

CERTIFICATION OF ENROLLMENT

**SENATE BILL 5094**

58th Legislature  
2003 Regular Session

Passed by the Senate February 26, 2003  
YEAS 49 NAYS 0

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**President of the Senate**

Passed by the House April 11, 2003  
YEAS 89 NAYS 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Milton H. Doumit, Jr.,  
Secretary of the Senate of the  
State of Washington, do hereby  
certify that the attached is  
**SENATE BILL 5094** as passed by the  
Senate and the House of  
Representatives on the dates  
hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SENATE BILL 5094**

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Passed Legislature - 2003 Regular Session

**State of Washington                      58th Legislature                      2003 Regular Session**

**By** Senators Carlson, Jacobsen, Spanel, Fraser, B. Sheldon and Rasmussen; by request of Joint Committee on Pension Policy

Read first time 01/15/2003. Referred to Committee on Ways & Means.

1            AN ACT Relating to providing optional service credit for substitute  
2 service to members of the school employees' retirement system; amending  
3 RCW 41.35.010 and 41.35.030; and adding a new section to chapter 41.35  
4 RCW.

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

6            **Sec. 1.** RCW 41.35.010 and 2001 c 180 s 3 are each amended to read  
7 as follows:

8            The definitions in this section apply throughout this chapter,  
9 unless the context clearly requires otherwise((÷)).

10            (1) "Retirement system" means the Washington school employees'  
11 retirement system provided for in this chapter.

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

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

16            (4) "Employer," for plan 2 and plan 3 members, means a school  
17 district or an educational service district.

1 (5) "Member" means any employee included in the membership of the  
2 retirement system, as provided for in RCW 41.35.030.

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

11 (b) "Compensation earnable" for plan 2 and plan 3 members also  
12 includes the following actual or imputed payments, which are not paid  
13 for personal services:

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

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

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

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

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

34 (iv) Compensation that a member would have received but for a  
35 disability occurring in the line of duty only as authorized by RCW  
36 41.40.038;

37 (v) Compensation that a member receives due to participation in the

1 leave sharing program only as authorized by RCW 41.04.650 through  
2 41.04.670; and

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

8 (7) "Service" for plan 2 and plan 3 members means periods of  
9 employment by a member in an eligible position or positions for one or  
10 more employers for which compensation earnable is paid. Compensation  
11 earnable earned for ninety or more hours in any calendar month shall  
12 constitute one service credit month except as provided in RCW  
13 41.35.180. Compensation earnable earned for at least seventy hours but  
14 less than ninety hours in any calendar month shall constitute one-half  
15 service credit month of service. Compensation earnable earned for less  
16 than seventy hours in any calendar month shall constitute one-quarter  
17 service credit month of service. Time spent in standby status, whether  
18 compensated or not, is not service.

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

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

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

29 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW  
30 28A.400.300 is equal to two service credit months. Use of less than  
31 forty-five days of sick leave is creditable as allowed under this  
32 subsection as follows:

33 (i) Less than eleven days equals one-quarter service credit month;

34 (ii) Eleven or more days but less than twenty-two days equals one-  
35 half service credit month;

36 (iii) Twenty-two days equals one service credit month;

37 (iv) More than twenty-two days but less than thirty-three days  
38 equals one and one-quarter service credit month; and

1 (v) Thirty-three or more days but less than forty-five days equals  
2 one and one-half service credit month.

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

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

7 (10) "Membership service" means all service rendered as a member.

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

12 (12) "Regular interest" means such rate as the director may  
13 determine.

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

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

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

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

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

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

35 (19) "Employee" or "employed" means a person who is providing  
36 services for compensation to an employer, unless the person is free  
37 from the employer's direction and control over the performance of work.

1 The department shall adopt rules and interpret this subsection  
2 consistent with common law.

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

6 (21) "Retirement" means withdrawal from active service with a  
7 retirement allowance as provided by this chapter.

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

14 (23) "Ineligible position" means any position which does not  
15 conform with the requirements set forth in subsection (22) of this  
16 section.

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

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

23 (26) "Director" means the director of the department.

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

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

29 (29) "Plan 2" means the Washington school employees' retirement  
30 system plan 2 providing the benefits and funding provisions covering  
31 persons who first became members of the public employees' retirement  
32 system on and after October 1, 1977, and transferred to the Washington  
33 school employees' retirement system under RCW 41.40.750.

34 (30) "Plan 3" means the Washington school employees' retirement  
35 system plan 3 providing the benefits and funding provisions covering  
36 persons who first became members of the system on and after September  
37 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

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

5 (32) "Index A" means the index for the year prior to the  
6 determination of a postretirement adjustment.

7 (33) "Index B" means the index for the year prior to index A.

8 (34) "Adjustment ratio" means the value of index A divided by index  
9 B.

10 (35) "Separation from service" occurs when a person has terminated  
11 all employment with an employer.

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

15 (37) "Classified employee" means an employee of a school district  
16 or an educational service district who is not eligible for membership  
17 in the teachers' retirement system established under chapter 41.32 RCW.

18 (38) "Substitute employee" means a classified employee who is  
19 employed by an employer exclusively as a substitute for an absent  
20 employee.

21 **Sec. 2.** RCW 41.35.030 and 1998 c 341 s 4 are each amended to read  
22 as follows:

23 Membership in the retirement system shall consist of all regularly  
24 compensated classified employees and appointive and elective officials  
25 of employers, as defined in this chapter, with the following  
26 exceptions:

27 (1) Persons in ineligible positions;

28 (2)(a) Persons holding elective offices or persons appointed  
29 directly by the governor: PROVIDED, That such persons shall have the  
30 option of applying for membership during such periods of employment:  
31 AND PROVIDED FURTHER, That any persons holding or who have held  
32 elective offices or persons appointed by the governor who are members  
33 in the retirement system and who have, prior to becoming such members,  
34 previously held an elective office, and did not at the start of such  
35 initial or successive terms of office exercise their option to become  
36 members, may apply for membership to be effective during such term or  
37 terms of office, and shall be allowed to establish the service credit

1 applicable to such term or terms of office upon payment of the employee  
2 contributions therefor by the employee with interest as determined by  
3 the director and employer contributions therefor by the employer or  
4 employee with interest as determined by the director: AND PROVIDED  
5 FURTHER, That all contributions with interest submitted by the employee  
6 under this subsection shall be placed in the employee's individual  
7 account in the employee's savings fund and be treated as any other  
8 contribution made by the employee, with the exception that any  
9 contributions submitted by the employee in payment of the employer's  
10 obligation, together with the interest the director may apply to the  
11 employer's contribution, shall not be considered part of the member's  
12 annuity for any purpose except withdrawal of contributions;

13 (b) A member holding elective office who has elected to apply for  
14 membership pursuant to (a) of this subsection and who later wishes to  
15 be eligible for a retirement allowance shall have the option of ending  
16 his or her membership in the retirement system. A member wishing to  
17 end his or her membership under this subsection must file on a form  
18 supplied by the department a statement indicating that the member  
19 agrees to irrevocably abandon any claim for service for future periods  
20 served as an elected official. A member who receives more than fifteen  
21 thousand dollars per year in compensation for his or her elective  
22 service, adjusted annually for inflation by the director, is not  
23 eligible for the option provided by this subsection (2)(b);

24 (3) Retirement system retirees: PROVIDED, That following  
25 reemployment in an eligible position, a retiree may elect to  
26 prospectively become a member of the retirement system if otherwise  
27 eligible;

28 (4) Persons enrolled in state-approved apprenticeship programs,  
29 authorized under chapter 49.04 RCW, and who are employed by employers  
30 to earn hours to complete such apprenticeship programs, if the employee  
31 is a member of a union-sponsored retirement plan and is making  
32 contributions to such a retirement plan or if the employee is a member  
33 of a Taft-Hartley retirement plan;

34 (5) Persons rendering professional services to an employer on a  
35 fee, retainer, or contract basis or when the income from these services  
36 is less than fifty percent of the gross income received from the  
37 person's practice of a profession;



1       (6) Substitute employees, except for the purposes of the purchase  
2 of service credit under section 3 of this act. Upon the return or  
3 termination of the absent employee a substitute employee is replacing,  
4 that substitute employee shall no longer be ineligible under this  
5 subsection;

6       (7) Employees who (a) are not citizens of the United States, (b) do  
7 not reside in the United States, and (c) perform duties outside of the  
8 United States;

9       (~~(7)~~) (8) Employees who (a) are not citizens of the United  
10 States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded  
11 from membership under this chapter or chapter 41.04 RCW, (d) are  
12 residents of this state, and (e) make an irrevocable election to be  
13 excluded from membership, in writing, which is submitted to the  
14 director within thirty days after employment in an eligible position;

15       (~~(8)~~) (9) Employees who are citizens of the United States and who  
16 reside and perform duties for an employer outside of the United States:  
17 PROVIDED, That unless otherwise excluded under this chapter or chapter  
18 41.04 RCW, the employee may apply for membership (a) within thirty days  
19 after employment in an eligible position and membership service credit  
20 shall be granted from the first day of membership service, and (b)  
21 after this thirty-day period, but membership service credit shall be  
22 granted only if payment is made for the noncredited membership service  
23 under RCW 41.50.165(2), otherwise service shall be from the date of  
24 application.

25       NEW SECTION. Sec. 3. A new section is added to chapter 41.35 RCW  
26 under the subchapter heading "provisions applicable to plan 2 and plan  
27 3" to read as follows:

28       (1) A substitute employee who works five or more months of seventy  
29 or more hours for which earnable compensation is paid in a school year  
30 may apply to the department to establish membership after the end of  
31 the school year during which the work was performed. The application  
32 must:

33       (a) Include a list of the employers the substitute employee has  
34 worked for;

35       (b) Include proof of hours worked and compensation earned; and

36       (c) Be made prior to retirement.

1           (2) Substitute employees who are members may apply to the  
2 department to receive service after the end of the last day of  
3 instruction of the school year during which the service was performed.

4 The application must:

5           (a) Include a list of the employers the substitute employee has  
6 worked for;

7           (b) Include proof of hours worked and compensation earned; and

8           (c) Be made prior to retirement.

9           (3) If the department accepts the substitute employee's application  
10 for service credit, the substitute employee may obtain service credit  
11 by paying the required contribution to the retirement system. The  
12 employer must pay the required employer contribution upon notice from  
13 the department that the substitute employee has made contributions  
14 under this section.

15           (4) The department shall charge interest prospectively on employee  
16 contributions that are submitted under this section more than six  
17 months after the end of the school year, as defined in RCW 28A.150.040,  
18 for which the substitute employee is seeking service credit. The  
19 interest rate charged to the employee shall take into account interest  
20 lost on employer contributions delayed for more than six months after  
21 the end of the school year.

22           (5) Each employer shall quarterly notify each substitute employee  
23 it has employed during the school year of the number of hours worked  
24 by, and the compensation paid to, the substitute employee.

25           (6) If a substitute employee, as defined in RCW 41.35.010(38),  
26 applies to the department under this section for credit for earnable  
27 compensation earned from an employer, the substitute employee must make  
28 contributions for all periods of service for that employer.

29           (7) The department shall adopt rules implementing this section.

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