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HOUSE BILL 1829

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State of Washington                      58th Legislature                      2003 Regular Session

By Representatives Bailey, Sehlin, Talcott, Kristiansen, Clements,  
Tom, Pearson, McMahan, Benson, Woods and Pflug

Read first time 02/11/2003. Referred to Committee on Appropriations.

1            AN ACT Relating to postretirement employment in the public  
2 employees' retirement system and the teachers' retirement system;  
3 amending RCW 41.32.010, 41.32.570, 41.40.010, and 41.40.037; repealing  
4 2001 c 317 s 1; and prescribing penalties.

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

6            **Sec. 1.** RCW 41.32.010 and 1997 c 254 s 3 are each amended to read  
7 as follows:

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

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

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

18            (2) "Actuarial equivalent" means a benefit of equal value when

1 computed upon the basis of such mortality tables and regulations as  
2 shall be adopted by the director and regular interest.

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

5 (4) "Member reserve" means the fund in which all of the accumulated  
6 contributions of members are held.

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

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

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

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

19 (8) "Dependent" means receiving one-half or more of support from a  
20 member.

21 (9) "Disability allowance" means monthly payments during  
22 disability. This subsection shall apply only to plan 1 members.

23 (10)(a) "Earnable compensation" for plan 1 members, means:

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

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

32 (A) Retroactive payments to an individual by an employer on  
33 reinstatement of the employee in a position, or payments by an employer  
34 to an individual in lieu of reinstatement in a position which are  
35 awarded or granted as the equivalent of the salary or wages which the  
36 individual would have earned during a payroll period shall be  
37 considered earnable compensation and the individual shall receive the  
38 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 (iii) 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, or a  
23 counselor. Earnable compensation shall be so defined only for the  
24 purpose of the calculation of retirement benefits and only as necessary  
25 to insure that members who receive fractional service credit under RCW  
26 41.32.270 receive benefits proportional to those received by members  
27 who have received full-time service credit.

28 (iv) "Earnable compensation" does not include:

29 (A) Remuneration for unused sick leave authorized under RCW  
30 41.04.340, 28A.400.210, or 28A.310.490;

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

33 (b) "Earnable compensation" for plan 2 and plan 3 members, means  
34 salaries or wages earned by a member during a payroll period for  
35 personal services, including overtime payments, and shall include wages  
36 and salaries deferred under provisions established pursuant to sections  
37 403(b), 414(h), and 457 of the United States Internal Revenue Code, but

1 shall exclude lump sum payments for deferred annual sick leave, unused  
2 accumulated vacation, unused accumulated annual leave, or any form of  
3 severance pay.

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

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

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

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

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

25 (11) "Employer" means the state of Washington, the school district,  
26 or any agency of the state of Washington by which the member is paid.

27 (12) "Fiscal year" means a year which begins July 1st and ends June  
28 30th of the following year.

29 (13) "Former state fund" means the state retirement fund in  
30 operation for teachers under chapter 187, Laws of 1923, as amended.

31 (14) "Local fund" means any of the local retirement funds for  
32 teachers operated in any school district in accordance with the  
33 provisions of chapter 163, Laws of 1917 as amended.

34 (15) "Member" means any teacher included in the membership of the  
35 retirement system. Also, any other employee of the public schools who,  
36 on July 1, 1947, had not elected to be exempt from membership and who,  
37 prior to that date, had by an authorized payroll deduction, contributed  
38 to the member reserve.

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

7 (17) "Pension" means the moneys payable per year during life from  
8 the pension reserve.

9 (18) "Pension reserve" is a fund in which shall be accumulated an  
10 actuarial reserve adequate to meet present and future pension  
11 liabilities of the system and from which all pension obligations are to  
12 be paid.

13 (19) "Prior service" means service rendered prior to the first date  
14 of eligibility to membership in the retirement system for which credit  
15 is allowable. The provisions of this subsection shall apply only to  
16 plan 1 members.

17 (20) "Prior service contributions" means contributions made by a  
18 member to secure credit for prior service. The provisions of this  
19 subsection shall apply only to plan 1 members.

20 (21) "Public school" means any institution or activity operated by  
21 the state of Washington or any instrumentality or political subdivision  
22 thereof employing teachers, except the University of Washington and  
23 Washington State University.

24 (22) "Regular contributions" means the amounts required to be  
25 deducted from the compensation of a member and credited to the member's  
26 individual account in the member reserve. This subsection shall apply  
27 only to plan 1 members.

28 (23) "Regular interest" means such rate as the director may  
29 determine.

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

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

36 (25) "Retirement system" means the Washington state teachers'  
37 retirement system.

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

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

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

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

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

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

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

29 (iii) All other members in an eligible position or as a substitute  
30 teacher shall receive service credit as follows:

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

33 (B) A half-service credit month is earned in those calendar months  
34 where earnable compensation is earned for at least seventy hours but  
35 less than ninety hours; and

36 (C) A quarter-service credit month is earned in those calendar  
37 months where earnable compensation is earned for less than seventy  
38 hours.

1 (iv) Any person who is a member of the teachers' retirement system  
2 and who is elected or appointed to a state elective position may  
3 continue to be a member of the retirement system and continue to  
4 receive a service credit month for each of the months in a state  
5 elective position by making the required member contributions.

6 (v) When an individual is employed by two or more employers the  
7 individual shall only receive one month's service credit during any  
8 calendar month in which multiple service for ninety or more hours is  
9 rendered.

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

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

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

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

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

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

24 (vii) As authorized in RCW 41.32.065, service earned in an out-of-  
25 state retirement system that covers teachers in public schools may be  
26 applied solely for the purpose of determining eligibility to retire  
27 under RCW 41.32.470.

28 (viii) The department shall adopt rules implementing this  
29 subsection.

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

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

34 (29) "Teacher" means any person qualified to teach who is engaged  
35 by a public school in an instructional, administrative, or supervisory  
36 capacity. The term includes state, educational service district, and  
37 school district superintendents and their assistants and all employees  
38 certificated by the superintendent of public instruction; and in

1 addition thereto any full time school doctor who is employed by a  
2 public school and renders service of an instructional or educational  
3 nature.

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

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

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

15 (33) "Director" means the director of the department.

16 (34) "State elective position" means any position held by any  
17 person elected or appointed to statewide office or elected or appointed  
18 as a member of the legislature.

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

21 (36) "Substitute teacher" means:

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

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

28 (37)(a) "Eligible position" for plan 2 members from June 7, 1990,  
29 through September 1, 1991, means a position which normally requires two  
30 or more uninterrupted months of creditable service during September  
31 through August of the following year.

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

37 (c) For purposes of this chapter an employer shall not define



1 "position" in such a manner that an employee's monthly work for that  
2 employer is divided into more than one position.

3 (d) The elected position of the superintendent of public  
4 instruction is an eligible position.

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

8 (39) "Plan 2" means the teachers' retirement system, plan 2  
9 providing the benefits and funding provisions covering persons who  
10 first became members of the system on and after October 1, 1977, and  
11 prior to July 1, 1996.

12 (40) "Plan 3" means the teachers' retirement system, plan 3  
13 providing the benefits and funding provisions covering persons who  
14 first become members of the system on and after July 1, 1996, or who  
15 transfer under RCW 41.32.817.

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

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

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

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

25 (45) "Adjustment ratio" means the value of index A divided by index  
26 B.

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

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

33 (48) "Separation from service or employment" occurs when a person  
34 has terminated all employment with an employer. Separation from  
35 service or employment does not occur, and if claimed by an employer or  
36 employee is a violation of RCW 41.32.055, when an employee and employer  
37 have a written or verbal agreement to resume employment with the same  
38 employer following termination.

1 (49) "Employed" or "employee" means a person who is providing  
2 services for compensation to an employer, unless the person is free  
3 from the employer's direction and control over the performance of work.  
4 The department shall adopt rules and interpret this subsection  
5 consistent with common law.

6 **Sec. 2.** RCW 41.32.570 and 2001 2nd sp.s. c 10 s 3 are each amended  
7 to read as follows:

8 (1)(a) If a retiree enters employment with an employer sooner than  
9 (i) one calendar month after his or her accrual date for employment of  
10 eight hundred sixty-seven hours or less in a school year, or (ii) two  
11 calendar months after his or her accrual date for employment of more  
12 than eight hundred sixty-seven hours in a school year, the retiree's  
13 monthly retirement allowance will be reduced by five and one-half  
14 percent for every seven hours worked during that month. This reduction  
15 will be applied each month until the retiree remains absent from  
16 employment with an employer for one full calendar month.

17 (b) The benefit reduction provided in (a) of this subsection will  
18 accrue for a maximum of one hundred forty hours per month. Any monthly  
19 benefit reduction over one hundred percent will be applied to the  
20 benefit the retiree is eligible to receive in subsequent months.

21 (2) Any retired teacher or retired administrator who enters service  
22 in any public educational institution in Washington state and who has  
23 satisfied the applicable break in employment requirement of subsection  
24 (1) of this section shall cease to receive pension payments while  
25 engaged in such service, after the retiree has rendered service for  
26 more than one thousand five hundred hours in a school year. When a  
27 retired teacher or administrator renders service beyond eight hundred  
28 sixty-seven hours, the department shall collect from the employer the  
29 applicable employer retirement contributions for the entire duration of  
30 the member's employment during that fiscal year.

31 (3) The department shall collect and provide the state actuary with  
32 information relevant to the use of this section for the joint committee  
33 on pension policy.

34 (4) The legislature reserves the right to amend or repeal this  
35 section in the future and no member or beneficiary has a contractual  
36 right to be employed for more than (~~five hundred twenty five~~) eight

1 hundred sixty-seven hours per year without a reduction of his or her  
2 pension.

3 NEW SECTION. **Sec. 3.** 2001 c 317 s 1 is repealed.

4 **Sec. 4.** RCW 41.40.010 and 2000 c 247 s 102 are each amended to  
5 read as follows:

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

8 (1) "Retirement system" means the public employees' retirement  
9 system provided for in this chapter.

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

12 (3) "State treasurer" means the treasurer of the state of  
13 Washington.

14 (4)(a) "Employer" for plan 1 members, means every branch,  
15 department, agency, commission, board, and office of the state, any  
16 political subdivision or association of political subdivisions of the  
17 state admitted into the retirement system, and legal entities  
18 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the  
19 term shall also include any labor guild, association, or organization  
20 the membership of a local lodge or division of which is comprised of at  
21 least forty percent employees of an employer (other than such labor  
22 guild, association, or organization) within this chapter. The term may  
23 also include any city of the first class that has its own retirement  
24 system.

25 (b) "Employer" for plan 2 and plan 3 members, means every branch,  
26 department, agency, commission, board, and office of the state, and any  
27 political subdivision and municipal corporation of the state admitted  
28 into the retirement system, including public agencies created pursuant  
29 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August  
30 31, 2000, school districts and educational service districts will no  
31 longer be employers for the public employees' retirement system plan 2.

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

1 (6) "Original member" of this retirement system means:

2 (a) Any person who became a member of the system prior to April 1,  
3 1949;

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

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

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

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

23 (f) Any member who has been a contributor under the system for two  
24 or more years and who has restored all contributions that may have been  
25 withdrawn as provided by RCW 41.40.150 and who on the effective date of  
26 the individual's retirement has rendered five or more years of service  
27 for the state or any political subdivision prior to the time of the  
28 admission of the employer into the system; except that the provisions  
29 relating to the minimum amount of retirement allowance for the member  
30 upon retirement at age seventy as found in RCW 41.40.190(4) shall not  
31 apply to the member.

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

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

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

4 (A) Retroactive payments to an individual by an employer on  
5 reinstatement of the employee in a position, or payments by an employer  
6 to an individual in lieu of reinstatement in a position which are  
7 awarded or granted as the equivalent of the salary or wage which the  
8 individual would have earned during a payroll period shall be  
9 considered compensation earnable and the individual shall receive the  
10 equivalent service credit;

11 (B) If a leave of absence is taken by an individual for the purpose  
12 of serving in the state legislature, the salary which would have been  
13 received for the position from which the leave of absence was taken,  
14 shall be considered as compensation earnable if the employee's  
15 contribution is paid by the employee and the employer's contribution is  
16 paid by the employer or employee;

17 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and  
18 72.09.240;

19 (D) Compensation that a member would have received but for a  
20 disability occurring in the line of duty only as authorized by RCW  
21 41.40.038;

22 (E) Compensation that a member receives due to participation in the  
23 leave sharing program only as authorized by RCW 41.04.650 through  
24 41.04.670; and

25 (F) Compensation that a member receives for being in standby  
26 status. For the purposes of this section, a member is in standby  
27 status when not being paid for time actually worked and the employer  
28 requires the member to be prepared to report immediately for work, if  
29 the need arises, although the need may not arise.

30 (ii) "Compensation earnable" 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) "Compensation earnable" 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, and shall include wages  
38 and salaries deferred under provisions established pursuant to sections

1 403(b), 414(h), and 457 of the United States Internal Revenue Code, but  
2 shall exclude nonmoney maintenance compensation and lump sum or other  
3 payments for deferred annual sick leave, unused accumulated vacation,  
4 unused accumulated annual leave, or any form of severance pay.

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

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

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

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

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

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

28 (iv) Compensation that a member would have received but for a  
29 disability occurring in the line of duty only as authorized by RCW  
30 41.40.038;

31 (v) Compensation that a member receives due to participation in the  
32 leave sharing program only as authorized by RCW 41.04.650 through  
33 41.04.670; and

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

1 (9)(a) "Service" for plan 1 members, except as provided in RCW  
2 41.40.088, means periods of employment in an eligible position or  
3 positions for one or more employers rendered to any employer for which  
4 compensation is paid, and includes time spent in office as an elected  
5 or appointed official of an employer. Compensation earnable earned in  
6 full time work for seventy hours or more in any given calendar month  
7 shall constitute one service credit month except as provided in RCW  
8 41.40.088. Compensation earnable earned for less than seventy hours in  
9 any calendar month shall constitute one-quarter service credit month of  
10 service except as provided in RCW 41.40.088. Only service credit  
11 months and one-quarter service credit months shall be counted in the  
12 computation of any retirement allowance or other benefit provided for  
13 in this chapter. Any fraction of a year of service shall be taken into  
14 account in the computation of such retirement allowance or benefits.  
15 Time spent in standby status, whether compensated or not, is not  
16 service.

17 (i) Service by a state employee officially assigned by the state on  
18 a temporary basis to assist another public agency, shall be considered  
19 as service as a state employee: PROVIDED, That service to any other  
20 public agency shall not be considered service as a state employee if  
21 such service has been used to establish benefits in any other public  
22 retirement system.

23 (ii) An individual shall receive no more than a total of twelve  
24 service credit months of service during any calendar year. If an  
25 individual is employed in an eligible position by one or more employers  
26 the individual shall receive no more than one service credit month  
27 during any calendar month in which multiple service for seventy or more  
28 hours is rendered.

29 (iii) A school district employee may count up to forty-five days of  
30 sick leave as creditable service solely for the purpose of determining  
31 eligibility to retire under RCW 41.40.180 as authorized by RCW  
32 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW  
33 28A.400.300 is equal to two service credit months. Use of less than  
34 forty-five days of sick leave is creditable as allowed under this  
35 subsection as follows:

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

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

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

3 (b) "Service" for plan 2 and plan 3 members, means periods of  
4 employment by a member in an eligible position or positions for one or  
5 more employers for which compensation earnable is paid. Compensation  
6 earnable earned for ninety or more hours in any calendar month shall  
7 constitute one service credit month except as provided in RCW  
8 41.40.088. Compensation earnable earned for at least seventy hours but  
9 less than ninety hours in any calendar month shall constitute one-half  
10 service credit month of service. Compensation earnable earned for less  
11 than seventy hours in any calendar month shall constitute one-quarter  
12 service credit month of service. Time spent in standby status, whether  
13 compensated or not, is not service.

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

16 (i) Service in any state elective position shall be deemed to be  
17 full time service, except that persons serving in state elective  
18 positions who are members of the Washington school employees'  
19 retirement system, teachers' retirement system, or law enforcement  
20 officers' and fire fighters' retirement system at the time of election  
21 or appointment to such position may elect to continue membership in the  
22 Washington school employees' retirement system, teachers' retirement  
23 system, or law enforcement officers' and fire fighters' retirement  
24 system.

25 (ii) A member shall receive a total of not more than twelve service  
26 credit months of service for such calendar year. If an individual is  
27 employed in an eligible position by one or more employers the  
28 individual shall receive no more than one service credit month during  
29 any calendar month in which multiple service for ninety or more hours  
30 is rendered.

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

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



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

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

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

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

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

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

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

14 (13) "Membership service" means:

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

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

20 (c) Service not to exceed six consecutive months of probationary  
21 service rendered after April 1, 1949, and prior to becoming a member,  
22 in the case of any member, upon payment in full by such member of the  
23 total amount of the employer's contribution to the retirement fund  
24 which would have been required under the law in effect when such  
25 probationary service was rendered if the member had been a member  
26 during such period, except that the amount of the employer's  
27 contribution shall be calculated by the director based on the first  
28 month's compensation earnable as a member;

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

36 (14)(a) "Beneficiary" for plan 1 members, means any person in  
37 receipt of a retirement allowance, pension or other benefit provided by  
38 this 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 (15) "Regular interest" means such rate as the director may  
6 determine.

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

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

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

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

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

28 (20) "Pension" means payments for life derived from contributions  
29 made by the employer. All pensions shall be paid in monthly  
30 installments.

31 (21) "Retirement allowance" means the sum of the annuity and the  
32 pension.

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

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

4 (24) "Retirement" means withdrawal from active service with a  
5 retirement allowance as provided by this chapter.

6 (25) "Eligible position" means:

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

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

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

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

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

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

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

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

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

35 (33) "Plan 1" means the public employees' retirement system, plan  
36 1 providing the benefits and funding provisions covering persons who  
37 first became members of the system prior to October 1, 1977.

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

5 (35) "Plan 3" means the public employees' retirement system, plan  
6 providing the benefits and funding provisions covering persons who:

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

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

10 (ii) September 1, 2002, and are employed by other than a state  
11 agency or institute of higher education and who did not choose to enter  
12 plan 2; or

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

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

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

20 (38) "Index B" means the index for the year prior to index A.

21 (39) "Index year" means the earliest calendar year in which the  
22 index is more than sixty percent of index A.

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

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

28 (42) "Separation from service" occurs when a person has terminated  
29 all employment with an employer. Separation from service or employment  
30 does not occur, and if claimed by an employer or employee is a  
31 violation of RCW 41.40.055, when an employee and employer have a  
32 written or verbal agreement to resume employment with the same employer  
33 following termination.

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

1       **Sec. 5.** RCW 41.40.037 and 2001 2nd sp.s. c 10 s 4 are each amended  
2 to read as follows:

3       (1)(a) If a retiree enters employment with an employer sooner than  
4 (i) one calendar month after his or her accrual date for employment of  
5 eight hundred sixty-seven hours or less in a calendar year, or (ii)  
6 three calendar months after his or her accrual date for employment of  
7 more than eight hundred sixty-seven hours in a calendar year, the  
8 retiree's monthly retirement allowance will be reduced by five and one-  
9 half percent for every eight hours worked during that month. This  
10 reduction will be applied each month until the retiree remains absent  
11 from employment with an employer for one full calendar month.

12       (b) The benefit reduction provided in (a) of this subsection will  
13 accrue for a maximum of one hundred sixty hours per month. Any benefit  
14 reduction over one hundred percent will be applied to the benefit the  
15 retiree is eligible to receive in subsequent months.

16       (2)(a) A retiree from plan 1 who has satisfied the applicable break  
17 in employment requirement of subsection (1) of this section and who  
18 enters employment with an employer may continue to receive pension  
19 payments while engaged in such service for up to one thousand five  
20 hundred hours of service in a calendar year without a reduction of  
21 pension. When a plan 1 member renders service beyond eight hundred  
22 sixty-seven hours, the department shall collect from the employer the  
23 applicable employer retirement contributions for the entire duration of  
24 the member's employment during that calendar year.

25       (b) A retiree from plan 2 or plan 3 who has satisfied the break in  
26 employment requirement of subsection (1) of this section may work up to  
27 eight hundred sixty-seven hours in a calendar year in an eligible  
28 position, as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as  
29 a fire fighter or law enforcement officer, as defined in RCW 41.26.030,  
30 without suspension of his or her benefit.

31       (3) If the retiree opts to reestablish membership under RCW  
32 41.40.023(12), he or she terminates his or her retirement status and  
33 becomes a member. Retirement benefits shall not accrue during the  
34 period of membership and the individual shall make contributions and  
35 receive membership credit. Such a member shall have the right to again  
36 retire if eligible in accordance with RCW 41.40.180. However, if the  
37 right to retire is exercised to become effective before the member has

1 rendered two uninterrupted years of service, the retirement formula and  
2 survivor options the member had at the time of the member's previous  
3 retirement shall be reinstated.

4 (4) The department shall collect and provide the state actuary with  
5 information relevant to the use of this section for the joint committee  
6 on pension policy.

7 (5) The legislature reserves the right to amend or repeal this  
8 section in the future and no member or beneficiary has a contractual  
9 right to be employed for more than five months in a calendar year  
10 without a reduction of his or her pension.

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