
SENATE BILL 6375

State of Washington 58th Legislature 2004 Regular Session

By Senators Honeyford, Mulliken, Hewitt and Shin

Read first time 01/19/2004. Referred to Committee on Ways & Means.

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, and 41.40.010; and reenacting and
4 amending RCW 41.40.037.

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

6 **Sec. 1.** RCW 41.32.010 and 2003 c 31 s 1 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) For an employee member of the retirement system teaching in an
30 extended school year program, two consecutive extended school years, as
31 defined by the employer school district, may be used as the annual
32 period for determining earnable compensation in lieu of the two fiscal
33 years.

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

37 (A) Retroactive payments to an individual by an employer on
38 reinstatement of the employee in a position, or payments by an employer

1 to an individual in lieu of reinstatement in a position which are
2 awarded or granted as the equivalent of the salary or wages which the
3 individual would have earned during a payroll period shall be
4 considered earnable compensation and the individual shall receive the
5 equivalent service credit.

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

18 (iv) For members employed less than full time under written
19 contract with a school district, or community college district, in an
20 instructional position, for which the member receives service credit of
21 less than one year in all of the years used to determine the earnable
22 compensation used for computing benefits due under RCW 41.32.497,
23 41.32.498, and 41.32.520, the member may elect to have earnable
24 compensation defined as provided in RCW 41.32.345. For the purposes of
25 this subsection, the term "instructional position" means a position in
26 which more than seventy-five percent of the member's time is spent as
27 a classroom instructor (including office hours), a librarian, or a
28 counselor. Earnable compensation shall be so defined only for the
29 purpose of the calculation of retirement benefits and only as necessary
30 to insure that members who receive fractional service credit under RCW
31 41.32.270 receive benefits proportional to those received by members
32 who have received full-time service credit.

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

34 (A) Remuneration for unused sick leave authorized under RCW
35 41.04.340, 28A.400.210, or 28A.310.490;

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

1 (b) "Earnable compensation" for plan 2 and plan 3 members, means
2 salaries or wages earned by a member during a payroll period for
3 personal services, including overtime payments, and shall include wages
4 and salaries deferred under provisions established pursuant to sections
5 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
6 shall exclude lump sum payments for deferred annual sick leave, unused
7 accumulated vacation, unused accumulated annual leave, or any form of
8 severance pay.

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

32 (12) "Fiscal year" means a year which begins July 1st and ends June
33 30th of the following year.

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

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

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

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

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

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

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

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

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

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

33 (23) "Regular interest" means such rate as the director may
34 determine.

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

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

4 (25) "Retirement system" means the Washington state teachers'
5 retirement system.

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

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

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

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

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

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

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

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

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

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

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

7 (iv) Any person who is a member of the teachers' retirement system
8 and who is elected or appointed to a state elective position may
9 continue to be a member of the retirement system and continue to
10 receive a service credit month for each of the months in a state
11 elective position by making the required member contributions.

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

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

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

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

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

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

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

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

34 (viii) The department shall adopt rules implementing this
35 subsection.

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

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

3 (29) "Teacher" means any person qualified to teach who is engaged
4 by a public school in an instructional, administrative, or supervisory
5 capacity. The term includes state, educational service district, and
6 school district superintendents and their assistants and all employees
7 certificated by the superintendent of public instruction; and in
8 addition thereto any full time school doctor who is employed by a
9 public school and renders service of an instructional or educational
10 nature.

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

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

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

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

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

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

28 (36) "Substitute teacher" means:

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

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

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

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

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

9 (d) The elected position of the superintendent of public
10 instruction is an eligible position.

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

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

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

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

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

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

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

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

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

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

1 (48) "Separation from service or employment" occurs when a person
2 has terminated all employment with an employer. Separation from
3 service or employment does not occur when an employee and employer have
4 a written or oral agreement to resume employment with the same employer
5 following termination.

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

11 **Sec. 2.** RCW 41.32.570 and 2003 c 295 s 6 are each amended to read
12 as follows:

13 (1)(a) If a retiree enters employment with an employer sooner than
14 one calendar month after his or her accrual date, the retiree's monthly
15 retirement allowance will be reduced by five and one-half percent for
16 every seven hours worked during that month. This reduction will be
17 applied each month until the retiree remains absent from employment
18 with an employer for one full calendar month.

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

23 (2) Except as provided in subsection (3) of this section, any
24 retired teacher or retired administrator who enters service in any
25 public educational institution in Washington state ((and who has
26 satisfied the break in employment requirement of subsection (1) of this
27 section)) at least one calendar month after his or her accrual date
28 shall cease to receive pension payments while engaged in such service,
29 after the retiree has rendered service for more than ((one thousand
30 five hundred)) eight hundred sixty-seven hours in a school year.

31 (3) Any retired teacher or retired administrator who enters service
32 in any public educational institution in Washington state one and one-
33 half calendar months or more after his or her accrual date and:

34 (a) Is hired into a position for which the school board has
35 documented a justifiable need to hire a retiree into the position;

36 (b) Is hired through the established process for the position with
37 the approval of the school board of the prospective employer;

1 (c) The employer retains records of the procedures followed and the
2 decisions made in hiring the retired teacher or retired administrator
3 and provides those records in the event of an audit;

4 (d) The employee has not already rendered a cumulative total of
5 more than (i) three thousand one hundred sixty-five hours of service as
6 a teacher or principal, or (ii) one thousand nine hundred hours in any
7 other capacity, while receiving pension payments, beyond an annual
8 threshold of eight hundred sixty-seven hours;

9 (e) The employee is hired for no more than one school year at a
10 time, during which time they may reapply for the position; and

11 (f) The employer shall, six months from the date of hiring a
12 retiree, reopen the position and accept applications;
13 shall cease to receive pension payments while engaged in that service
14 after the retiree has rendered service for more than one thousand five
15 hundred hours in a school year. The cumulative total limitations under
16 this subsection apply prospectively to those retiring after the
17 effective date of this act and retroactively to those who retired prior
18 to the effective date of this act, and shall be calculated from the
19 date of retirement.

20 (4) When a retired teacher or administrator renders service beyond
21 eight hundred sixty-seven hours, the department shall collect from the
22 employer and employee the applicable employer retirement contributions
23 for the entire duration of the member's employment during that fiscal
24 year.

25 ~~((+3))~~ (5) The department shall collect and provide the state
26 actuary with information relevant to the use of this section for the
27 select committee on pension policy.

28 ~~((+4))~~ (6) The legislature reserves the right to amend or repeal
29 this section in the future and no member or beneficiary has a
30 contractual right to be employed for more than five hundred twenty-five
31 hours per year without a reduction of his or her pension.

32 **Sec. 3.** RCW 41.40.010 and 2003 c 412 s 4 are each amended to read
33 as follows:

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

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

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

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

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

16 (b) "Employer" for plan 2 and plan 3 members, means every branch,
17 department, agency, commission, board, and office of the state, and any
18 political subdivision and municipal corporation of the state admitted
19 into the retirement system, including public agencies created pursuant
20 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
21 31, 2000, school districts and educational service districts will no
22 longer be employers for the public employees' retirement system plan 2.

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

28 (6) "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 (7) "New member" means a person who becomes a member on or after
23 April 1, 1949, except as otherwise provided in this section.

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

29 (i) "Compensation earnable" 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 wage which the
36 individual would have earned during a payroll period shall be
37 considered compensation earnable and the individual shall receive the
38 equivalent service credit;

1 (B) If a leave of absence is taken by an individual for the purpose
2 of serving in the state legislature, the salary which would have been
3 received for the position from which the leave of absence was taken,
4 shall be considered as compensation earnable if the employee's
5 contribution is paid by the employee and the employer's contribution is
6 paid by the employer or employee;

7 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
8 72.09.240;

9 (D) Compensation that a member would have received but for a
10 disability occurring in the line of duty only as authorized by RCW
11 41.40.038;

12 (E) Compensation that a member receives due to participation in the
13 leave sharing program only as authorized by RCW 41.04.650 through
14 41.04.670; and

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

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

21 (A) Remuneration for unused sick leave authorized under RCW
22 41.04.340, 28A.400.210, or 28A.310.490;

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

25 (b) "Compensation earnable" for plan 2 and plan 3 members, means
26 salaries or wages earned by a member during a payroll period for
27 personal services, including overtime payments, and shall include wages
28 and salaries deferred under provisions established pursuant to sections
29 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
30 shall exclude nonmoney maintenance compensation and lump sum or other
31 payments for deferred annual sick leave, unused accumulated vacation,
32 unused accumulated annual leave, or any form of severance pay.

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

36 (i) Retroactive payments to an individual by an employer on
37 reinstatement of the employee in a position, or payments by an employer
38 to an individual in lieu of reinstatement in a position which are

1 awarded or granted as the equivalent of the salary or wage which the
2 individual would have earned during a payroll period shall be
3 considered compensation earnable to the extent provided above, and the
4 individual shall receive the equivalent service credit;

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

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

10 (B) Such member's actual compensation earnable received for
11 nonlegislative public employment and legislative service combined. Any
12 additional contributions to the retirement system required because
13 compensation earnable under (b)(ii)(A) of this subsection is greater
14 than compensation earnable under (b)(ii)(B) of this subsection shall be
15 paid by the member for both member and employer contributions;

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

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

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

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

29 (9)(a) "Service" for plan 1 members, except as provided in RCW
30 41.40.088, means periods of employment in an eligible position or
31 positions for one or more employers rendered to any employer for which
32 compensation is paid, and includes time spent in office as an elected
33 or appointed official of an employer. Compensation earnable earned in
34 full time work for seventy hours or more in any given calendar month
35 shall constitute one service credit month except as provided in RCW
36 41.40.088. Compensation earnable earned for less than seventy hours in
37 any calendar month shall constitute one-quarter service credit month of
38 service except as provided in RCW 41.40.088. Only service credit

1 months and one-quarter service credit months shall be counted in the
2 computation of any retirement allowance or other benefit provided for
3 in this chapter. Any fraction of a year of service shall be taken into
4 account in the computation of such retirement allowance or benefits.
5 Time spent in standby status, whether compensated or not, is not
6 service.

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

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

19 (iii) A school district employee may count up to forty-five days of
20 sick leave as creditable service solely for the purpose of determining
21 eligibility to retire under RCW 41.40.180 as authorized by RCW
22 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW
23 28A.400.300 is equal to two service credit months. Use of less than
24 forty-five days of sick leave is creditable as allowed under this
25 subsection as follows:

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

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

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

31 (b) "Service" for plan 2 and plan 3 members, means periods of
32 employment by a member in an eligible position or positions for one or
33 more employers for which compensation earnable is paid. Compensation
34 earnable earned for ninety or more hours in any calendar month shall
35 constitute one service credit month except as provided in RCW
36 41.40.088. Compensation earnable earned for at least seventy hours but
37 less than ninety hours in any calendar month shall constitute one-half
38 service credit month of service. Compensation earnable earned for less

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (13) "Membership service" means:

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

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

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

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

25 (14)(a) "Beneficiary" for plan 1 members, means any person in
26 receipt of a retirement allowance, pension or other benefit provided by
27 this chapter.

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

32 (15) "Regular interest" means such rate as the director may
33 determine.

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

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

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

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

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

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

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

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

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

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

33 (25) "Eligible position" means:

34 (a) Any position that, as defined by the employer, normally
35 requires five or more months of service a year for which regular
36 compensation for at least seventy hours is earned by the occupant
37 thereof. 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 (b) Any position occupied by an elected official or person
4 appointed directly by the governor, or appointed by the chief justice
5 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which
6 compensation is paid.

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

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

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

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

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

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

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

25 (33) "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 (34) "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 (35) "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 (36) "Index" means, for any calendar year, that year's annual
5 average consumer price index, Seattle, Washington area, for urban wage
6 earners and clerical workers, all items, compiled by the bureau of
7 labor statistics, United States department of labor.

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

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

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

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

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

18 (42) "Separation from service" occurs when a person has terminated
19 all employment with an employer. Separation from service or employment
20 does not occur(~~(, and if claimed by an employer or employee may be a~~
21 ~~violation of RCW 41.40.055,)~~) when an employee and employer have a
22 written or oral agreement to resume employment with the same employer
23 following termination.

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

27 **Sec. 4.** RCW 41.40.037 and 2003 c 412 s 5 and 2003 c 295 s 7 are
28 each reenacted and amended to read as follows:

29 (1)(a) If a retiree enters employment with an employer sooner than
30 one calendar month after his or her accrual date, the retiree's monthly
31 retirement allowance will be reduced by five and one-half percent for
32 every eight hours worked during that month. This reduction will be
33 applied each month until the retiree remains absent from employment
34 with an employer for one full calendar month.

35 (b) The benefit reduction provided in (a) of this subsection will
36 accrue for a maximum of one hundred sixty hours per month. Any benefit

1 reduction over one hundred percent will be applied to the benefit the
2 retiree is eligible to receive in subsequent months.

3 (2)(a) Except as provided in (b) of this subsection, a retiree from
4 plan 1 who enters employment with an employer at least one calendar
5 month after his or her accrual date may continue to receive pension
6 payments while engaged in such service for up to eight hundred sixty-
7 seven hours of service in a calendar year without a reduction of
8 pension.

9 (b) A retiree from plan 1 who enters employment with an employer at
10 least three calendar months after his or her accrual date and:

11 (i) Is hired into a position for which the employer has documented
12 a justifiable need to hire a retiree into the position;

13 (ii) Is hired through the established process for the position with
14 the approval of: A school board for a school district; the chief
15 executive officer of a state agency employer; the secretary of the
16 senate for the senate; the chief clerk of the house of representatives
17 for the house of representatives; the secretary of the senate and the
18 chief clerk of the house of representatives jointly for the joint
19 legislative audit and review committee, the legislative transportation
20 committee, the joint committee on pension policy, the legislative
21 evaluation and accountability program, the legislative systems
22 committee, and the statute law committee; or according to rules adopted
23 for the rehiring of retired plan 1 members for a local government
24 employer;

25 (iii) The employer retains records of the procedures followed and
26 decisions made in hiring the retiree, and provides those records in the
27 event of an audit; ((and))

28 (iv) The employee has not already rendered a cumulative total of
29 more than one thousand nine hundred hours of service while in receipt
30 of pension payments beyond an annual threshold of eight hundred sixty-
31 seven hours;

32 (v) The employee is hired for no more than one twelve-month period
33 at a time, during which time they may reapply for the position; and

34 (vi) The employer shall, eight months from the date of hiring a
35 retiree, reopen the position and accept applications;

36 shall cease to receive pension payments while engaged in that service
37 after the retiree has rendered service for more than one thousand five
38 hundred hours in a calendar year. The one thousand nine hundred hour

1 cumulative total under this subsection applies prospectively to those
2 retiring after July 27, 2003, and retroactively to those who retired
3 prior to July 27, 2003, and shall be calculated from the date of
4 retirement.

5 (c) When a plan 1 member renders service beyond eight hundred
6 sixty-seven hours, the department shall collect from the employer and
7 employee the applicable employer retirement contributions for the
8 entire duration of the member's employment during that calendar year.

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

15 (3) If the retiree opts to reestablish membership under RCW
16 41.40.023(12), he or she terminates his or her retirement status and
17 becomes a member. Retirement benefits shall not accrue during the
18 period of membership and the individual shall make contributions and
19 receive membership credit. Such a member shall have the right to again
20 retire if eligible in accordance with RCW 41.40.180. However, if the
21 right to retire is exercised to become effective before the member has
22 rendered two uninterrupted years of service, the retirement formula and
23 survivor options the member had at the time of the member's previous
24 retirement shall be reinstated.

25 (4) The department shall collect and provide the state actuary with
26 information relevant to the use of this section for the select
27 committee on pension policy.

28 (5) The legislature reserves the right to amend or repeal this
29 section in the future and no member or beneficiary has a contractual
30 right to be employed for more than (~~five months~~) eight hundred
31 sixty-seven hours in a calendar year without a reduction of his or her
32 pension.

--- END ---