
SENATE BILL 6448

State of Washington

59th Legislature

2006 Regular Session

By Senators Mulliken, Pridemore, Fraser, Franklin and Rasmussen; by request of Select Committee on Pension Policy

Read first time 01/12/2006. Referred to Committee on Ways & Means.

1 AN ACT Relating to the public employment of retirees from the
2 teachers' retirement system plan 1 and the public employees' retirement
3 system plan 1; amending RCW 41.32.055, 41.32.570, 41.40.010, and
4 41.40.037; reenacting and amending RCW 41.32.010; prescribing
5 penalties; and providing an effective date.

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

7 **Sec. 1.** RCW 41.32.010 and 2005 c 131 s 8 and 2005 c 23 s 1 are
8 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (ii) For an employee member of the retirement system teaching in an
31 extended school year program, two consecutive extended school years, as
32 defined by the employer school district, may be used as the annual
33 period for determining earnable compensation in lieu of the two fiscal
34 years.

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

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

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

20 (iv) For members employed less than full time under written
21 contract with a school district, or community college district, in an
22 instructional position, for which the member receives service credit of
23 less than one year in all of the years used to determine the earnable
24 compensation used for computing benefits due under RCW 41.32.497,
25 41.32.498, and 41.32.520, the member may elect to have earnable
26 compensation defined as provided in RCW 41.32.345. For the purposes of
27 this subsection, the term "instructional position" means a position in
28 which more than seventy-five percent of the member's time is spent as
29 a classroom instructor (including office hours), a librarian, a
30 psychologist, a social worker, a nurse, a physical therapist, an
31 occupational therapist, a speech language pathologist or audiologist,
32 or a counselor. Earnable compensation shall be so defined only for the
33 purpose of the calculation of retirement benefits and only as necessary
34 to insure that members who receive fractional service credit under RCW
35 41.32.270 receive benefits proportional to those received by members
36 who have received full-time service credit.

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

1 (A) Remuneration for unused sick leave authorized under RCW
2 41.04.340, 28A.400.210, or 28A.310.490;

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

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

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

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

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

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

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

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

36 (12) "Fiscal year" means a year which begins July 1st and ends June
37 30th of the following year.

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

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

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

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

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

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

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

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

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

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

1 (23) "Regular interest" means such rate as the director may
2 determine.

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

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

9 (25) "Retirement system" means the Washington state teachers'
10 retirement system.

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

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

16 (ii) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (viii) The department shall adopt rules implementing this
2 subsection.

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

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

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

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

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

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

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

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

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

32 (36) "Substitute teacher" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (46) "Annual increase" means, initially, fifty-nine cents per month

1 per year of service which amount shall be increased each July 1st by
2 three percent, rounded to the nearest cent.

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

6 (48) "Separation from service or employment" occurs when a person
7 has terminated all employment with an employer. Separation from
8 service or employment does not occur, and if claimed by an employer or
9 employee may be a violation of RCW 41.32.055, when an employee and
10 employer have a written or oral agreement to resume employment with the
11 same employer following termination. Mere expressions or inquiries
12 about postretirement employment by an employer or employee that do not
13 constitute a commitment to reemploy the employee after retirement are
14 not an agreement under this section.

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

20 **Sec. 2.** RCW 41.32.055 and 2003 c 53 s 218 are each amended to read
21 as follows:

22 (1) Any person who shall knowingly make false statements or shall
23 falsify or permit to be falsified any record or records of the
24 retirement system, except under subsection (2) of this section, in any
25 attempt to defraud such system as a result of such act, is guilty of a
26 class B felony punishable according to chapter 9A.20 RCW.

27 (2) Any person who shall knowingly make false statements or shall
28 falsify or permit to be falsified any record or records of the
29 retirement systems related to a member's separation from service and
30 qualification for a retirement allowance under RCW 41.32.480 in any
31 attempt to defraud that system as a result of such an act, is guilty of
32 a gross misdemeanor.

33 **Sec. 3.** RCW 41.32.570 and 2003 c 295 s 6 are each amended to read
34 as follows:

35 (1)(a) If a retiree enters employment with an employer sooner than
36 one calendar month after his or her accrual date, the retiree's monthly

1 retirement allowance will be reduced by five and one-half percent for
2 every seven hours worked during that month. This reduction will be
3 applied each month until the retiree remains absent from employment
4 with an employer for one full calendar month.

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

9 (2) Except under subsection (3) of this section, any retired
10 teacher or retired administrator who enters service in any public
11 educational institution in Washington state (~~and who has satisfied the~~
12 ~~break in employment requirement of subsection (1) of this section~~) at
13 least one calendar month after his or her accrual date shall cease to
14 receive pension payments while engaged in such service, after the
15 retiree has rendered service for more than (~~one thousand five~~
16 ~~hundred~~) eight hundred sixty-seven hours in a school year.

17 (3) Any retired teacher or retired administrator who enters service
18 in any public educational institution in Washington state one calendar
19 month or more after his or her accrual date and:

20 (a) Is hired pursuant to a written policy into a position for which
21 the school board has documented a justifiable need to hire a retiree
22 into the position;

23 (b) Is hired through the established process for the position with
24 the approval of the school board or other highest decision-making
25 authority of the prospective employer; and

26 (c) Whose employer retains records of the procedures followed and
27 the decisions made in hiring the retired teacher or retired
28 administrator and provides those records in the event of an audit;
29 shall cease to receive pension payments while engaged in that service
30 after the retiree has rendered service for more than one thousand five
31 hundred hours in a school year.

32 (4) When a retired teacher or administrator renders service beyond
33 eight hundred sixty-seven hours, the department shall collect from the
34 employer the applicable employer retirement contributions for the
35 entire duration of the member's employment during that fiscal year.

36 ((+3)) (5) The department shall collect and provide the state
37 actuary with information relevant to the use of this section for the
38 select committee on pension policy.

1 (~~(4)~~) (6) The legislature reserves the right to amend or repeal
2 this section in the future and no member or beneficiary has a
3 contractual right to be employed for more than five hundred twenty-five
4 hours per year without a reduction of his or her pension.

5 **Sec. 4.** RCW 41.40.010 and 2004 c 242 s 53 are each amended to read
6 as follows:

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

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

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

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

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

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

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

1 (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, public safety
20 employees' retirement system, or law enforcement officers' and fire
21 fighters' retirement system at the time of election or appointment to
22 such position may elect to continue membership in the Washington school
23 employees' retirement system, teachers' retirement system, public
24 safety employees' retirement system, or law enforcement officers' and
25 fire fighters' retirement system.

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

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

38 (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 may be a
31 violation of RCW 41.40.055, when an employee and employer have a
32 written or oral agreement to resume employment with the same employer
33 following termination. Mere expressions or inquiries about
34 postretirement employment by an employer or employee that do not
35 constitute a commitment to reemploy the employee after retirement are
36 not an agreement under this subsection.

37 (43) "Member account" or "member's account" for purposes of plan 3

1 means the sum of the contributions and earnings on behalf of the member
2 in the defined contribution portion of plan 3.

3 **Sec. 5.** RCW 41.40.037 and 2005 c 319 s 103 are each amended to
4 read as follows:

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

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

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

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

23 (i) Is hired pursuant to a written policy into a position for which
24 the employer has documented a justifiable need to hire a retiree into
25 the position;

26 (ii) Is hired through the established process for the position with
27 the approval of: A school board for a school district; the chief
28 executive officer of a state agency employer; the secretary of the
29 senate for the senate; the chief clerk of the house of representatives
30 for the house of representatives; the secretary of the senate and the
31 chief clerk of the house of representatives jointly for the joint
32 legislative audit and review committee, the (~~joint~~) select committee
33 on pension policy, the legislative evaluation and accountability
34 program, the legislative systems committee, and the statute law
35 committee; or according to rules adopted for the rehiring of retired
36 plan 1 members for a local government employer;

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

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

8 shall cease to receive pension payments while engaged in that service
9 after the retiree has rendered service for more than one thousand five
10 hundred hours in a calendar year. The one thousand nine hundred hour
11 cumulative total under this subsection applies prospectively to those
12 retiring after July 27, 2003, and retroactively to those who retired
13 prior to July 27, 2003, and shall be calculated from the date of
14 retirement.

15 (c) When a plan 1 member renders service beyond eight hundred
16 sixty-seven hours, the department shall collect from the employer the
17 applicable employer retirement contributions for the entire duration of
18 the member's employment during that calendar year.

19 (d) A retiree from plan 2 or plan 3 who has satisfied the break in
20 employment requirement of subsection (1) of this section may work up to
21 eight hundred sixty-seven hours in a calendar year in an eligible
22 position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or
23 41.40.010, or as a fire fighter or law enforcement officer, as defined
24 in RCW 41.26.030, without suspension of his or her benefit.

25 (3) If the retiree opts to reestablish membership under RCW
26 41.40.023(12), he or she terminates his or her retirement status and
27 becomes a member. Retirement benefits shall not accrue during the
28 period of membership and the individual shall make contributions and
29 receive membership credit. Such a member shall have the right to again
30 retire if eligible in accordance with RCW 41.40.180. However, if the
31 right to retire is exercised to become effective before the member has
32 rendered two uninterrupted years of service, the retirement formula and
33 survivor options the member had at the time of the member's previous
34 retirement shall be reinstated.

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

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

5 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2006.

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