, 1977.

36 (22) "Plan 2" means the law enforcement officers' and firefighters'
37 retirement system, plan 2 providing the benefits and funding provisions

1 covering persons who first became members of the system on and after
2 October 1, 1977.

3 (23) "Position" means the employment held at any particular time,
4 which may or may not be the same as civil service rank.

5 (24) "Regular interest" means such rate as the director may
6 determine.

7 (25) "Retiree" for persons who establish membership in the
8 retirement system on or after October 1, 1977, means any member in
9 receipt of a retirement allowance or other benefit provided by this
10 chapter resulting from service rendered to an employer by such member.

11 (26) "Retirement fund" means the "Washington law enforcement
12 officers' and firefighters' retirement system fund" as provided for
13 herein.

14 (27) "Retirement system" means the "Washington law enforcement
15 officers' and firefighters' retirement system" provided herein.

16 (28)(a) "Service" for plan 1 members, means all periods of
17 employment for an employer as a firefighter or law enforcement officer,
18 for which compensation is paid, together with periods of suspension not
19 exceeding thirty days in duration. For the purposes of this chapter
20 service shall also include service in the armed forces of the United
21 States as provided in RCW 41.26.190. Credit shall be allowed for all
22 service credit months of service rendered by a member from and after
23 the member's initial commencement of employment as a firefighter or law
24 enforcement officer, during which the member worked for seventy or more
25 hours, or was on disability leave or disability retirement. Only
26 service credit months of service shall be counted in the computation of
27 any retirement allowance or other benefit provided for in this chapter.

28 (i) For members retiring after May 21, 1971 who were employed under
29 the coverage of a prior pension act before March 1, 1970, "service"
30 shall also include (A) such military service not exceeding five years
31 as was creditable to the member as of March 1, 1970, under the member's
32 particular prior pension act, and (B) such other periods of service as
33 were then creditable to a particular member under the provisions of RCW
34 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit
35 be allowed for any service rendered prior to March 1, 1970, where the
36 member at the time of rendition of such service was employed in a
37 position covered by a prior pension act, unless such service, at the

1 time credit is claimed therefor, is also creditable under the
2 provisions of such prior act.

3 (ii) A member who is employed by two employers at the same time
4 shall only be credited with service to one such employer for any month
5 during which the member rendered such dual service.

6 (b) "Service" for plan 2 members, means periods of employment by a
7 member for one or more employers for which basic salary is earned for
8 ninety or more hours per calendar month which shall constitute a
9 service credit month. Periods of employment by a member for one or
10 more employers for which basic salary is earned for at least seventy
11 hours but less than ninety hours per calendar month shall constitute
12 one-half service credit month. Periods of employment by a member for
13 one or more employers for which basic salary is earned for less than
14 seventy hours shall constitute a one-quarter service credit month.

15 Members of the retirement system who are elected or appointed to a
16 state elective position may elect to continue to be members of this
17 retirement system.

18 Service credit years of service shall be determined by dividing the
19 total number of service credit months of service by twelve. Any
20 fraction of a service credit year of service as so determined shall be
21 taken into account in the computation of such retirement allowance or
22 benefits.

23 If a member receives basic salary from two or more employers during
24 any calendar month, the individual shall receive one service credit
25 month's service credit during any calendar month in which multiple
26 service for ninety or more hours is rendered; or one-half service
27 credit month's service credit during any calendar month in which
28 multiple service for at least seventy hours but less than ninety hours
29 is rendered; or one-quarter service credit month during any calendar
30 month in which multiple service for less than seventy hours is
31 rendered.

32 (29) "Service credit month" means a full service credit month or an
33 accumulation of partial service credit months that are equal to one.

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

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

1 (32) "State elective position" means any position held by any
2 person elected or appointed to statewide office or elected or appointed
3 as a member of the legislature.

4 (33) "Surviving spouse" means the surviving widow or widower of a
5 member. "Surviving spouse" shall not include the divorced spouse of a
6 member except as provided in RCW 41.26.162.

7 **Sec. 2.** RCW 41.32.010 and 2011 1st sp.s. c 5 s 2 are each amended
8 to read as follows:

9 As used in this chapter, unless a different meaning is plainly
10 required by the context:

11 (1)(a) "Accumulated contributions" for plan 1 members, means the
12 sum of all regular annuity contributions and, except for the purpose of
13 withdrawal at the time of retirement, any amount paid under RCW
14 41.50.165(2) with regular interest thereon.

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

19 (2) "Actuarial equivalent" means a benefit of equal value when
20 computed upon the basis of such mortality tables and regulations as
21 shall be adopted by the director and regular interest.

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

24 (4) "Annual increase" means, initially, fifty-nine cents per month
25 per year of service which amount shall be increased each July 1st by
26 three percent, rounded to the nearest cent.

27 (5) "Annuity" means the moneys payable per year during life by
28 reason of accumulated contributions of a member.

29 (6) "Average final compensation" for plan 2 and plan 3 members,
30 means the member's average earnable compensation of the highest
31 consecutive sixty service credit months prior to such member's
32 retirement, termination, or death. Periods constituting authorized
33 leaves of absence may not be used in the calculation of average final
34 compensation except under RCW 41.32.810(2).

35 (7)(a) "Beneficiary" for plan 1 members, means any person in
36 receipt of a retirement allowance or other benefit provided by this
37 chapter.

1 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
2 in receipt of a retirement allowance or other benefit provided by this
3 chapter resulting from service rendered to an employer by another
4 person.

5 (8) "Contract" means any agreement for service and compensation
6 between a member and an employer.

7 (9) "Creditable service" means membership service plus prior
8 service for which credit is allowable. This subsection shall apply
9 only to plan 1 members.

10 (10) "Department" means the department of retirement systems
11 created in chapter 41.50 RCW.

12 (11) "Dependent" means receiving one-half or more of support from
13 a member.

14 (12) "Director" means the director of the department.

15 (13) "Disability allowance" means monthly payments during
16 disability. This subsection shall apply only to plan 1 members.

17 (14)(a) "Earnable compensation" for plan 1 members, means:

18 (i) All salaries and wages paid by an employer to an employee
19 member of the retirement system for personal services rendered during
20 a fiscal year. In all cases where compensation includes maintenance
21 the employer shall fix the value of that part of the compensation not
22 paid in money.

23 (ii) For an employee member of the retirement system teaching in an
24 extended school year program, two consecutive extended school years, as
25 defined by the employer school district, may be used as the annual
26 period for determining earnable compensation in lieu of the two fiscal
27 years.

28 (iii) "Earnable compensation" for plan 1 members also includes the
29 following actual or imputed payments, which are not paid for personal
30 services:

31 (A) Retroactive payments to an individual by an employer on
32 reinstatement of the employee in a position, or payments by an employer
33 to an individual in lieu of reinstatement in a position which are
34 awarded or granted as the equivalent of the salary or wages which the
35 individual would have earned during a payroll period shall be
36 considered earnable compensation and the individual shall receive the
37 equivalent service credit.

1 (B) If a leave of absence, without pay, is taken by a member for
2 the purpose of serving as a member of the state legislature, and such
3 member has served in the legislature five or more years, the salary
4 which would have been received for the position from which the leave of
5 absence was taken shall be considered as compensation earnable if the
6 employee's contribution thereon is paid by the employee. In addition,
7 where a member has been a member of the state legislature for five or
8 more years, earnable compensation for the member's two highest
9 compensated consecutive years of service shall include a sum not to
10 exceed thirty-six hundred dollars for each of such two consecutive
11 years, regardless of whether or not legislative service was rendered
12 during those two years.

13 (iv) For members employed less than full time under written
14 contract with a school district, or community college district, in an
15 instructional position, for which the member receives service credit of
16 less than one year in all of the years used to determine the earnable
17 compensation used for computing benefits due under RCW 41.32.497,
18 41.32.498, and 41.32.520, the member may elect to have earnable
19 compensation defined as provided in RCW 41.32.345. For the purposes of
20 this subsection, the term "instructional position" means a position in
21 which more than seventy-five percent of the member's time is spent as
22 a classroom instructor (including office hours), a librarian, a
23 psychologist, a social worker, a nurse, a physical therapist, an
24 occupational therapist, a speech language pathologist or audiologist,
25 or a counselor. Earnable compensation shall be so defined only for the
26 purpose of the calculation of retirement benefits and only as necessary
27 to insure that members who receive fractional service credit under RCW
28 41.32.270 receive benefits proportional to those received by members
29 who have received full-time service credit.

30 (v) "Earnable compensation" does not include:

31 (A) Remuneration for unused sick leave authorized under RCW
32 41.04.340, 28A.400.210, or 28A.310.490;

33 (B) Remuneration for unused annual leave in excess of thirty days
34 as authorized by RCW 43.01.044 and 43.01.041.

35 (b) "Earnable compensation" for plan 2 and plan 3 members, means
36 salaries or wages earned by a member during a payroll period for
37 personal services, including overtime payments made to members who
38 first established membership before the effective date of this section,

1 and shall include wages and salaries deferred under provisions
2 established pursuant to sections 403(b), 414(h), and 457 of the United
3 States Internal Revenue Code, but shall exclude lump sum payments for
4 deferred annual sick leave, unused accumulated vacation, unused
5 accumulated annual leave, or any form of severance pay. "Earnable
6 compensation," for plan 2 and plan 3 members who first establish
7 membership on or after the effective date of this section, shall
8 exclude overtime payments.

9 "Earnable compensation" for plan 2 and plan 3 members also includes
10 the following actual or imputed payments which, except in the case of
11 (b)(ii)(B) of this subsection, are not paid for personal services:

12 (i) Retroactive payments to an individual by an employer on
13 reinstatement of the employee in a position or payments by an employer
14 to an individual in lieu of reinstatement in a position which are
15 awarded or granted as the equivalent of the salary or wages which the
16 individual would have earned during a payroll period shall be
17 considered earnable compensation, to the extent provided above, and the
18 individual shall receive the equivalent service credit.

19 (ii) In any year in which a member serves in the legislature the
20 member shall have the option of having such member's earnable
21 compensation be the greater of:

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

24 (B) Such member's actual earnable compensation received for
25 teaching and legislative service combined. Any additional
26 contributions to the retirement system required because compensation
27 earnable under (b)(ii)(A) of this subsection is greater than
28 compensation earnable under (b)(ii)(B) of this subsection shall be paid
29 by the member for both member and employer contributions.

30 (c) In calculating earnable compensation under (a) or (b) of this
31 subsection, the department of retirement systems shall include:

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

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

8 (15)(a) "Eligible position" for plan 2 members from June 7, 1990,
9 through September 1, 1991, means a position which normally requires two
10 or more uninterrupted months of creditable service during September
11 through August of the following year.

12 (b) "Eligible position" for plan 2 and plan 3 on and after
13 September 1, 1991, means a position that, as defined by the employer,
14 normally requires five or more months of at least seventy hours of
15 earnable compensation during September through August of the following
16 year.

17 (c) For purposes of this chapter an employer shall not define
18 "position" in such a manner that an employee's monthly work for that
19 employer is divided into more than one position.

20 (d) The elected position of the superintendent of public
21 instruction is an eligible position.

22 (16) "Employed" or "employee" means a person who is providing
23 services for compensation to an employer, unless the person is free
24 from the employer's direction and control over the performance of work.
25 The department shall adopt rules and interpret this subsection
26 consistent with common law.

27 (17) "Employer" means the state of Washington, the school district,
28 or any agency of the state of Washington by which the member is paid.

29 (18) "Fiscal year" means a year which begins July 1st and ends June
30 30th of the following year.

31 (19) "Former state fund" means the state retirement fund in
32 operation for teachers under chapter 187, Laws of 1923, as amended.

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

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

1 (22) "Index B" means the index for the year prior to index A.

2 (23) "Index year" means the earliest calendar year in which the
3 index is more than sixty percent of index A.

4 (24) "Local fund" means any of the local retirement funds for
5 teachers operated in any school district in accordance with the
6 provisions of chapter 163, Laws of 1917 as amended.

7 (25) "Member" means any teacher included in the membership of the
8 retirement system who has not been removed from membership under RCW
9 41.32.878 or 41.32.768. Also, any other employee of the public schools
10 who, on July 1, 1947, had not elected to be exempt from membership and
11 who, prior to that date, had by an authorized payroll deduction,
12 contributed to the member reserve.

13 (26) "Member account" or "member's account" for purposes of plan 3
14 means the sum of the contributions and earnings on behalf of the member
15 in the defined contribution portion of plan 3.

16 (27) "Member reserve" means the fund in which all of the
17 accumulated contributions of members are held.

18 (28) "Membership service" means service rendered subsequent to the
19 first day of eligibility of a person to membership in the retirement
20 system: PROVIDED, That where a member is employed by two or more
21 employers the individual shall receive no more than one service credit
22 month during any calendar month in which multiple service is rendered.
23 The provisions of this subsection shall apply only to plan 1 members.

24 (29) "Pension" means the moneys payable per year during life from
25 the pension reserve.

26 (30) "Pension reserve" is a fund in which shall be accumulated an
27 actuarial reserve adequate to meet present and future pension
28 liabilities of the system and from which all pension obligations are to
29 be paid.

30 (31) "Plan 1" means the teachers' retirement system, plan 1
31 providing the benefits and funding provisions covering persons who
32 first became members of the system prior to October 1, 1977.

33 (32) "Plan 2" means the teachers' retirement system, plan 2
34 providing the benefits and funding provisions covering persons who
35 first became members of the system on and after October 1, 1977, and
36 prior to July 1, 1996.

37 (33) "Plan 3" means the teachers' retirement system, plan 3

1 providing the benefits and funding provisions covering persons who
2 first become members of the system on and after July 1, 1996, or who
3 transfer under RCW 41.32.817.

4 (34) "Prior service" means service rendered prior to the first date
5 of eligibility to membership in the retirement system for which credit
6 is allowable. The provisions of this subsection shall apply only to
7 plan 1 members.

8 (35) "Prior service contributions" means contributions made by a
9 member to secure credit for prior service. The provisions of this
10 subsection shall apply only to plan 1 members.

11 (36) "Public school" means any institution or activity operated by
12 the state of Washington or any instrumentality or political subdivision
13 thereof employing teachers, except the University of Washington and
14 Washington State University.

15 (37) "Regular contributions" means the amounts required to be
16 deducted from the compensation of a member and credited to the member's
17 individual account in the member reserve. This subsection shall apply
18 only to plan 1 members.

19 (38) "Regular interest" means such rate as the director may
20 determine.

21 (39) "Retiree" means any person who has begun accruing a retirement
22 allowance or other benefit provided by this chapter resulting from
23 service rendered to an employer while a member.

24 (40)(a) "Retirement allowance" for plan 1 members, means monthly
25 payments based on the sum of annuity and pension, or any optional
26 benefits payable in lieu thereof.

27 (b) "Retirement allowance" for plan 2 and plan 3 members, means
28 monthly payments to a retiree or beneficiary as provided in this
29 chapter.

30 (41) "Retirement system" means the Washington state teachers'
31 retirement system.

32 (42) "Separation from service or employment" occurs when a person
33 has terminated all employment with an employer. Separation from
34 service or employment does not occur, and if claimed by an employer or
35 employee may be a violation of RCW 41.32.055, when an employee and
36 employer have a written or oral agreement to resume employment with the
37 same employer following termination. Mere expressions or inquiries

1 about postretirement employment by an employer or employee that do not
2 constitute a commitment to reemploy the employee after retirement are
3 not an agreement under this section.

4 (43)(a) "Service" for plan 1 members means the time during which a
5 member has been employed by an employer for compensation.

6 (i) If a member is employed by two or more employers the individual
7 shall receive no more than one service credit month during any calendar
8 month in which multiple service is rendered.

9 (ii) As authorized by RCW 28A.400.300, up to forty-five days of
10 sick leave may be creditable as service solely for the purpose of
11 determining eligibility to retire under RCW 41.32.470.

12 (iii) As authorized in RCW 41.32.065, service earned in an out-of-
13 state retirement system that covers teachers in public schools may be
14 applied solely for the purpose of determining eligibility to retire
15 under RCW 41.32.470.

16 (b) "Service" for plan 2 and plan 3 members, means periods of
17 employment by a member for one or more employers for which earnable
18 compensation is earned subject to the following conditions:

19 (i) A member employed in an eligible position or as a substitute
20 shall receive one service credit month for each month of September
21 through August of the following year if he or she earns earnable
22 compensation for eight hundred ten or more hours during that period and
23 is employed during nine of those months, except that a member may not
24 receive credit for any period prior to the member's employment in an
25 eligible position except as provided in RCW 41.32.812 and 41.50.132.

26 (ii) Any other member employed in an eligible position or as a
27 substitute who earns earnable compensation during the period from
28 September through August shall receive service credit according to one
29 of the following methods, whichever provides the most service credit to
30 the member:

31 (A) If a member is employed either in an eligible position or as a
32 substitute teacher for nine months of the twelve month period between
33 September through August of the following year but earns earnable
34 compensation for less than eight hundred ten hours but for at least six
35 hundred thirty hours, he or she will receive one-half of a service
36 credit month for each month of the twelve month period;

37 (B) If a member is employed in an eligible position or as a
38 substitute teacher for at least five months of a six-month period

1 between September through August of the following year and earns
2 earnable compensation for six hundred thirty or more hours within the
3 six-month period, he or she will receive a maximum of six service
4 credit months for the school year, which shall be recorded as one
5 service credit month for each month of the six-month period;

6 (C) All other members employed in an eligible position or as a
7 substitute teacher shall receive service credit as follows:

8 (I) A service credit month is earned in those calendar months where
9 earnable compensation is earned for ninety or more hours;

10 (II) A half-service credit month is earned in those calendar months
11 where earnable compensation is earned for at least seventy hours but
12 less than ninety hours; and

13 (III) A quarter-service credit month is earned in those calendar
14 months where earnable compensation is earned for less than seventy
15 hours.

16 (iii) Any person who is a member of the teachers' retirement system
17 and who is elected or appointed to a state elective position may
18 continue to be a member of the retirement system and continue to
19 receive a service credit month for each of the months in a state
20 elective position by making the required member contributions.

21 (iv) When an individual is employed by two or more employers the
22 individual shall only receive one month's service credit during any
23 calendar month in which multiple service for ninety or more hours is
24 rendered.

25 (v) As authorized by RCW 28A.400.300, up to forty-five days of sick
26 leave may be creditable as service solely for the purpose of
27 determining eligibility to retire under RCW 41.32.470. For purposes of
28 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal
29 to two service credit months. Use of less than forty-five days of sick
30 leave is creditable as allowed under this subsection as follows:

31 (A) Less than eleven days equals one-quarter service credit month;

32 (B) Eleven or more days but less than twenty-two days equals one-
33 half service credit month;

34 (C) Twenty-two days equals one service credit month;

35 (D) More than twenty-two days but less than thirty-three days
36 equals one and one-quarter service credit month;

37 (E) Thirty-three or more days but less than forty-five days equals
38 one and one-half service credit month.

1 (vi) As authorized in RCW 41.32.065, service earned in an out-of-
2 state retirement system that covers teachers in public schools may be
3 applied solely for the purpose of determining eligibility to retire
4 under RCW 41.32.470.

5 (vii) The department shall adopt rules implementing this
6 subsection.

7 (44) "Service credit month" means a full service credit month or an
8 accumulation of partial service credit months that are equal to one.

9 (45) "Service credit year" means an accumulation of months of
10 service credit which is equal to one when divided by twelve.

11 (46) "State actuary" or "actuary" means the person appointed
12 pursuant to RCW 44.44.010(2).

13 (47) "State elective position" means any position held by any
14 person elected or appointed to statewide office or elected or appointed
15 as a member of the legislature.

16 (48) "Substitute teacher" means:

17 (a) A teacher who is hired by an employer to work as a temporary
18 teacher, except for teachers who are annual contract employees of an
19 employer and are guaranteed a minimum number of hours; or

20 (b) Teachers who either (i) work in ineligible positions for more
21 than one employer or (ii) work in an ineligible position or positions
22 together with an eligible position.

23 (49) "Teacher" means any person qualified to teach who is engaged
24 by a public school in an instructional, administrative, or supervisory
25 capacity. The term includes state, educational service district, and
26 school district superintendents and their assistants and all employees
27 certificated by the superintendent of public instruction; and in
28 addition thereto any full time school doctor who is employed by a
29 public school and renders service of an instructional or educational
30 nature.

31 **Sec. 3.** RCW 41.37.010 and 2011 1st sp.s. c 5 s 4 and 2011 c 68 s
32 1 are each reenacted and amended to read as follows:

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

35 (1) "Accumulated contributions" means the sum of all contributions
36 standing to the credit of a member in the member's individual account,

1 including any amount paid under RCW 41.50.165(2), together with the
2 regular interest thereon.

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

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

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

11 (5)(a) "Average final compensation" means the member's average
12 compensation earnable of the highest consecutive sixty months of
13 service credit months prior to such member's retirement, termination,
14 or death. Periods constituting authorized leaves of absence may not be
15 used in the calculation of average final compensation except under RCW
16 41.37.290.

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

19 (i) Any compensation forgone by a member employed by a state agency
20 or institution during the 2009-2011 fiscal biennium as a result of
21 reduced work hours, mandatory or voluntary leave without pay, temporary
22 reduction in pay implemented prior to December 11, 2010, or temporary
23 layoffs if the reduced compensation is an integral part of the
24 employer's expenditure reduction efforts, as certified by the employer;
25 and

26 (ii) Any compensation forgone by a member employed by the state or
27 a local government employer during the 2011-2013 fiscal biennium as a
28 result of reduced work hours, mandatory leave without pay, temporary
29 layoffs, or reductions to current pay if the reduced compensation is an
30 integral part of the employer's expenditure reduction efforts, as
31 certified by the employer. Reductions to current pay shall not include
32 elimination of previously agreed upon future salary increases.

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

36 (7)(a) "Compensation earnable" for members, means salaries or wages
37 earned by a member during a payroll period for personal services,
38 including overtime payments made to members who first established

1 membership before the effective date of this section, and shall include
2 wages and salaries deferred under provisions established pursuant to
3 sections 403(b), 414(h), and 457 of the United States internal revenue
4 code, but shall exclude nonmoney maintenance compensation and lump sum
5 or other payments for deferred annual sick leave, unused accumulated
6 vacation, unused accumulated annual leave, or any form of severance
7 pay. For members who first establish membership on or after the
8 effective date of this section, "compensation earnable" shall exclude
9 overtime payments.

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

12 (i) Retroactive payments to an individual by an employer on
13 reinstatement of the employee in a position, or payments by an employer
14 to an individual in lieu of reinstatement, which are awarded or granted
15 as the equivalent of the salary or wage which the individual would have
16 earned during a payroll period shall be considered compensation
17 earnable to the extent provided in this subsection, and the individual
18 shall receive the equivalent service credit;

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

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

24 (B) Such member's actual compensation earnable received for
25 nonlegislative public employment and legislative service combined. Any
26 additional contributions to the retirement system required because
27 compensation earnable under (b)(ii)(A) of this subsection is greater
28 than compensation earnable under (b)(ii)(B) of this subsection shall be
29 paid by the member for both member and employer contributions;

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

32 (iv) Compensation that a member would have received but for a
33 disability occurring in the line of duty only as authorized by RCW
34 41.37.060;

35 (v) Compensation that a member receives due to participation in the
36 leave sharing program only as authorized by RCW 41.04.650 through
37 41.04.670; and

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

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

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

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

11 (11) "Employee" or "employed" means a person who is providing
12 services for compensation to an employer, unless the person is free
13 from the employer's direction and control over the performance of work.
14 The department shall adopt rules and interpret this subsection
15 consistent with common law.

16 (12) "Employer" means the Washington state department of
17 corrections, the Washington state parks and recreation commission, the
18 Washington state gambling commission, the Washington state patrol, the
19 Washington state department of natural resources, and the Washington
20 state liquor control board; any county corrections department; any city
21 corrections department not covered under chapter 41.28 RCW; and any
22 public corrections entity created under RCW 39.34.030 by counties,
23 cities not covered under chapter 41.28 RCW, or both.

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

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

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

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

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

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

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

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

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

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

12 (d) Whose primary responsibility is to supervise members eligible
13 under this subsection.

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

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

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

20 (23) "Regular interest" means such rate as the director may
21 determine.

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

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

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

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

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

33 (29) "Service" means periods of employment by a member on or after
34 July 1, 2006, for one or more employers for which compensation earnable
35 is paid. Compensation earnable earned for ninety or more hours in any
36 calendar month shall constitute one service credit month. Compensation
37 earnable earned for at least seventy hours but less than ninety hours
38 in any calendar month shall constitute one-half service credit month of

1 service. Compensation earnable earned for less than seventy hours in
2 any calendar month shall constitute one-quarter service credit month of
3 service. Time spent in standby status, whether compensated or not, is
4 not service.

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

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

9 (b) A member shall receive a total of not more than twelve service
10 credit months of service for such calendar year. If an individual is
11 employed in an eligible position by one or more employers the
12 individual shall receive no more than one service credit month during
13 any calendar month in which multiple service for ninety or more hours
14 is rendered.

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

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

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

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

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

26 **Sec. 4.** RCW 41.40.010 and 2011 1st sp.s. c 5 s 5 are each amended
27 to read as follows:

28 As used in this chapter, unless a different meaning is plainly
29 required by the context:

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

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

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

3 (4) "Annual increase" means, initially, fifty-nine cents per month
4 per year of service which amount shall be increased each July 1st by
5 three percent, rounded to the nearest cent.

6 (5) "Annuity" means payments for life derived from accumulated
7 contributions of a member. All annuities shall be paid in monthly
8 installments.

9 (6)(a) "Average final compensation" for plan 1 members, means the
10 annual average of the greatest compensation earnable by a member during
11 any consecutive two year period of service credit months for which
12 service credit is allowed; or if the member has less than two years of
13 service credit months then the annual average compensation earnable
14 during the total years of service for which service credit is allowed.

15 (b) "Average final compensation" for plan 2 and plan 3 members,
16 means the member's average compensation earnable of the highest
17 consecutive sixty months of service credit months prior to such
18 member's retirement, termination, or death. Periods constituting
19 authorized leaves of absence may not be used in the calculation of
20 average final compensation except under RCW 41.40.710(2) or (c) of this
21 subsection.

22 (c) In calculating average final compensation under this subsection
23 for a member of plan 1, 2, or 3, the department of retirement systems
24 shall include:

25 (i) Any compensation forgone by the member during the 2009-2011
26 fiscal biennium as a result of reduced work hours, voluntary leave
27 without pay, temporary reduction in pay implemented prior to December
28 11, 2010, or temporary furloughs if the reduced compensation is an
29 integral part of the employer's expenditure reduction efforts, as
30 certified by the employer; and

31 (ii) Any compensation forgone by a member employed by the state or
32 a local government during the 2011-2013 fiscal biennium as a result of
33 reduced work hours, mandatory leave without pay, temporary layoffs, or
34 reductions to current pay if the reduced compensation is an integral
35 part of the employer's expenditure reduction efforts, as certified by
36 the employer. Reductions to current pay shall not include elimination
37 of previously agreed upon future salary increases.

1 (7)(a) "Beneficiary" for plan 1 members, means any person in
2 receipt of a retirement allowance, pension or other benefit provided by
3 this chapter.

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

8 (8)(a) "Compensation earnable" for plan 1 members, means salaries
9 or wages earned during a payroll period for personal services and where
10 the compensation is not all paid in money, maintenance compensation
11 shall be included upon the basis of the schedules established by the
12 member's employer.

13 (i) "Compensation earnable" for plan 1 members also includes the
14 following actual or imputed payments, which are not paid for personal
15 services:

16 (A) Retroactive payments to an individual by an employer on
17 reinstatement of the employee in a position, or payments by an employer
18 to an individual in lieu of reinstatement in a position which are
19 awarded or granted as the equivalent of the salary or wage which the
20 individual would have earned during a payroll period shall be
21 considered compensation earnable and the individual shall receive the
22 equivalent service credit;

23 (B) If a leave of absence is taken by an individual for the purpose
24 of serving in the state legislature, the salary which would have been
25 received for the position from which the leave of absence was taken,
26 shall be considered as compensation earnable if the employee's
27 contribution is paid by the employee and the employer's contribution is
28 paid by the employer or employee;

29 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
30 72.09.240;

31 (D) Compensation that a member would have received but for a
32 disability occurring in the line of duty only as authorized by RCW
33 41.40.038;

34 (E) Compensation that a member receives due to participation in the
35 leave sharing program only as authorized by RCW 41.04.650 through
36 41.04.670; and

37 (F) Compensation that a member receives for being in standby
38 status. For the purposes of this section, a member is in standby

1 status when not being paid for time actually worked and the employer
2 requires the member to be prepared to report immediately for work, if
3 the need arises, although the need may not arise.

4 (ii) "Compensation earnable" does not include:

5 (A) Remuneration for unused sick leave authorized under RCW
6 41.04.340, 28A.400.210, or 28A.310.490;

7 (B) Remuneration for unused annual leave in excess of thirty days
8 as authorized by RCW 43.01.044 and 43.01.041.

9 (b) "Compensation earnable" for plan 2 and plan 3 members, means
10 salaries or wages earned by a member during a payroll period for
11 personal services, including overtime payments made to members who
12 first established membership before the effective date of this section,
13 and shall include wages and salaries deferred under provisions
14 established pursuant to sections 403(b), 414(h), and 457 of the United
15 States Internal Revenue Code, but shall exclude nonmoney maintenance
16 compensation and lump sum or other payments for deferred annual sick
17 leave, unused accumulated vacation, unused accumulated annual leave, or
18 any form of severance pay. For members who first establish membership
19 on or after the effective date of this section, "compensation earnable"
20 shall exclude overtime payments.

21 "Compensation earnable" for plan 2 and plan 3 members also includes
22 the following actual or imputed payments, which are not paid for
23 personal services:

24 (i) Retroactive payments to an individual by an employer on
25 reinstatement of the employee in a position, or payments by an employer
26 to an individual in lieu of reinstatement in a position which are
27 awarded or granted as the equivalent of the salary or wage which the
28 individual would have earned during a payroll period shall be
29 considered compensation earnable to the extent provided above, and the
30 individual shall receive the equivalent service credit;

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

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

36 (B) Such member's actual compensation earnable received for
37 nonlegislative public employment and legislative service combined. Any
38 additional contributions to the retirement system required because

1 compensation earnable under (b)(ii)(A) of this subsection is greater
2 than compensation earnable under (b)(ii)(B) of this subsection shall be
3 paid by the member for both member and employer contributions;

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

6 (iv) Compensation that a member would have received but for a
7 disability occurring in the line of duty only as authorized by RCW
8 41.40.038;

9 (v) Compensation that a member receives due to participation in the
10 leave sharing program only as authorized by RCW 41.04.650 through
11 41.04.670; and

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

17 (9) "Department" means the department of retirement systems created
18 in chapter 41.50 RCW.

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

20 (11) "Eligible position" means:

21 (a) Any position that, as defined by the employer, normally
22 requires five or more months of service a year for which regular
23 compensation for at least seventy hours is earned by the occupant
24 thereof. For purposes of this chapter an employer shall not define
25 "position" in such a manner that an employee's monthly work for that
26 employer is divided into more than one position;

27 (b) Any position occupied by an elected official or person
28 appointed directly by the governor, or appointed by the chief justice
29 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which
30 compensation is paid.

31 (12) "Employee" or "employed" means a person who is providing
32 services for compensation to an employer, unless the person is free
33 from the employer's direction and control over the performance of work.
34 The department shall adopt rules and interpret this subsection
35 consistent with common law.

36 (13)(a) "Employer" for plan 1 members, means every branch,
37 department, agency, commission, board, and office of the state, any
38 political subdivision or association of political subdivisions of the

1 state admitted into the retirement system, and legal entities
2 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the
3 term shall also include any labor guild, association, or organization
4 the membership of a local lodge or division of which is comprised of at
5 least forty percent employees of an employer (other than such labor
6 guild, association, or organization) within this chapter. The term may
7 also include any city of the first class that has its own retirement
8 system.

9 (b) "Employer" for plan 2 and plan 3 members, means every branch,
10 department, agency, commission, board, and office of the state, and any
11 political subdivision and municipal corporation of the state admitted
12 into the retirement system, including public agencies created pursuant
13 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
14 31, 2000, school districts and educational service districts will no
15 longer be employers for the public employees' retirement system plan 2.

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

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

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

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

25 (18) "Index year" means the earliest calendar year in which the
26 index is more than sixty percent of index A.

27 (19) "Ineligible position" means any position which does not
28 conform with the requirements set forth in subsection (11) of this
29 section.

30 (20) "Leave of absence" means the period of time a member is
31 authorized by the employer to be absent from service without being
32 separated from membership.

33 (21) "Member" means any employee included in the membership of the
34 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045
35 does not prohibit a person otherwise eligible for membership in the
36 retirement system from establishing such membership effective when he
37 or she first entered an eligible position.

1 (22) "Member account" or "member's account" for purposes of plan 3
2 means the sum of the contributions and earnings on behalf of the member
3 in the defined contribution portion of plan 3.

4 (23) "Membership service" means:

5 (a) All service rendered, as a member, after October 1, 1947;

6 (b) All service after October 1, 1947, to any employer prior to the
7 time of its admission into the retirement system for which member and
8 employer contributions, plus interest as required by RCW 41.50.125,
9 have been paid under RCW 41.40.056 or 41.40.057;

10 (c) Service not to exceed six consecutive months of probationary
11 service rendered after April 1, 1949, and prior to becoming a member,
12 in the case of any member, upon payment in full by such member of the
13 total amount of the employer's contribution to the retirement fund
14 which would have been required under the law in effect when such
15 probationary service was rendered if the member had been a member
16 during such period, except that the amount of the employer's
17 contribution shall be calculated by the director based on the first
18 month's compensation earnable as a member;

19 (d) Service not to exceed six consecutive months of probationary
20 service, rendered after October 1, 1947, and before April 1, 1949, and
21 prior to becoming a member, in the case of any member, upon payment in
22 full by such member of five percent of such member's salary during said
23 period of probationary service, except that the amount of the
24 employer's contribution shall be calculated by the director based on
25 the first month's compensation earnable as a member.

26 (24) "New member" means a person who becomes a member on or after
27 April 1, 1949, except as otherwise provided in this section.

28 (25) "Original member" of this retirement system means:

29 (a) Any person who became a member of the system prior to April 1,
30 1949;

31 (b) Any person who becomes a member through the admission of an
32 employer into the retirement system on and after April 1, 1949, and
33 prior to April 1, 1951;

34 (c) Any person who first becomes a member by securing employment
35 with an employer prior to April 1, 1951, provided the member has
36 rendered at least one or more years of service to any employer prior to
37 October 1, 1947;

1 (d) Any person who first becomes a member through the admission of
2 an employer into the retirement system on or after April 1, 1951,
3 provided, such person has been in the regular employ of the employer
4 for at least six months of the twelve-month period preceding the said
5 admission date;

6 (e) Any member who has restored all contributions that may have
7 been withdrawn as provided by RCW 41.40.150 and who on the effective
8 date of the individual's retirement becomes entitled to be credited
9 with ten years or more of membership service except that the provisions
10 relating to the minimum amount of retirement allowance for the member
11 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
12 apply to the member;

13 (f) Any member who has been a contributor under the system for two
14 or more years and who has restored all contributions that may have been
15 withdrawn as provided by RCW 41.40.150 and who on the effective date of
16 the individual's retirement has rendered five or more years of service
17 for the state or any political subdivision prior to the time of the
18 admission of the employer into the system; except that the provisions
19 relating to the minimum amount of retirement allowance for the member
20 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
21 apply to the member.

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

25 (27) "Plan 1" means the public employees' retirement system, plan
26 1 providing the benefits and funding provisions covering persons who
27 first became members of the system prior to October 1, 1977.

28 (28) "Plan 2" means the public employees' retirement system, plan
29 2 providing the benefits and funding provisions covering persons who
30 first became members of the system on and after October 1, 1977, and
31 are not included in plan 3.

32 (29) "Plan 3" means the public employees' retirement system, plan
33 3 providing the benefits and funding provisions covering persons who:

34 (a) First become a member on or after:

35 (i) March 1, 2002, and are employed by a state agency or institute
36 of higher education and who did not choose to enter plan 2; or

37 (ii) September 1, 2002, and are employed by other than a state

1 agency or institute of higher education and who did not choose to enter
2 plan 2; or

3 (b) Transferred to plan 3 under RCW 41.40.795.

4 (30) "Prior service" means all service of an original member
5 rendered to any employer prior to October 1, 1947.

6 (31) "Regular interest" means such rate as the director may
7 determine.

8 (32) "Retiree" means any person who has begun accruing a retirement
9 allowance or other benefit provided by this chapter resulting from
10 service rendered to an employer while a member.

11 (33) "Retirement" means withdrawal from active service with a
12 retirement allowance as provided by this chapter.

13 (34) "Retirement allowance" means the sum of the annuity and the
14 pension.

15 (35) "Retirement system" means the public employees' retirement
16 system provided for in this chapter.

17 (36) "Separation from service" occurs when a person has terminated
18 all employment with an employer. Separation from service or employment
19 does not occur, and if claimed by an employer or employee may be a
20 violation of RCW 41.40.055, when an employee and employer have a
21 written or oral agreement to resume employment with the same employer
22 following termination. Mere expressions or inquiries about
23 postretirement employment by an employer or employee that do not
24 constitute a commitment to reemploy the employee after retirement are
25 not an agreement under this subsection.

26 (37)(a) "Service" for plan 1 members, except as provided in RCW
27 41.40.088, means periods of employment in an eligible position or
28 positions for one or more employers rendered to any employer for which
29 compensation is paid, and includes time spent in office as an elected
30 or appointed official of an employer. Compensation earnable earned in
31 full time work for seventy hours or more in any given calendar month
32 shall constitute one service credit month except as provided in RCW
33 41.40.088. Compensation earnable earned for less than seventy hours in
34 any calendar month shall constitute one-quarter service credit month of
35 service except as provided in RCW 41.40.088. Only service credit
36 months and one-quarter service credit months shall be counted in the
37 computation of any retirement allowance or other benefit provided for
38 in this chapter. Any fraction of a year of service shall be taken into

1 account in the computation of such retirement allowance or benefits.
2 Time spent in standby status, whether compensated or not, is not
3 service.

4 (i) Service by a state employee officially assigned by the state on
5 a temporary basis to assist another public agency, shall be considered
6 as service as a state employee: PROVIDED, That service to any other
7 public agency shall not be considered service as a state employee if
8 such service has been used to establish benefits in any other public
9 retirement system.

10 (ii) An individual shall receive no more than a total of twelve
11 service credit months of service during any calendar year. If an
12 individual is employed in an eligible position by one or more employers
13 the individual shall receive no more than one service credit month
14 during any calendar month in which multiple service for seventy or more
15 hours is rendered.

16 (iii) A school district employee may count up to forty-five days of
17 sick leave as creditable service solely for the purpose of determining
18 eligibility to retire under RCW 41.40.180 as authorized by RCW
19 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW
20 28A.400.300 is equal to two service credit months. Use of less than
21 forty-five days of sick leave is creditable as allowed under this
22 subsection as follows:

23 (A) Less than twenty-two days equals one-quarter service credit
24 month;

25 (B) Twenty-two days equals one service credit month;

26 (C) More than twenty-two days but less than forty-five days equals
27 one and one-quarter service credit month.

28 (b) "Service" for plan 2 and plan 3 members, means periods of
29 employment by a member in an eligible position or positions for one or
30 more employers for which compensation earnable is paid. Compensation
31 earnable earned for ninety or more hours in any calendar month shall
32 constitute one service credit month except as provided in RCW
33 41.40.088. Compensation earnable earned for at least seventy hours but
34 less than ninety hours in any calendar month shall constitute one-half
35 service credit month of service. Compensation earnable earned for less
36 than seventy hours in any calendar month shall constitute one-quarter
37 service credit month of service. Time spent in standby status, whether
38 compensated or not, is not service.

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

3 (i) Service in any state elective position shall be deemed to be
4 full time service, except that persons serving in state elective
5 positions who are members of the Washington school employees'
6 retirement system, teachers' retirement system, public safety
7 employees' retirement system, or law enforcement officers' and
8 firefighters' retirement system at the time of election or appointment
9 to such position may elect to continue membership in the Washington
10 school employees' retirement system, teachers' retirement system,
11 public safety employees' retirement system, or law enforcement
12 officers' and firefighters' retirement system.

13 (ii) A member shall receive a total of not more than twelve service
14 credit months of service for such calendar year. If an individual is
15 employed in an eligible position by one or more employers the
16 individual shall receive no more than one service credit month during
17 any calendar month in which multiple service for ninety or more hours
18 is rendered.

19 (iii) Up to forty-five days of sick leave may be creditable as
20 service solely for the purpose of determining eligibility to retire
21 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of
22 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal
23 to two service credit months. Use of less than forty-five days of sick
24 leave is creditable as allowed under this subsection as follows:

25 (A) Less than eleven days equals one-quarter service credit month;

26 (B) Eleven or more days but less than twenty-two days equals one-
27 half service credit month;

28 (C) Twenty-two days equals one service credit month;

29 (D) More than twenty-two days but less than thirty-three days
30 equals one and one-quarter service credit month;

31 (E) Thirty-three or more days but less than forty-five days equals
32 one and one-half service credit month.

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

35 (39) "Service credit year" means an accumulation of months of
36 service credit which is equal to one when divided by twelve.

37 (40) "State actuary" or "actuary" means the person appointed
38 pursuant to RCW 44.44.010(2).

1 (41) "State elective position" means any position held by any
2 person elected or appointed to statewide office or elected or appointed
3 as a member of the legislature.

4 (42) "State treasurer" means the treasurer of the state of
5 Washington.

6 (43) "Totally incapacitated for duty" means total inability to
7 perform the duties of a member's employment or office or any other work
8 for which the member is qualified by training or experience.

9 **Sec. 5.** RCW 41.80.040 and 2002 c 354 s 305 are each amended to
10 read as follows:

11 The employer shall not bargain over rights of management which, in
12 addition to all powers, duties, and rights established by
13 constitutional provision or statute, shall include but not be limited
14 to the following:

15 (1) The functions and programs of the employer, the use of
16 technology, and the structure of the organization;

17 (2) The employer's budget and the size of the agency workforce,
18 including determining the financial basis for layoffs;

19 (3) The right to direct and supervise employees, including the
20 right to determine the basis for the allocation of overtime
21 assignments;

22 (4) The right to take whatever actions are deemed necessary to
23 carry out the mission of the state and its agencies during emergencies;
24 and

25 (5) Retirement plans and retirement benefits.

26 **Sec. 6.** RCW 43.43.120 and 2011 1st sp.s. c 5 s 6 are each amended
27 to read as follows:

28 As used in this section and RCW 43.43.130 through 43.43.320, unless
29 a different meaning is plainly required by the context:

30 (1) "Actuarial equivalent" shall mean a benefit of equal value when
31 computed upon the basis of such mortality table as may be adopted and
32 such interest rate as may be determined by the director.

33 (2) "Annual increase" means as of July 1, 1999, seventy-seven cents
34 per month per year of service which amount shall be increased each
35 subsequent July 1st by three percent, rounded to the nearest cent.

1 (3)(a) "Average final salary," for members commissioned prior to
2 January 1, 2003, shall mean the average monthly salary received by a
3 member during the member's last two years of service or any consecutive
4 two-year period of service, whichever is the greater, as an employee of
5 the Washington state patrol; or if the member has less than two years
6 of service, then the average monthly salary received by the member
7 during the member's total years of service.

8 (b) "Average final salary," for members commissioned on or after
9 January 1, 2003, shall mean the average monthly salary received by a
10 member for the highest consecutive sixty service credit months; or if
11 the member has less than sixty months of service, then the average
12 monthly salary received by the member during the member's total months
13 of service.

14 (c) In calculating average final salary under (a) or (b) of this
15 subsection, the department of retirement systems shall include:

16 (i) Any compensation forgone by the member during the 2009-2011
17 fiscal biennium as a result of reduced work hours, mandatory or
18 voluntary leave without pay, temporary reduction in pay implemented
19 prior to December 11, 2010, or temporary layoffs if the reduced
20 compensation is an integral part of the employer's expenditure
21 reduction efforts, as certified by the chief; and

22 (ii) Any compensation forgone by a member during the 2011-2013
23 fiscal biennium as a result of reduced work hours, mandatory leave
24 without pay, temporary layoffs, or reductions to current pay if the
25 reduced compensation is an integral part of the employer's expenditure
26 reduction efforts, as certified by the chief. Reductions to current
27 pay shall not include elimination of previously agreed upon future
28 salary reductions.

29 (4) "Beneficiary" means any person in receipt of retirement
30 allowance or any other benefit allowed by this chapter.

31 (5)(a) "Cadet," for a person who became a member of the retirement
32 system after June 12, 1980, is a person who has passed the Washington
33 state patrol's entry-level oral, written, physical performance, and
34 background examinations and is, thereby, appointed by the chief as a
35 candidate to be a commissioned officer of the Washington state patrol.

36 (b) "Cadet," for a person who became a member of the retirement
37 system before June 12, 1980, is a trooper cadet, patrol cadet, or
38 employee of like classification, employed for the express purpose of

1 receiving the on-the-job training required for attendance at the state
2 patrol academy and for becoming a commissioned trooper. "Like
3 classification" includes: Radio operators or dispatchers; persons
4 providing security for the governor or legislature; patrol officers;
5 drivers' license examiners; weighmasters; vehicle safety inspectors;
6 central wireless operators; and warehouse workers.

7 (6) "Contributions" means the deduction from the compensation of
8 each member in accordance with the contribution rates established under
9 chapter 41.45 RCW.

10 (7) "Current service" shall mean all service as a member rendered
11 on or after August 1, 1947.

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

14 (9) "Director" means the director of the department of retirement
15 systems.

16 (10) "Domestic partners" means two adults who have registered as
17 domestic partners under RCW 26.60.040.

18 (11) "Employee" means any commissioned employee of the Washington
19 state patrol.

20 (12) "Insurance commissioner" means the insurance commissioner of
21 the state of Washington.

22 (13) "Lieutenant governor" means the lieutenant governor of the
23 state of Washington.

24 (14) "Member" means any person included in the membership of the
25 retirement fund.

26 (15) "Plan 2" means the Washington state patrol retirement system
27 plan 2, providing the benefits and funding provisions covering
28 commissioned employees who first become members of the system on or
29 after January 1, 2003.

30 (16) "Prior service" shall mean all services rendered by a member
31 to the state of Washington, or any of its political subdivisions prior
32 to August 1, 1947, unless such service has been credited in another
33 public retirement or pension system operating in the state of
34 Washington.

35 (17) "Regular interest" means interest compounded annually at such
36 rates as may be determined by the director.

37 (18) "Retirement board" means the board provided for in this
38 chapter.

1 (19) "Retirement fund" means the Washington state patrol retirement
2 fund.

3 (20) "Retirement system" means the Washington state patrol
4 retirement system.

5 (21)(a) "Salary," for members commissioned prior to July 1, 2001,
6 shall exclude any overtime earnings related to RCW 47.46.040, or any
7 voluntary overtime, earned on or after July 1, 2001.

8 (b) "Salary," for members commissioned (~~on or~~) after (~~July 1~~)
9 June 30, 2001, but before the effective date of this section, shall
10 exclude any overtime earnings related to RCW 47.46.040 or any voluntary
11 overtime, lump sum payments for deferred annual sick leave, unused
12 accumulated vacation, unused accumulated annual leave, holiday pay, or
13 any form of severance pay.

14 (c) "Salary," for members commissioned on or after the effective
15 date of this section, shall exclude any overtime payments, lump sum
16 payments for deferred annual sick leave, unused accumulated vacation,
17 unused accumulated annual leave, holiday pay, or any form of severance
18 pay.

19 (22) "Service" shall mean services rendered to the state of
20 Washington or any political subdivisions thereof for which compensation
21 has been paid. Full time employment for seventy or more hours in any
22 given calendar month shall constitute one month of service. An
23 employee who is reinstated in accordance with RCW 43.43.110 shall
24 suffer no loss of service for the period reinstated subject to the
25 contribution requirements of this chapter. Only months of service
26 shall be counted in the computation of any retirement allowance or
27 other benefit provided for herein. Years of service shall be
28 determined by dividing the total number of months of service by twelve.
29 Any fraction of a year of service as so determined shall be taken into
30 account in the computation of such retirement allowance or benefit.

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

33 (24) "State treasurer" means the treasurer of the state of
34 Washington.

35 Unless the context expressly indicates otherwise, words importing
36 the masculine gender shall be extended to include the feminine gender
37 and words importing the feminine gender shall be extended to include
38 the masculine gender.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.45 RCW
2 to read as follows:

3 (1) In addition to the basic and supplemental employer
4 contributions required by RCW 41.45.060 and 41.45.070, beginning July
5 1, 2015, the department shall collect additional contributions on
6 overtime payments as provided in subsection (2) of this section.

7 (2) Not later than January 1, 2015, and every two years thereafter,
8 the state actuary shall report to the department, for each state
9 retirement plan listed in subsection (3) of this section, additional
10 employer contribution rates to be collected for the following fiscal
11 biennium for overtime payments to members who first established
12 membership in their current plans prior to the effective date of this
13 section. The additional contribution rates shall be sufficient to
14 offset any increased liabilities in the retirement systems resulting
15 from the inclusion of overtime in the determination of members'
16 retirement allowances. The state actuary may establish different
17 employer contribution requirements under this section for overtime
18 payments based on a member's age.

19 (3) This section applies to all retirement plans in the following
20 retirement systems:

21 (a) The law enforcement officers' and firefighters' retirement
22 system under chapter 41.26 RCW;

23 (b) The teachers' retirement system under chapter 41.32 RCW;

24 (c) The school employees' retirement system under chapter 41.35
25 RCW;

26 (d) The public safety employees' retirement system under chapter
27 41.37 RCW;

28 (e) The public employees' retirement system under chapter 41.40
29 RCW; and

30 (f) The Washington state patrol retirement system under chapter
31 43.43 RCW.

32 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2012.

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