
HOUSE BILL 2264

State of Washington

66th Legislature

2020 Regular Session

By Representatives Doglio, Dolan, Thai, Appleton, Wylie, Volz, and Pollet

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1 AN ACT Relating to increasing the cap on accrued vacation leave;
2 amending RCW 43.01.044, 41.32.010, and 41.40.010; and reenacting and
3 amending RCW 43.01.040.

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

5 **Sec. 1.** RCW 43.01.040 and 2017 c 168 s 1 and 2017 c 167 s 1 are
6 each reenacted and amended to read as follows:

7 Each subordinate officer and employee of the several offices,
8 departments, and institutions of the state government shall be
9 entitled under their contract of employment with the state government
10 to not less than eight hours of vacation leave with full pay for each
11 month of employment.

12 Each such subordinate officer and employee shall be entitled
13 under such contract of employment to not less than eight additional
14 hours of vacation with full pay each year for satisfactorily
15 completing the first two, three, and five continuous years of
16 employment respectively.

17 Such part-time officers or employees of the state government who
18 are employed on a regular schedule of duration of not less than one
19 year shall be entitled under their contract of employment to that
20 fractional part of the vacation leave that the total number of hours

1 of such employment bears to the total number of hours of full-time
2 employment.

3 Each subordinate officer and employee of the several offices,
4 departments, and institutions of the state government shall be
5 entitled under his or her contract of employment with the state
6 government to accrue unused vacation leave not to exceed two hundred
7 (~~forty~~) eighty hours. However, employees of the Washington state
8 ferries covered by collective bargaining agreements containing
9 provisions in effect on June 30, 2017, allowing accrual of unused
10 vacation leave not to exceed three hundred twenty hours shall be
11 allowed to continue the higher accrual limit until such time as those
12 provisions are modified through collective bargaining, or the
13 bargaining unit changes its exclusive representative or is
14 decertified. Officers and employees transferring within the several
15 offices, departments, and institutions of the state government shall
16 be entitled to transfer such accrued vacation leave to each
17 succeeding state office, department, or institution. All vacation
18 leave shall be taken at the time convenient to the employing office,
19 department, or institution: PROVIDED, That if a subordinate officer's
20 or employee's request for vacation leave is deferred by reason of the
21 convenience of the employing office, department, or institution, and
22 a statement of the necessity therefor is retained by the agency, then
23 the aforesaid maximum two hundred (~~forty~~) eighty hours of accrued
24 unused vacation leave shall be extended for each month said leave is
25 so deferred.

26 **Sec. 2.** RCW 43.01.044 and 2017 c 167 s 2 are each amended to
27 read as follows:

28 As an alternative, in addition to the provisions of RCW 43.01.040
29 authorizing the accumulation of vacation leave in excess of two
30 hundred (~~forty~~) eighty hours with the filing of a statement of
31 necessity, vacation leave in excess of two hundred (~~forty~~) eighty
32 hours may also be accumulated as provided in this section but without
33 the filing of a statement of necessity. The accumulation of leave
34 under this alternative method shall be governed by the following
35 provisions:

36 (1) Each subordinate officer and employee of the several offices,
37 departments, and institutions of state government may accumulate the
38 vacation leave hours between the time two hundred (~~forty~~) eighty
39 hours is accrued and his or her anniversary date of state employment.

1 (2) All vacation hours accumulated under this section shall be
2 used by the anniversary date and at a time convenient to the
3 employing office, department, or institution. If an officer or
4 employee does not use the excess leave by the anniversary date, then
5 such leave shall be automatically extinguished and considered to have
6 never existed.

7 (3) This section shall not result in any increase in a retirement
8 allowance under any public retirement system in this state.

9 (4) Should the legislature revoke any benefits or rights provided
10 under this section, no affected officer or employee shall be entitled
11 thereafter to receive such benefits or exercise such rights as a
12 matter of contractual right.

13 (5) Vacation leave credit acquired and accumulated under this
14 section shall never, regardless of circumstances, be deferred by the
15 employing office, department, or institution by filing a statement of
16 necessity under the provisions of RCW 43.01.040.

17 (6) Notwithstanding any other provision of this chapter, on or
18 after July 24, 1983, a statement of necessity for excess leave shall,
19 (~~as [at]~~) at a minimum, include the following: (a) The specific
20 number of hours of excess leave; and (b) the date on which it was
21 authorized. A copy of any such authorization shall be sent to the
22 department of retirement systems.

23 **Sec. 3.** RCW 41.32.010 and 2018 c 257 s 2 are each amended to
24 read as follows:

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

27 (1)(a) "Accumulated contributions" for plan 1 members, means the
28 sum of all regular annuity contributions and, except for the purpose
29 of withdrawal at the time of retirement, any amount paid under RCW
30 41.50.165(2) with regular interest thereon.

31 (b) "Accumulated contributions" for plan 2 members, means the sum
32 of all contributions standing to the credit of a member in the
33 member's individual account, including any amount paid under RCW
34 41.50.165(2), together with the regular interest thereon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (ii) For an employee member of the retirement system teaching in
38 an extended school year program, two consecutive extended school
39 years, as defined by the employer school district, may be used as the

1 annual period for determining earnable compensation in lieu of the
2 two fiscal years.

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

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

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

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

1 proportional to those received by members who have received full-time
2 service credit.

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

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

6 (B) Remuneration for unused annual leave in excess of two hundred
7 forty hours (~~as authorized by RCW 43.01.044 and 43.01.041~~).

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

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

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

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

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

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

38 (c) In calculating earnable compensation under (a) or (b) of this
39 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. For the purposes of
6 retirement plan membership, this subsection includes tribal schools
7 who have chosen to participate in the retirement system and satisfied
8 the requirements of RCW 28A.715.010(7).

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

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

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

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

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

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

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

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

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

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

36 (28) "Membership service" means service rendered subsequent to
37 the first day of eligibility of a person to membership in the
38 retirement system: PROVIDED, That where a member is employed by two
39 or more employers the individual shall receive no more than one
40 service credit month during any calendar month in which multiple

1 service is rendered. The provisions of this subsection shall apply
2 only to plan 1 members.

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

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

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

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

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

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

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

27 (36) "Public school" means any institution or activity operated
28 by the state of Washington or any instrumentality or political
29 subdivision thereof employing teachers, except the University of
30 Washington and Washington State University. For the purposes of
31 retirement plan membership, this subsection includes tribal schools
32 who have chosen to participate in the retirement system and satisfied
33 the requirements of RCW 28A.715.010(7).

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

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

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

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

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

10 (41) "Retirement system" means the Washington state teachers'
11 retirement system.

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

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

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

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

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

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

36 (i) A member employed in an eligible position or as a substitute
37 shall receive one service credit month for each month of September
38 through August of the following year if he or she earns earnable
39 compensation for eight hundred ten or more hours during that period
40 and is employed during nine of those months, except that a member may

1 not receive credit for any period prior to the member's employment in
2 an eligible position except as provided in RCW 41.32.812 and
3 41.50.132.

4 (ii) Any other member employed in an eligible position or as a
5 substitute who earns earnable compensation during the period from
6 September through August shall receive service credit according to
7 one of the following methods, whichever provides the most service
8 credit to the member:

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

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

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

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

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

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

32 (iii) Any person who is a member of the teachers' retirement
33 system and who is elected or appointed to a state elective position
34 may continue to be a member of the retirement system and continue to
35 receive a service credit month for each of the months in a state
36 elective position by making the required member contributions.

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

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

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

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

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

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

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

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

21 (vii) The department shall adopt rules implementing this
22 subsection.

23 (44) "Service credit month" means a full service credit month or
24 an accumulation of partial service credit months that are equal to
25 one.

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

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

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

33 (48) "Substitute teacher" means:

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

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

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

9 **Sec. 4.** RCW 41.40.010 and 2012 c 236 s 6 are each amended to
10 read as follows:

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

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

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

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

22 (4) "Annual increase" means, initially, fifty-nine cents per
23 month per year of service which amount shall be increased each July
24 1st by three percent, rounded to the nearest cent.

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

28 (6)(a) "Average final compensation" for plan 1 members, means the
29 annual average of the greatest compensation earnable by a member
30 during any consecutive two year period of service credit months for
31 which service credit is allowed; or if the member has less than two
32 years of service credit months then the annual average compensation
33 earnable during the total years of service for which service credit
34 is allowed.

35 (b) "Average final compensation" for plan 2 and plan 3 members,
36 means the member's average compensation earnable of the highest
37 consecutive sixty months of service credit months prior to such
38 member's retirement, termination, or death. Periods constituting
39 authorized leaves of absence may not be used in the calculation of

1 average final compensation except under RCW 41.40.710(2) or (c) of
2 this subsection.

3 (c) In calculating average final compensation under this
4 subsection for a member of plan 1, 2, or 3, the department of
5 retirement systems shall include:

6 (i) Any compensation forgone by the member during the 2009-2011
7 fiscal biennium as a result of reduced work hours, voluntary leave
8 without pay, temporary reduction in pay implemented prior to December
9 11, 2010, or temporary furloughs if the reduced compensation is an
10 integral part of the employer's expenditure reduction efforts, as
11 certified by the employer; and

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

20 (7)(a) "Beneficiary" for plan 1 members, means any person in
21 receipt of a retirement allowance, pension or other benefit provided
22 by this chapter.

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

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

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

35 (A) Retroactive payments to an individual by an employer on
36 reinstatement of the employee in a position, or payments by an
37 employer to an individual in lieu of reinstatement in a position
38 which are awarded or granted as the equivalent of the salary or wage
39 which the individual would have earned during a payroll period shall

1 be considered compensation earnable and the individual shall receive
2 the equivalent service credit;

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

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

11 (D) Compensation that a member would have received but for a
12 disability occurring in the line of duty only as authorized by RCW
13 41.40.038;

14 (E) Compensation that a member receives due to participation in
15 the leave sharing program only as authorized by RCW 41.04.650 through
16 41.04.670; and

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

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

23 (A) Remuneration for unused sick leave authorized under RCW
24 41.04.340, 28A.400.210, or 28A.310.490;

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

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

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

39 (i) Retroactive payments to an individual by an employer on
40 reinstatement of the employee in a position, or payments by an

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

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

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

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

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

20 (iv) Compensation that a member would have received but for a
21 disability occurring in the line of duty only as authorized by RCW
22 41.40.038;

23 (v) Compensation that a member receives due to participation in
24 the leave sharing program only as authorized by RCW 41.04.650 through
25 41.04.670; and

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

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

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

34 (11) "Eligible position" means:

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

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

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

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

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

29 (c) Except as otherwise specifically provided in this chapter,
30 "employer" does not include a government contractor. For purposes of
31 this subsection, a "government contractor" is any entity, including a
32 partnership, limited liability company, for-profit or nonprofit
33 corporation, or person, that provides services pursuant to a contract
34 with an "employer." The determination whether an employer-employee
35 relationship has been established is not based on the relationship
36 between a government contractor and an "employer," but is based
37 solely on the relationship between a government contractor's employee
38 and an "employer" under this chapter.

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

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

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

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

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

10 (19) "Ineligible position" means any position which does not
11 conform with the requirements set forth in subsection (11) of this
12 section.

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

16 (21) "Member" means any employee included in the membership of
17 the retirement system, as provided for in RCW 41.40.023. RCW
18 41.26.045 does not prohibit a person otherwise eligible for
19 membership in the retirement system from establishing such membership
20 effective when he or she first entered an eligible position.

21 (22) "Member account" or "member's account" for purposes of plan
22 3 means the sum of the contributions and earnings on behalf of the
23 member in the defined contribution portion of plan 3.

24 (23) "Membership service" means:

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

26 (b) All service after October 1, 1947, to any employer prior to
27 the time of its admission into the retirement system for which member
28 and employer contributions, plus interest as required by RCW
29 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

30 (c) Service not to exceed six consecutive months of probationary
31 service rendered after April 1, 1949, and prior to becoming a member,
32 in the case of any member, upon payment in full by such member of the
33 total amount of the employer's contribution to the retirement fund
34 which would have been required under the law in effect when such
35 probationary service was rendered if the member had been a member
36 during such period, except that the amount of the employer's
37 contribution shall be calculated by the director based on the first
38 month's compensation earnable as a member;

39 (d) Service not to exceed six consecutive months of probationary
40 service, rendered after October 1, 1947, and before April 1, 1949,

1 and prior to becoming a member, in the case of any member, upon
2 payment in full by such member of five percent of such member's
3 salary during said period of probationary service, except that the
4 amount of the employer's contribution shall be calculated by the
5 director based on the first month's compensation earnable as a
6 member.

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

9 (25) "Original member" of this retirement system means:

10 (a) Any person who became a member of the system prior to April
11 1, 1949;

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

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

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

24 (e) Any member who has restored all contributions that may have
25 been withdrawn as provided by RCW 41.40.150 and who on the effective
26 date of the individual's retirement becomes entitled to be credited
27 with ten years or more of membership service except that the
28 provisions relating to the minimum amount of retirement allowance for
29 the member upon retirement at age seventy as found in RCW
30 41.40.190(4) shall not apply to the member;

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

1 (26) "Pension" means payments for life derived from contributions
2 made by the employer. All pensions shall be paid in monthly
3 installments.

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

7 (28) "Plan 2" means the public employees' retirement system, plan
8 2 providing the benefits and funding provisions covering persons who
9 first became members of the system on and after October 1, 1977, and
10 are not included in plan 3.

11 (29) "Plan 3" means the public employees' retirement system, plan
12 3 providing the benefits and funding provisions covering persons who:

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

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

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

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

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

23 (31) "Regular interest" means such rate as the director may
24 determine.

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

28 (33) "Retirement" means withdrawal from active service with a
29 retirement allowance as provided by this chapter.

30 (34) "Retirement allowance" means the sum of the annuity and the
31 pension.

32 (35) "Retirement system" means the public employees' retirement
33 system provided for in this chapter.

34 (36) "Separation from service" occurs when a person has
35 terminated all employment with an employer. Separation from service
36 or employment does not occur, and if claimed by an employer or
37 employee may be a violation of RCW 41.40.055, when an employee and
38 employer have a written or oral agreement to resume employment with
39 the same employer following termination. Mere expressions or
40 inquiries about postretirement employment by an employer or employee

1 that do not constitute a commitment to reemploy the employee after
2 retirement are not an agreement under this subsection.

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

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

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

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

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

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

1 (C) More than twenty-two days but less than forty-five days
2 equals 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
5 or more employers for which compensation earnable is paid.
6 Compensation earnable earned for ninety or more hours in any calendar
7 month shall constitute one service credit month except as provided in
8 RCW 41.40.088. Compensation earnable earned for at least seventy
9 hours but less than ninety hours in any calendar month shall
10 constitute one-half service credit month of service. Compensation
11 earnable earned for less than seventy hours in any calendar month
12 shall constitute one-quarter service credit month of service. Time
13 spent in standby status, whether 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
21 firefighters' retirement system at the time of election or
22 appointment to such position may elect to continue membership in the
23 Washington school employees' retirement system, teachers' retirement
24 system, public safety employees' retirement system, or law
25 enforcement officers' and firefighters' retirement system.

26 (ii) A member shall receive a total of not more than twelve
27 service credit months of service for such calendar year. If an
28 individual is employed in an eligible position by one or more
29 employers the individual shall receive no more than one service
30 credit month during any calendar month in which multiple service for
31 ninety or more hours 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
36 equal to two service credit months. Use of less than forty-five days
37 of sick leave is creditable as allowed under this subsection as
38 follows:

39 (A) Less than eleven days equals one-quarter service credit
40 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
7 equals one and one-half service credit month.

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

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

12 (40) "State actuary" or "actuary" means the person appointed
13 pursuant to RCW 44.44.010(2).

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

17 (42) "State treasurer" means the treasurer of the state of
18 Washington.

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

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