
SENATE BILL 5173

State of Washington

60th Legislature

2007 Regular Session

By Senators Pridemore, McAuliffe, Fairley, Kline and Rasmussen; by request of Select Committee on Pension Policy

Read first time 01/12/2007. 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; providing an effective date; and declaring an emergency.

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 and one-
19 half calendar months 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;

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; and

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

33 shall cease to receive pension payments while engaged in that service
34 after the retiree has rendered service for more than one thousand five
35 hundred hours in a school year. The one thousand nine hundred hour
36 cumulative total limitation under this section applies prospectively
37 after the effective date of this act.

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

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

8 ~~((+4))~~ (6) The legislature reserves the right to amend or repeal
9 this section in the future and no member or beneficiary has a
10 contractual right to be employed for more than five hundred twenty-five
11 hours per year without a reduction of his or her pension.

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

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

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

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

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

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

33 (b) "Employer" for plan 2 and plan 3 members, means every branch,
34 department, agency, commission, board, and office of the state, and any
35 political subdivision and municipal corporation of the state admitted
36 into the retirement system, including public agencies created pursuant

1 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
2 31, 2000, school districts and educational service districts will no
3 longer be employers for the public employees' retirement system plan 2.

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

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

10 (a) Any person who became a member of the system prior to April 1,
11 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 to
18 October 1, 1947;

19 (d) Any person who first becomes a member through the admission of
20 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 provisions
28 relating to the minimum amount of retirement allowance for the member
29 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
30 apply to the member;

31 (f) Any member who has been a contributor under the system for two
32 or more years and who has restored all contributions that may have been
33 withdrawn as provided by RCW 41.40.150 and who on the effective date of
34 the individual's retirement has rendered five or more years of service
35 for the state or any political subdivision prior to the time of the
36 admission of the employer into the system; except that the provisions
37 relating to the minimum amount of retirement allowance for the member

1 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
2 apply to the member.

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

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

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

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

20 (B) If a leave of absence is taken by an individual for the purpose
21 of serving in the state legislature, the salary which would have been
22 received for the position from which the leave of absence was taken,
23 shall be considered as compensation earnable if the employee's
24 contribution is paid by the employee and the employer's contribution is
25 paid by the employer or employee;

26 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
27 72.09.240;

28 (D) 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 (E) 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 (F) 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 (ii) "Compensation earnable" does not include:

2 (A) Remuneration for unused sick leave authorized under RCW
3 41.04.340, 28A.400.210, or 28A.310.490;

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

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

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

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

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

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

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

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

37 (iv) Compensation that a member would have received but for a

1 disability occurring in the line of duty only as authorized by RCW
2 41.40.038;

3 (v) Compensation that a member receives due to participation in the
4 leave sharing program only as authorized by RCW 41.04.650 through
5 41.04.670; and

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

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

27 (i) Service by a state employee officially assigned by the state on
28 a temporary basis to assist another public agency, shall be considered
29 as service as a state employee: PROVIDED, That service to any other
30 public agency shall not be considered service as a state employee if
31 such service has been used to establish benefits in any other public
32 retirement system.

33 (ii) An individual shall receive no more than a total of twelve
34 service credit months of service during any calendar year. If an
35 individual is employed in an eligible position by one or more employers
36 the individual shall receive no more than one service credit month
37 during any calendar month in which multiple service for seventy or more
38 hours is rendered.

1 (iii) A school district employee may count up to forty-five days of
2 sick leave as creditable service solely for the purpose of determining
3 eligibility to retire under RCW 41.40.180 as authorized by RCW
4 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW
5 28A.400.300 is equal to two service credit months. Use of less than
6 forty-five days of sick leave is creditable as allowed under this
7 subsection as follows:

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

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

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

13 (b) "Service" for plan 2 and plan 3 members, means periods of
14 employment by a member in an eligible position or positions for one or
15 more employers for which compensation earnable is paid. Compensation
16 earnable earned for ninety or more hours in any calendar month shall
17 constitute one service credit month except as provided in RCW
18 41.40.088. Compensation earnable earned for at least seventy hours but
19 less than ninety hours in any calendar month shall constitute one-half
20 service credit month of service. Compensation earnable earned for less
21 than seventy hours in any calendar month shall constitute one-quarter
22 service credit month of service. Time spent in standby status, whether
23 compensated or not, is not service.

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

26 (i) Service in any state elective position shall be deemed to be
27 full time service, except that persons serving in state elective
28 positions who are members of the Washington school employees'
29 retirement system, teachers' retirement system, public safety
30 employees' retirement system, or law enforcement officers' and fire
31 fighters' retirement system at the time of election or appointment to
32 such position may elect to continue membership in the Washington school
33 employees' retirement system, teachers' retirement system, public
34 safety employees' retirement system, or law enforcement officers' and
35 fire fighters' retirement system.

36 (ii) A member shall receive a total of not more than twelve service
37 credit months of service for such calendar year. If an individual is
38 employed in an eligible position by one or more employers the

1 individual shall receive no more than one service credit month during
2 any calendar month in which multiple service for ninety or more hours
3 is rendered.

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

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

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

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

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

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

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

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

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

24 (13) "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 the
27 time of its admission into the retirement system for which member and
28 employer contributions, plus interest as required by RCW 41.50.125,
29 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;

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

8 (14)(a) "Beneficiary" for plan 1 members, means any person in
9 receipt of a retirement allowance, pension or other benefit provided by
10 this 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 (15) "Regular interest" means such rate as the director may
16 determine.

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

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

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

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

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

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

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

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

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

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

16 (25) "Eligible position" means:

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

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

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

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

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

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

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

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

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

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

10 (34) "Plan 2" means the public employees' retirement system, plan
11 2 providing the benefits and funding provisions covering persons who
12 first became members of the system on and after October 1, 1977, and
13 are not included in plan 3.

14 (35) "Plan 3" means the public employees' retirement system, plan
15 3 providing the benefits and funding provisions covering persons who:
16 (a) First become a member on or after:
17 (i) March 1, 2002, and are employed by a state agency or institute
18 of higher education and who did not choose to enter plan 2; or
19 (ii) September 1, 2002, and are employed by other than a state
20 agency or institute of higher education and who did not choose to enter
21 plan 2; or
22 (b) Transferred to plan 3 under RCW 41.40.795.

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

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

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

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

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

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

37 (42) "Separation from service" occurs when a person has terminated
38 all employment with an employer. Separation from service or employment

1 does not occur, and if claimed by an employer or employee may be a
2 violation of RCW 41.40.055, when an employee and employer have a
3 written or oral agreement to resume employment with the same employer
4 following termination. Mere expressions or inquiries about
5 postretirement employment by an employer or employee that do not
6 constitute a commitment to reemploy the employee after retirement are
7 not an agreement under this subsection.

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

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

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

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

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

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

31 (i) Is hired pursuant to a written policy into a position for which
32 the employer has documented a justifiable need to hire a retiree into
33 the position;

34 (ii) Is hired through the established process for the position with
35 the approval of: A school board for a school district; the chief
36 executive officer of a state agency employer; the secretary of the
37 senate for the senate; the chief clerk of the house of representatives

1 for the house of representatives; the secretary of the senate and the
2 chief clerk of the house of representatives jointly for the joint
3 legislative audit and review committee, the (~~joint~~) select committee
4 on pension policy, the legislative evaluation and accountability
5 program, the legislative systems committee, and the statute law
6 committee; or according to rules adopted for the rehiring of retired
7 plan 1 members for a local government employer;

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

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

15 shall cease to receive pension payments while engaged in that service
16 after the retiree has rendered service for more than one thousand five
17 hundred hours in a calendar year. The one thousand nine hundred hour
18 cumulative total under this subsection applies prospectively to those
19 retiring after July 27, 2003, and retroactively to those who retired
20 prior to July 27, 2003, and shall be calculated from the date of
21 retirement.

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

26 (d) A retiree from plan 2 or plan 3 who has satisfied the break in
27 employment requirement of subsection (1) of this section may work up to
28 eight hundred sixty-seven hours in a calendar year in an eligible
29 position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or
30 41.40.010, or as a fire fighter or law enforcement officer, as defined
31 in RCW 41.26.030, without suspension of his or her benefit.

32 (3) If the retiree opts to reestablish membership under RCW
33 41.40.023(12), he or she terminates his or her retirement status and
34 becomes a member. Retirement benefits shall not accrue during the
35 period of membership and the individual shall make contributions and
36 receive membership credit. Such a member shall have the right to again
37 retire if eligible in accordance with RCW 41.40.180. However, if the
38 right to retire is exercised to become effective before the member has

1 rendered two uninterrupted years of service, the retirement formula and
2 survivor options the member had at the time of the member's previous
3 retirement shall be reinstated.

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

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

11 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 July 1, 2007.

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