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**SUBSTITUTE HOUSE BILL 1109**

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**State of Washington                      64th Legislature                      2015 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Reykdal, Wilcox, and Bergquist)

READ FIRST TIME 02/10/15.

1            AN ACT Relating to membership in the teachers' retirement system  
2 for certificated employees of the superintendent of public  
3 instruction; amending RCW 41.32.010; and adding a new section to  
4 chapter 41.32 RCW.

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

6            **Sec. 1.** RCW 41.32.010 and 2012 c 236 s 3 are each amended to  
7 read 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  
12 of 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  
16 member's individual account, including any amount paid under RCW  
17 41.50.165(2), together with the regular interest thereon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (ii) For an employee member of the retirement system teaching in  
40 an extended school year program, two consecutive extended school

1 years, as defined by the employer school district, may be used as the  
2 annual period for determining earnable compensation in lieu of the  
3 two fiscal years.

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

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

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

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

1 fractional service credit under RCW 41.32.270 receive benefits  
2 proportional to those received by members who have received full-time  
3 service credit.

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

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

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

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

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

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

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

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

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

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

1 (i) Any compensation forgone by a member employed by a state  
2 agency or institution during the 2009-2011 fiscal biennium as a  
3 result of reduced work hours, mandatory or voluntary leave without  
4 pay, temporary reduction in pay implemented prior to December 11,  
5 2010, or temporary layoffs if the reduced compensation is an integral  
6 part of the employer's expenditure reduction efforts, as certified by  
7 the employer; and

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

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

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

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

27 (d) The elected position of the superintendent of public  
28 instruction is an eligible position.

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

34 (17) "Employer" means the state of Washington, the school  
35 district, or any agency of the state of Washington by which the  
36 member is paid. Except as otherwise specifically provided in this  
37 chapter, "employer" does not include a government contractor. For  
38 purposes of this subsection, a "government contractor" is any entity,  
39 including a partnership, limited liability company, for-profit or  
40 nonprofit corporation, or person, that provides services pursuant to

1 a contract with an employer. The determination whether an employer-  
2 employee relationship has been established is not based on the  
3 relationship between a government contractor and an employer, but is  
4 based solely on the relationship between a government contractor's  
5 employee and an employer under this chapter.

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

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

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

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

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

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

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

22 (25) "Member" means any teacher included in the membership of the  
23 retirement system who has not been removed from membership under RCW  
24 41.32.878 or 41.32.768. Also, any other employee of the public  
25 schools who, on July 1, 1947, had not elected to be exempt from  
26 membership and who, prior to that date, had by an authorized payroll  
27 deduction, contributed to the member reserve.

28 (26) "Member account" or "member's account" for purposes of plan  
29 3 means the sum of the contributions and earnings on behalf of the  
30 member in the defined contribution portion of plan 3.

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

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

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

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

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

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

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

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

22 (35) "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 (36) "Public school" means any institution or activity operated  
26 by the state of Washington or any instrumentality or political  
27 subdivision thereof employing teachers, except the University of  
28 Washington and Washington State University.

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

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

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

38 (40)(a) "Retirement allowance" for plan 1 members, means monthly  
39 payments based on the sum of annuity and pension, or any optional  
40 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 (41) "Retirement system" means the Washington state teachers'  
5 retirement system.

6 (42) "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  
9 or 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  
11 the same employer following termination. Mere expressions or  
12 inquiries about postretirement employment by an employer or employee  
13 that do not constitute a commitment to reemploy the employee after  
14 retirement are not an agreement under this section.

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

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

20 (ii) 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.

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

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

30 (i) A member employed in an eligible position or as a substitute  
31 shall receive one service credit month for each month of September  
32 through August of the following year if he or she earns earnable  
33 compensation for eight hundred ten or more hours during that period  
34 and is employed during nine of those months, except that a member may  
35 not receive credit for any period prior to the member's employment in  
36 an eligible position except as provided in RCW 41.32.812 and  
37 41.50.132.

38 (ii) Any other member employed in an eligible position or as a  
39 substitute who earns earnable compensation during the period from  
40 September through August shall receive service credit according to



1 one of the following methods, whichever provides the most service  
2 credit to the member:

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

9 (B) If a member is employed in an eligible position or as a  
10 substitute teacher for at least five months of a six-month period  
11 between September through August of the following year and earns  
12 earnable compensation for six hundred thirty or more hours within the  
13 six-month period, he or she will receive a maximum of six service  
14 credit months for the school year, which shall be recorded as one  
15 service credit month for each month of the six-month period;

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

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

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

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

26 (iii) Any person who is a member of the teachers' retirement  
27 system and who is elected or appointed to a state elective position  
28 may continue to be a member of the retirement system and continue to  
29 receive a service credit month for each of the months in a state  
30 elective position by making the required member contributions.

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

35 (v) As authorized by RCW 28A.400.300, up to forty-five days of  
36 sick leave may be creditable as service solely for the purpose of  
37 determining eligibility to retire under RCW 41.32.470. For purposes  
38 of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is  
39 equal to two service credit months. Use of less than forty-five days

1 of sick leave is creditable as allowed under this subsection as  
2 follows:

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

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

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

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

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

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

16 (vii) The department shall adopt rules implementing this  
17 subsection.

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

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

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

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

28 (48) "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 (49) "Teacher" means any person qualified to teach who is engaged  
36 by a public school or the office of the superintendent of public  
37 instruction in an instructional, administrative, or supervisory  
38 capacity. The term includes state, educational service district, and  
39 school district superintendents and their assistants and all  
40 employees certificated by the superintendent of public instruction;

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

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.32  
5 RCW to read as follows:

6 (1) An employee that is employed by the office of the  
7 superintendent of public instruction before the effective date of  
8 this act, and is a teacher as defined in RCW 41.32.010(49), has the  
9 following options during the election period defined in subsection  
10 (2) of this section:

11 (a) Remain in the public employees' retirement system; or  
12 (b) Become a member of the teachers' retirement system for  
13 purposes of service earned after the end of the election period  
14 defined in subsection (2) of this section.

15 (2) The "election period" is the period between September 1,  
16 2015, and December 31, 2015.

17 (3) Service earned in the public employees' retirement system  
18 during employment with the office of the superintendent of public  
19 instruction prior to the end of the election period may not be  
20 transferred to the teachers' retirement system by employees choosing  
21 to transfer for purposes of service earned after the election period.

22 (4) If after December 31, 2015, the member qualifying to transfer  
23 to the teachers' retirement system under subsection (1) of this  
24 section has not made an election to join the teachers' retirement  
25 system during the election period, he or she will remain in the  
26 public employees' retirement system for the duration of his or her  
27 employment with the office of the superintendent of public  
28 instruction.

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