

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 2644**

Chapter 177, Laws of 1994

53rd Legislature  
1994 Regular Session

RETIREMENT CONTRIBUTIONS AND RECOVERY OF OVERPAYMENTS

EFFECTIVE DATE: 6/9/94

Passed by the House March 7, 1994  
Yeas 93 Nays 0

BRIAN EBERSOLE

**Speaker of the  
House of Representatives**

Passed by the Senate March 3, 1994  
Yeas 47 Nays 0

JOEL PRITCHARD

**President of the Senate**

Approved March 30, 1994

MIKE LOWRY

**Governor of the State of Washington**

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2644** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER

**Chief Clerk**

FILED

March 30, 1994 - 1:27 p.m.

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE HOUSE BILL 2644**

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AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

**State of Washington                      53rd Legislature                      1994 Regular Session**

**By** House Committee on Appropriations (originally sponsored by Representatives Sommers and Silver; by request of Department of Retirement Systems)

Read first time 02/04/94.

1            AN ACT Relating to retirement contributions and recovery of  
2 overpayments; amending RCW 41.50.130, 41.32.500, 41.32.510, 41.40.280,  
3 and 41.40.010; amending 1990 c 274 s 18 (uncodified); adding new  
4 sections to chapter 41.50 RCW; and creating new sections.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds that:

7            (1) Whenever employer or member contributions are not made at the  
8 time service is rendered, the state retirement system trust funds lose  
9 investment income which is a major source of pension funding. The  
10 department of retirement systems has broad authority to charge interest  
11 to compensate for the loss to the trust funds, subject only to explicit  
12 statutory provisions to the contrary.

13            (2) The inherent authority of the department to recover all  
14 overpayments and unauthorized payments from the retirement trust funds,  
15 for the benefit of members and taxpayers, should be established clearly  
16 in statute.

17            NEW SECTION.    **Sec. 2.** A new section is added to chapter 41.50 RCW  
18 to read as follows:

1       The department may charge interest, as determined by the director,  
2 on member or employer contributions owing to any of the retirement  
3 systems listed in RCW 41.50.030. The department's authority to charge  
4 interest shall extend to all optional and mandatory billings for  
5 contributions where member or employer contributions are paid other  
6 than immediately after service is rendered. Except as explicitly  
7 limited by statute, the director may delay the imposition of interest  
8 charges on late contributions under this section if the delay is  
9 necessary to implement required changes in the department's accounting  
10 and information systems.

11       **Sec. 3.** RCW 41.50.130 and 1987 c 490 s 1 are each amended to read  
12 as follows:

13       (1) The director may at any time correct errors appearing in the  
14 records of the retirement systems listed in RCW 41.50.030. Should any  
15 error in such records result in any member ~~((or))~~, beneficiary, or  
16 other person or entity receiving more or less than he or she would have  
17 been entitled to had the records been correct, the director, subject to  
18 the conditions set forth in this section, shall adjust the payment in  
19 such a manner that the benefit to which such member ~~((or))~~,  
20 beneficiary, or other person or entity was correctly entitled shall be  
21 paid in accordance with the following:

22       (a) In the case of underpayments to a member or beneficiary, the  
23 retirement system shall correct all future payments from the point of  
24 error detection, and shall compute the additional payment due for the  
25 allowable prior period which shall be paid in a lump sum by the  
26 appropriate retirement system.

27       (b) In the case of overpayments to a member or beneficiary, the  
28 retirement system shall adjust the payment in such a manner that the  
29 benefit to which such member or beneficiary was correctly entitled  
30 shall be reduced by an amount equal to the actuarial equivalent of the  
31 amount of overpayment. Alternatively the member shall have the option  
32 of repaying the overpayment in a lump sum within ninety days of  
33 notification and receive the proper benefit in the future. In the case  
34 of overpayments to a member ~~((or))~~, beneficiary, or other person or  
35 entity resulting from actual fraud on the part of the member ~~((or))~~,  
36 beneficiary, or other person or entity, the benefits shall be adjusted  
37 to reflect the full amount of such overpayment, plus interest at the  
38 ~~((maximum rate allowed under RCW 19.52.020(1) as it was in effect the~~

1 ~~first month the overpayment occurred~~) rate of one percent per month on  
2 the outstanding balance.

3 (c) In the case of overpayments to a person or entity other than a  
4 member or beneficiary, the overpayment shall constitute a debt from the  
5 person or entity to the department, recovery of which shall not be  
6 barred by laches or statute of limitations.

7 (2) Except in the case of actual fraud, in the case of overpayments  
8 to a member or beneficiary, the benefits shall be adjusted to reflect  
9 only the amount of overpayments made within three years of discovery of  
10 the error, notwithstanding any provision to the contrary in chapter  
11 4.16 RCW.

12 (3)(a) The employer shall elicit on a written form from all new  
13 employees as to their having been retired from a retirement system  
14 listed in RCW 41.50.030.

15 (b) In the case of overpayments which result from the failure of an  
16 employer to report properly to the department the employment of a  
17 retiree from information received in subparagraph (a), the employer  
18 shall, upon receipt of a billing from the department, pay into the  
19 appropriate retirement system the amount of the overpayment plus  
20 interest as determined by the director. However, except in the case of  
21 actual employer fraud, the overpayments charged to the employer under  
22 this subsection shall not exceed five thousand dollars for each year of  
23 overpayments received by a retiree. The retiree's benefits upon  
24 reretirement shall not be reduced because of such overpayment except as  
25 necessary to recapture contributions required for periods of  
26 employment.

27 (c) The provision of this subsection regarding the reduction of  
28 retirees' benefits shall apply to recovery actions commenced on or  
29 after January 1, 1986, even though the overpayments resulting from  
30 retiree employment were discovered by the department prior to that  
31 date. The provisions of this subsection regarding the billing of  
32 employers for overpayments shall apply to overpayments made after  
33 January 1, 1986.

34 (4) Except in the case of actual fraud, no monthly benefit shall be  
35 reduced by more than fifty percent of the member's or beneficiary's  
36 corrected benefit. Any overpayment not recovered due to the inability  
37 to actuarially reduce a member's benefit due to: (a) The provisions of  
38 this subsection; or (b) the fact that the retiree's monthly retirement  
39 allowance is less than the monthly payment required to effectuate an

1 actuarial reduction, shall constitute a claim against the estate of a  
2 member, beneficiary, or other person or entity in receipt of an  
3 overpayment.

4 (5) Except as provided in subsection (2) of this section,  
5 obligations of employers or members until paid to the department shall  
6 constitute a debt from the employer or member to the department,  
7 recovery of which shall not be barred by laches or statutes of  
8 limitation.

9 NEW SECTION. Sec. 4. A new section is added to chapter 41.50 RCW  
10 to read as follows:

11 (1) If a person receives a withdrawal of accumulated contributions  
12 from any of the retirement systems listed in RCW 41.50.030 in  
13 contravention of the restrictions on withdrawal for the particular  
14 system, the member shall no longer be entitled to credit for the period  
15 of service represented by the withdrawn contributions. The erroneous  
16 withdrawal shall be treated as an authorized withdrawal, subject to all  
17 conditions imposed by the member's system for restoration of withdrawn  
18 contributions. Failure to restore the contributions within the time  
19 permitted by the system shall constitute a waiver by the member of any  
20 right to receive a retirement allowance based upon the period of  
21 service represented by the withdrawn contributions.

22 (2) All erroneous withdrawals occurring prior to the effective date  
23 of this section shall be subject to the provisions of this section.  
24 The deadline for restoring the prior erroneous withdrawals shall be  
25 five years from the effective date of this section for members who are  
26 currently active members of a system.

27 **Sec. 5.** RCW 41.32.500 and 1991 c 35 s 57 are each amended to read  
28 as follows:

29 (1) Membership in the retirement system is terminated when a member  
30 retires for service or disability, dies, or withdraws ~~((the))~~ his or  
31 her accumulated contributions ~~((or does not establish service credit~~  
32 ~~with the retirement system for five consecutive years; however, a~~  
33 ~~member may retain membership in the teachers' retirement system by~~  
34 ~~leaving the accumulated contributions in the teachers' retirement fund~~  
35 ~~under one of the following conditions:~~

36 ~~(a) If he or she is eligible for retirement;~~

1       ~~(b) If he or she is a member of another public retirement system in~~  
2 ~~the state of Washington by reason of change in employment and has~~  
3 ~~arranged to have membership extended during the period of such~~  
4 ~~employment;~~

5       ~~(c) If he or she is not eligible for retirement but has established~~  
6 ~~five or more years of Washington membership service credit.))~~

7       The prior service certificate becomes void when a member dies((~~7~~))  
8 ~~or~~ withdraws the accumulated contributions ((~~or does not establish~~  
9 ~~service credit with the retirement system for five consecutive years~~)),  
10 and any prior administrative interpretation of the board of trustees,  
11 consistent with this section, is hereby ratified, affirmed and  
12 approved.

13       (2) ((~~Any member, except an elected official, who reentered service~~  
14 ~~and who failed to restore withdrawn contributions, shall now have from~~  
15 ~~April 4, 1986, through June 30, 1987, to restore the contributions,~~  
16 ~~with interest as determined by the director.~~

17       ~~(3))~~) Within the ninety days following the employee's resumption of  
18 employment, the employer shall notify the department of the resumption  
19 and the department shall then return to the employer a statement of the  
20 potential service credit to be restored, the amount of funds required  
21 for restoration, and the date when the restoration must be  
22 accomplished. The employee shall be given a copy of the statement and  
23 shall sign a copy of the statement which signed copy shall be placed in  
24 the employee's personnel file.

25       **Sec. 6.** RCW 41.32.510 and 1982 1st ex.s. c 52 s 15 are each  
26 amended to read as follows:

27       Should a member cease to be employed by an employer and request  
28 upon a form provided by the department a refund of the member's  
29 accumulated contributions with interest, this amount shall be paid to  
30 the individual less any withdrawal fee which may be assessed by the  
31 director which shall be deposited in the department of retirement  
32 systems expense fund. The amount withdrawn, together with interest as  
33 determined by the director must be paid if the member desires to  
34 reestablish the former service credits. ((~~Termination of employment~~  
35 ~~with one employer for the specific purpose of accepting employment with~~  
36 ~~another employer or termination with one employer and reemployment with~~  
37 ~~the same employer, whether for the same school year or for the ensuing~~  
38 ~~school year, shall not qualify a member for a refund of the member's~~

1 accumulated contributions. ~~A member who files an application for a~~  
2 ~~refund of the member's accumulated contributions and subsequently~~  
3 ~~enters into a contract for or resumes public school employment before~~  
4 ~~a refund payment has been made shall not be eligible for such~~  
5 ~~payment.))~~ A member who files a request for a refund and subsequently  
6 enters into employment with an employer prior to the refund being made  
7 shall not be eligible for a refund. For purposes of this section, a  
8 written or oral employment agreement shall be considered entering into  
9 employment.

10 **Sec. 7.** RCW 41.40.280 and 1991 c 35 s 86 are each amended to read  
11 as follows:

12 The department may, in its discretion, withhold payment of all or  
13 part of a member's contributions for not more than six months after a  
14 member has ceased to be an employee. ~~((Termination of employment with~~  
15 ~~one employer for the purpose of accepting employment with another~~  
16 ~~employer or termination with one employer and reemployment with the~~  
17 ~~same employer within a period of thirty days shall not qualify a member~~  
18 ~~for a refund of his or her accumulated contributions. In addition, a~~  
19 ~~member who files an application for a refund of his or her accumulated~~  
20 ~~contributions and subsequently becomes employed in an eligible position~~  
21 ~~before the expiration of thirty days or before a refund payment has~~  
22 ~~been made, shall not be eligible for the refund payment.))~~ A member  
23 who files a request for a refund and subsequently enters into  
24 employment with an employer prior to the refund being made shall not be  
25 eligible for a refund. For purposes of this section, a written or oral  
26 employment agreement shall be considered entering into employment.

27 **Sec. 8.** RCW 41.40.010 and 1993 c 95 s 8 are each amended to read  
28 as follows:

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

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

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

35 (3) "State treasurer" means the treasurer of the state of  
36 Washington.

1 (4)(a) "Employer" for plan I members, means every branch,  
2 department, agency, commission, board, and office of the state, any  
3 political subdivision or association of political subdivisions of the  
4 state admitted into the retirement system, and legal entities  
5 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW as now  
6 or hereafter amended; and the term shall also include any labor guild,  
7 association, or organization the membership of a local lodge or  
8 division of which is comprised of at least forty percent employees of  
9 an employer (other than such labor guild, association, or organization)  
10 within this chapter. The term may also include any city of the first  
11 class that has its own retirement system.

12 (b) "Employer" for plan II members, means every branch, department,  
13 agency, commission, board, and office of the state, and any political  
14 subdivision and municipal corporation of the state admitted into the  
15 retirement system, including public agencies created pursuant to RCW  
16 35.63.070, 36.70.060, and 39.34.030.

17 (5) "Member" means any employee included in the membership of the  
18 retirement system, as provided for in RCW 41.40.023.

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

20 (a) Any person who became a member of the system prior to April 1,  
21 1949;

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

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

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

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

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

14 (8)(a) "Compensation earnable" for plan I members, means salaries  
15 or wages earned during a payroll period for personal services and where  
16 the compensation is not all paid in money, maintenance compensation  
17 shall be included upon the basis of the schedules established by the  
18 member's employer(~~(:—PROVIDED, That)~~). Compensation that a member  
19 receives for being in standby status is also compensation earnable,  
20 subject to the conditions of this subsection. A member is in standby  
21 status when not being paid for time actually worked and only when both  
22 of the following conditions exist: (i) The member is required to be  
23 present at, or in the immediate vicinity of, a specified location; and  
24 (ii) the employer requires the member to be prepared to report  
25 immediately for work, if the need arises, although the need may not  
26 arise. Standby compensation is regular salary for the purposes of RCW  
27 41.50.150(2). Retroactive payments to an individual by an employer on  
28 reinstatement of the employee in a position, or payments by an employer  
29 to an individual in lieu of reinstatement in a position which are  
30 awarded or granted as the equivalent of the salary or wage which the  
31 individual would have earned during a payroll period shall be  
32 considered compensation earnable and the individual shall receive the  
33 equivalent service credit(~~(:—PROVIDED FURTHER, That)~~). If a leave of  
34 absence is taken by an individual for the purpose of serving in the  
35 state legislature, the salary which would have been received for the  
36 position from which the leave of absence was taken, shall be considered  
37 as compensation earnable if the employee's contribution is paid by the  
38 employee and the employer's contribution is paid by the employer or  
39 employee.

1 (b) "Compensation earnable" for plan II members, means salaries or  
2 wages earned by a member during a payroll period for personal services,  
3 including overtime payments, and shall include wages and salaries  
4 deferred under provisions established pursuant to sections 403(b),  
5 414(h), and 457 of the United States Internal Revenue Code, but shall  
6 exclude nonmoney maintenance compensation and lump sum payments for  
7 deferred annual sick leave, unused accumulated vacation, unused  
8 accumulated annual leave, or any form of severance pay(~~(:—PROVIDED,~~  
9 ~~That)~~). Compensation that a member receives for being in standby  
10 status is also compensation earnable, subject to the conditions of this  
11 subsection. A member is in standby status when not being paid for time  
12 actually worked and only when both of the following conditions exist:  
13 (i) The member is required to be present at, or in the immediate  
14 vicinity of, a specified location; and (ii) the employer requires the  
15 member to be prepared to report immediately for work, if the need  
16 arises, although the need may not arise. Standby compensation is  
17 regular salary for the purposes of RCW 41.50.150(2). Retroactive  
18 payments to an individual by an employer on reinstatement of the  
19 employee in a position, or payments by an employer to an individual in  
20 lieu of reinstatement in a position which are awarded or granted as the  
21 equivalent of the salary or wage which the individual would have earned  
22 during a payroll period shall be considered compensation earnable to  
23 the extent provided above, and the individual shall receive the  
24 equivalent service credit(~~(:—PROVIDED FURTHER, That)~~). In any year in  
25 which a member serves in the legislature, the member shall have the  
26 option of having such member's compensation earnable be the greater of:  
27 ((+i+)) (A) The compensation earnable the member would have  
28 received had such member not served in the legislature; or  
29 ((+ii+)) (B) Such member's actual compensation earnable received  
30 for nonlegislative public employment and legislative service combined.  
31 Any additional contributions to the retirement system required because  
32 compensation earnable under subparagraph (i) of this subsection is  
33 greater than compensation earnable under subparagraph (ii) of this  
34 subsection shall be paid by the member for both member and employer  
35 contributions.

36 (9)(a) "Service" for plan I members, except as provided in RCW  
37 41.40.088, means periods of employment in an eligible position or  
38 positions for one or more employers rendered to any employer for which  
39 compensation is paid, and includes time spent in office as an elected

1 or appointed official of an employer. Compensation earnable earned in  
2 full time work for seventy hours or more in any given calendar month  
3 shall constitute one service credit month except as provided in RCW  
4 41.40.088. Compensation earnable earned for less than seventy hours in  
5 any calendar month shall constitute one-quarter service credit month of  
6 service except as provided in RCW 41.40.088. Only service credit  
7 months and one-quarter service credit months shall be counted in the  
8 computation of any retirement allowance or other benefit provided for  
9 in this chapter. Any fraction of a year of service shall be taken into  
10 account in the computation of such retirement allowance or benefits.  
11 Time spent in standby status, whether compensated or not, is not  
12 service.

13 Service by a state employee officially assigned by the state on a  
14 temporary basis to assist another public agency, shall be considered as  
15 service as a state employee: PROVIDED, That service to any other  
16 public agency shall not be considered service as a state employee if  
17 such service has been used to establish benefits in any other public  
18 retirement system: PROVIDED FURTHER, That an individual shall receive  
19 no more than a total of twelve service credit months of service during  
20 any calendar year: PROVIDED FURTHER, That where an individual is  
21 employed in an eligible position by one or more employers the  
22 individual shall receive no more than one service credit month during  
23 any calendar month in which multiple service for seventy or more hours  
24 is rendered.

25 (b) "Service" for plan II members, means periods of employment by  
26 a member in an eligible position or positions for one or more employers  
27 for which compensation earnable is paid. Compensation earnable earned  
28 for ninety or more hours in any calendar month shall constitute one  
29 service credit month except as provided in RCW 41.40.088. Compensation  
30 earnable earned for at least seventy hours but less than ninety hours  
31 in any calendar month shall constitute one-half service credit month of  
32 service. Compensation earnable earned for less than seventy hours in  
33 any calendar month shall constitute one-quarter service credit month of  
34 service. Time spent in standby status, whether compensated or not, is  
35 not service.

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

38 Service in any state elective position shall be deemed to be full  
39 time service, except that persons serving in state elective positions

1 who are members of the teachers' retirement system or law enforcement  
2 officers' and fire fighters' retirement system at the time of election  
3 or appointment to such position may elect to continue membership in the  
4 teachers' retirement system or law enforcement officers' and fire  
5 fighters' retirement system.

6 A member shall receive a total of not more than twelve service  
7 credit months of service for such calendar year: PROVIDED, That when  
8 an individual is employed in an eligible position by one or more  
9 employers the individual shall receive no more than one service credit  
10 month during any calendar month in which multiple service for ninety or  
11 more hours is rendered.

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

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

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

18 (13) "Membership service" means:

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

20 (b) All service after October 1, 1947, to any employer prior to the  
21 time of its admission into the retirement system: PROVIDED, That an  
22 amount equal to the employer and employee contributions which would  
23 have been paid to the retirement system on account of such service  
24 shall have been paid to the retirement system with interest (as  
25 computed by the department) on the employee's portion prior to  
26 retirement of such person, by the employee or his employer, except as  
27 qualified by RCW 41.40.023: PROVIDED FURTHER, That employer  
28 contributions plus employee contributions with interest submitted by  
29 the employee under this subsection shall be placed in the employee's  
30 individual account in the employees' savings fund and be treated as any  
31 other contribution made by the employee, with the exception that the  
32 contributions submitted by the employee in payment of the employer's  
33 obligation, together with the interest the director may apply to the  
34 employer's contribution, shall be excluded from the calculation of the  
35 member's annuity in the event the member selects a benefit with an  
36 annuity option;

37 (c) Service not to exceed six consecutive months of probationary  
38 service rendered after April 1, 1949, and prior to becoming a member,  
39 in the case of any member, upon payment in full by such member of the

1 total amount of the employer's contribution to the retirement fund  
2 which would have been required under the law in effect when such  
3 probationary service was rendered if the member had been a member  
4 during such period, except that the amount of the employer's  
5 contribution shall be calculated by the director based on the first  
6 month's compensation earnable as a member;

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

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

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

20 (15) "Regular interest" means such rate as the director may  
21 determine.

22 (16) "Accumulated contributions" means the sum of all contributions  
23 standing to the credit of a member in the member's individual account  
24 together with the regular interest thereon.

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

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

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

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

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

7 (21) "Retirement allowance" means the sum of the annuity and the  
8 pension.

9 (22) "Employee" means any person who may become eligible for  
10 membership under this chapter, as set forth in RCW 41.40.023.

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 for which compensation is paid.

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

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

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

34 (29) "Retiree" means any member in receipt of a retirement  
35 allowance or other benefit provided by this chapter resulting from  
36 service rendered to an employer by such member.

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

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

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

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

9 (34) "Plan II" means the public employees' retirement system, plan  
10 II providing the benefits and funding provisions covering persons who  
11 first became members of the system on and after October 1, 1977.

12 NEW SECTION. **Sec. 9.** (1) Notwithstanding RCW 41.50.130, the  
13 department is not required to correct, nor to cause any employer to  
14 correct the reporting error described in subsection (2) of this  
15 section.

16 (2) Standby pay and other similar forms of compensation that are  
17 not pay for time worked were not salary or wages for personal services  
18 within the meaning of RCW 41.40.010(8). Contrary to RCW 41.40.010(8),  
19 some employers have been reporting standby pay to the department as  
20 compensation earnable. To avoid unduly impacting the retirement  
21 allowances of persons who have retired on or before the effective date  
22 of this act, the department is not required to correct, nor cause to be  
23 corrected, any misreporting of amounts identified as standby pay  
24 through the effective date of this act. Any erroneous reporting of  
25 amounts identified as standby pay to the department on or after the  
26 effective date of this act shall be corrected as an error under RCW  
27 41.50.130.

28 (3) The forgiveness of past misreporting under subsection (2) of  
29 this section constitutes a benefit enhancement for those individuals  
30 for whom amounts received as standby pay were misreported to the  
31 department. Prior to the effective date of this act no retirement  
32 system member had any right, contractual or otherwise, to have amounts  
33 identified as standby pay included as compensation earnable.

34 **Sec. 10.** 1990 c 274 s 18 (uncodified) is amended to read as  
35 follows:

36 (1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are  
37 intended by the legislature to effect administrative, rather than

1 substantive, changes to the affected retirement plan. The legislature  
2 therefore reserves the right to revoke or amend the 1990 amendments to  
3 RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his  
4 or her service credit calculated under the 1990 amendments to RCW  
5 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

6 (2) The department's retroactive application of the changes made in  
7 RCW 41.32.010(27)(b) to all service rendered between October 1, 1977,  
8 and August 31, 1990, is consistent with the legislative intent of the  
9 1990 changes to RCW 41.32.010(27)(b).

Passed the House March 7, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 30, 1994.

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