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**SUBSTITUTE SENATE BILL 5218**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Winsley, Long, Bauer, Franklin, Roach and Loveland; by request of Joint Committee on Pension Policy)

Read first time 02/11/97.

1 AN ACT Relating to restrictions on postretirement employment;  
2 amending RCW 41.26.490, 41.32.010, 41.32.480, 41.32.570, 41.32.800,  
3 41.32.860, 41.40.150, 41.40.690, and 41.50.130; reenacting and amending  
4 RCW 41.40.010 and 41.40.023; adding new sections to chapter 41.32 RCW;  
5 adding a new section to chapter 41.40 RCW; adding a new section to  
6 chapter 41.50 RCW; and creating new sections.

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

8 NEW SECTION. **Sec. 1.** (1) This act, which defines separation from  
9 service and restrictions concerning postretirement employment, is  
10 intended to clarify existing statutory provisions regarding these  
11 issues. As a result of this act, the legal standard for determining  
12 separation from service and the impact to a retiree's benefit should  
13 they return to work following retirement, are either the same as under  
14 the prior law, or less restrictive. Accordingly, this act does not  
15 constitute a diminution of benefits and applies to all members of the  
16 affected retirement systems.

17 (2) This act, which addresses the determination of employee status,  
18 is intended to clarify existing law. The clarifications are consistent  
19 with long-standing common law of the state of Washington and long-

1 standing department of retirement systems' interpretations of the  
2 appropriate standard to be used in determining employee status.  
3 Accordingly, sections 3(49) and 10(22) of this act do not constitute a  
4 diminution of benefits and apply to all members of the teachers'  
5 retirement system and the public employees' retirement system.

6 **Sec. 2.** RCW 41.26.490 and 1977 ex.s. c 294 s 10 are each amended  
7 to read as follows:

8 Any member or beneficiary eligible to receive a retirement  
9 allowance under the provisions of RCW 41.26.430, 41.26.470, or  
10 41.26.510 shall be eligible to commence receiving a retirement  
11 allowance after having filed written application with the department.

12 (1) Retirement allowances paid to members under the provisions of  
13 RCW 41.26.430 shall accrue from the first day of the calendar month  
14 immediately following such member's separation from ~~((employment))~~  
15 service.

16 (2) Retirement allowances paid to vested members no longer in  
17 service, but qualifying for such an allowance pursuant to RCW  
18 41.26.430, shall accrue from the first day of the calendar month  
19 immediately following such qualification.

20 (3) Disability allowances paid to disabled members under the  
21 provisions of RCW 41.26.470 shall accrue from the first day of the  
22 calendar month immediately following such member's separation from  
23 ~~((employment))~~ service for disability.

24 (4) Retirement allowances paid as death benefits under the  
25 provisions of RCW 41.26.510 shall accrue from the first day of the  
26 calendar month immediately following the member's death.

27 (5) A person is separated from service on the date a person has  
28 terminated all employment with an employer.

29 **Sec. 3.** RCW 41.32.010 and 1996 c 39 s 1 are each amended to read  
30 as follows:

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

33 (1)(a) "Accumulated contributions" for plan I members, means the  
34 sum of all regular annuity contributions and, except for the purpose of  
35 withdrawal at the time of retirement, any amount paid under RCW  
36 41.50.165(2) with regular interest thereon.

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

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

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

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

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

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

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

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

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

26 (9) "Disability allowance" means monthly payments during  
27 disability. This subsection shall apply only to plan I members.

28 (10)(a) "Earnable compensation" for plan I members, means:

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

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

37 (A) Retroactive payments to an individual by an employer on  
38 reinstatement of the employee in a position, or payments by an employer  
39 to an individual in lieu of reinstatement in a position which are

1 awarded or granted as the equivalent of the salary or wages which the  
2 individual would have earned during a payroll period shall be  
3 considered earnable compensation and the individual shall receive the  
4 equivalent service credit.

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

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

32 (iv) "Earnable compensation" does not include:

33 (A) Remuneration for unused sick leave authorized under RCW  
34 41.04.340, 28A.400.210, or 28A.310.490;

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

37 (b) "Earnable compensation" for plan II and plan III members, means  
38 salaries or wages earned by a member during a payroll period for  
39 personal services, including overtime payments, and shall include wages

1 and salaries deferred under provisions established pursuant to sections  
2 403(b), 414(h), and 457 of the United States Internal Revenue Code, but  
3 shall exclude lump sum payments for deferred annual sick leave, unused  
4 accumulated vacation, unused accumulated annual leave, or any form of  
5 severance pay.

6 "Earnable compensation" for plan II and plan III members also  
7 includes the following actual or imputed payments which, except in the  
8 case of (b)(ii)(B) of this subsection, are not paid for personal  
9 services:

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

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

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

22 (B) Such member's actual earnable compensation received for  
23 teaching and legislative service combined. Any additional  
24 contributions to the retirement system required because compensation  
25 earnable under (b)(ii)(A) of this subsection is greater than  
26 compensation earnable under (b)(ii)(B) of this subsection shall be paid  
27 by the member for both member and employer contributions.

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

30 (12) "Fiscal year" means a year which begins July 1st and ends June  
31 30th of the following year.

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

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

37 (15) "Member" means any teacher included in the membership of the  
38 retirement system. Also, any other employee of the public schools who,  
39 on July 1, 1947, had not elected to be exempt from membership and who,

1 prior to that date, had by an authorized payroll deduction, contributed  
2 to the member reserve.

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

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

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

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

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

22 (21) "Public school" means any institution or activity operated by  
23 the state of Washington or any instrumentality or political subdivision  
24 thereof employing teachers, except the University of Washington and  
25 Washington State University.

26 (22) "Regular contributions" means the amounts required to be  
27 deducted from the compensation of a member and credited to the member's  
28 individual account in the member reserve. This subsection shall apply  
29 only to plan I members.

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

32 (24)(a) "Retirement allowance" for plan I members, means monthly  
33 payments based on the sum of annuity and pension, or any optional  
34 benefits payable in lieu thereof.

35 (b) "Retirement allowance" for plan II and plan III members, means  
36 monthly payments to a retiree or beneficiary as provided in this  
37 chapter.

38 (25) "Retirement system" means the Washington state teachers'  
39 retirement system.

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

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

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

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

13 (b) "Service" for plan II and plan III members, means periods of  
14 employment by a member for one or more employers for which earnable  
15 compensation is earned subject to the following conditions:

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

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

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

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

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

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

1 (iv) Any person who is a member of the teachers' retirement system  
2 and who is elected or appointed to a state elective position may  
3 continue to be a member of the retirement system and continue to  
4 receive a service credit month for each of the months in a state  
5 elective position by making the required member contributions.

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

10 (vi) As authorized by RCW 28A.400.300, up to forty-five days of  
11 sick leave may be creditable as service solely for the purpose of  
12 determining eligibility to retire under RCW 41.32.470. For purposes of  
13 plan II and plan III "forty-five days" as used in RCW 28A.400.300 is  
14 equal to two service credit months. Use of less than forty-five days  
15 of sick leave is creditable as allowed under this subsection as  
16 follows:

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

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

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

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

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

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

29 (viii) The department shall adopt rules implementing this  
30 subsection.

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

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

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



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

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

10 (31) "Retiree" means any person (~~(in receipt of)~~) who has begun  
11 accruing a retirement allowance or other benefit provided by this  
12 chapter resulting from service rendered to an employer while a member.  
13 (~~(A person is in receipt of a retirement allowance as defined in~~  
14 ~~subsection (24) of this section or other benefit as provided by this~~  
15 ~~chapter when the department mails, causes to be mailed, or otherwise~~  
16 ~~transmits the retirement allowance warrant.))~~

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

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

20 (34) "State elective position" means any position held by any  
21 person elected or appointed to state-wide office or elected or  
22 appointed as a member of the legislature.

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

25 (36) "Substitute teacher" means:

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

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

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

36 (b) "Eligible position" for plan II and plan III on and after  
37 September 1, 1991, means a position that, as defined by the employer,  
38 normally requires five or more months of at least seventy hours of

1 earnable compensation during September through August of the following  
2 year.

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

6 (d) The elected position of the superintendent of public  
7 instruction is an eligible position.

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

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

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

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

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

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

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

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

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

33 (47) "Member account" or "member's account" for purposes of plan  
34 III means the sum of the contributions and earnings on behalf of the  
35 member in the defined contribution portion of plan III.

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

38 (49) "Employed" or "employee" means a person who is providing  
39 services for compensation to an employer, unless the person is free

1 from the employer's direction and control over the performance of work.  
2 The department shall adopt rules and interpret this subsection  
3 consistent with common law.

4 **Sec. 4.** RCW 41.32.480 and 1991 c 35 s 53 are each amended to read  
5 as follows:

6 (1) Any member who (~~has left public school~~) separates from  
7 service after having completed thirty years of creditable service may  
8 retire upon the approval by the department of an application for  
9 retirement filed on the prescribed form. Upon retirement the member  
10 shall receive a retirement allowance consisting of an annuity which  
11 shall be the actuarial equivalent of his or her accumulated  
12 contributions at his or her age of retirement and a pension as provided  
13 in RCW 41.32.497. Effective July 1, 1967, anyone then receiving a  
14 retirement allowance or a survivor retirement allowance under this  
15 chapter, based on thirty-five years of creditable service, and who has  
16 established more than thirty-five years of service credit with the  
17 retirement system, shall thereafter receive a retirement allowance  
18 based on the total years of service credit established.

19 (2) Any member who has attained age sixty years, but who has  
20 completed less than thirty years of creditable service, upon (~~leaving~~  
21 ~~public school~~) separation from service, may retire upon the approval  
22 by the department of an application for retirement filed on the  
23 prescribed form. Upon retirement the member shall receive a retirement  
24 allowance consisting of an annuity which shall be the actuarial  
25 equivalent of his or her accumulated contributions at his or her age of  
26 retirement and a pension as provided in RCW 41.32.497.

27 (3) Any member who has attained age fifty-five years and who has  
28 completed not less than twenty-five years of creditable service, upon  
29 (~~leaving public school~~) separation from service, may retire upon the  
30 approval by the department of an application for retirement filed on  
31 the prescribed form. Upon retirement the member shall receive a  
32 retirement allowance which shall be the actuarial equivalent of his or  
33 her accumulated contributions at his or her age of retirement and a  
34 pension as provided in RCW 41.32.497. An individual who has retired  
35 pursuant to this subsection, on or after July 1, 1969, shall not suffer  
36 an actuarial reduction in his or her retirement allowance, except as  
37 the allowance may be actuarially reduced pursuant to the options

1 contained in RCW 41.32.530. This 1974 amendment shall be retroactive  
2 to July 1, 1969.

3 **Sec. 5.** RCW 41.32.570 and 1995 c 264 s 1 are each amended to read  
4 as follows:

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

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

15 (2) Any retired teacher or retired administrator who enters service  
16 in any public educational institution in Washington state and who has  
17 satisfied the break in employment requirement of subsection (1) of this  
18 section shall cease to receive pension payments while engaged in such  
19 service: PROVIDED, That service may be rendered up to (~~seventy-five~~  
20 days)) five hundred twenty-five hours per school year without reduction  
21 of pension.

22 (~~(+2)~~) (3) In addition to the (~~seventy-five days~~) five hundred  
23 twenty-five hours of service permitted under subsection (~~(+1)~~) (2) of  
24 this section, a retired teacher or retired administrator may also serve  
25 only as a substitute teacher for up to an additional (~~fifteen days~~)  
26 one hundred five hours per school year without reduction of pension if:

27 (a) A school district, which is not a member of a multidistrict  
28 substitute cooperative, determines that it has exhausted or can  
29 reasonably anticipate that it will exhaust its list of qualified and  
30 available substitutes and the school board of the district adopts a  
31 resolution to make its substitute teachers who are retired teachers or  
32 retired administrators eligible for the additional (~~fifteen days~~) one  
33 hundred five hours of extended service once the list of qualified and  
34 available substitutes has been exhausted. The resolution by the school  
35 district shall state that the services of retired teachers and retired  
36 administrators are necessary to address the shortage of qualified and  
37 available substitutes. The resolution shall be valid only for the  
38 school year in which it is adopted. The district shall forward a copy

1 of the resolution with a list of retired teachers and retired  
2 administrators who have been employed as substitute teachers to the  
3 department and may notify the retired teachers and retired  
4 administrators included on the list of their right to take advantage of  
5 the provisions of this subsection; or

6 (b) A multidistrict substitute cooperative determines that the  
7 school districts have exhausted or can reasonably anticipate that they  
8 will exhaust their list of qualified and available substitutes and each  
9 of the school boards adopts a resolution to make their substitute  
10 teachers (~~((or retired administrators))~~) who are retired teachers (~~((or  
11 retired administrators}))~~) or retired administrators eligible for the  
12 extended service once the list of qualified and available substitutes  
13 has been exhausted. The resolutions by each of the school districts  
14 shall state that the services of retired teachers and retired  
15 administrators are necessary to address the shortage of qualified and  
16 available substitutes. The resolutions shall be valid only for the  
17 school year in which they are adopted. The cooperative shall forward  
18 a copy of the resolutions with a list of retired teachers and retired  
19 administrators who have been employed as substitute teachers to the  
20 department and may notify the retired teachers and retired  
21 administrators included on the list of their right to take advantage of  
22 the provisions of this subsection.

23 (~~((3))~~) (4) In addition to the (~~((seventy-five days))~~) five hundred  
24 twenty-five hours of service permitted under subsection (~~((1))~~) (2) of  
25 this section, a retired administrator or retired teacher may also serve  
26 as a substitute administrator up to an additional (~~((fifteen days))~~) one  
27 hundred five hours per school year without reduction of pension if a  
28 school district board of directors adopts a resolution declaring that  
29 the services of a retired administrator or retired teacher are  
30 necessary because it cannot find a replacement administrator to fill a  
31 vacancy. The resolution shall be valid only for the school year in  
32 which it is adopted. The district shall forward a copy of the  
33 resolution with the name of the retired administrator or retired  
34 teacher who has been employed as a substitute administrator to the  
35 department. However, a retired administrator or retired teacher may  
36 not serve more than a total of (~~((fifteen))~~) one hundred five additional  
37 (~~((days))~~) hours per school year pursuant to subsections (~~((2))~~) (3) and  
38 (~~((3))~~) (4) of this section.

1        ~~((4))~~ (5) Subsection ~~((1))~~ (2) of this section shall apply to  
2 all persons governed by the provisions of plan I, regardless of the  
3 date of their retirement, but shall apply only to benefits payable  
4 after June 11, 1986.

5        ~~((5))~~ (6) Subsection ~~((2))~~ (3) of this section shall apply to  
6 all persons governed by the provisions of plan I, regardless of the  
7 date of their retirement, but shall only apply to benefits payable  
8 after September 1, 1994.

9        **Sec. 6.** RCW 41.32.800 and 1990 c 274 s 13 are each amended to read  
10 as follows:

11        (1) Except as provided in section 8 of this act, no retiree under  
12 the provisions of plan II shall be eligible to receive such retiree's  
13 monthly retirement allowance if he or she is employed in an eligible  
14 position as defined in RCW 41.40.010 or 41.32.010, or as a law  
15 enforcement officer or fire fighter as defined in RCW 41.26.030.

16        If a retiree's benefits have been suspended under this section, his  
17 or her benefits shall be reinstated when the retiree terminates the  
18 employment that caused his or her benefits to be suspended. Upon  
19 reinstatement, the retiree's benefits shall be actuarially recomputed  
20 pursuant to the rules adopted by the department.

21        (2) The department shall adopt rules implementing this section.

22        **Sec. 7.** RCW 41.32.860 and 1995 c 239 s 110 are each amended to  
23 read as follows:

24        (1) Except under section 9 of this act, no retiree shall be  
25 eligible to receive such retiree's monthly retirement allowance if he  
26 or she is employed in an eligible position as defined in RCW 41.40.010  
27 or 41.32.010, or as a law enforcement officer or fire fighter as  
28 defined in RCW 41.26.030(~~(, except that a plan III retiree may work in~~  
29 ~~eligible positions on a temporary basis for up to five months per~~  
30 ~~calendar year))~~).

31        (2) If a retiree's benefits have been suspended under this section,  
32 his or her benefits shall be reinstated when the retiree terminates the  
33 employment that caused the suspension of benefits. Upon reinstatement,  
34 the retiree's benefits shall be actuarially recomputed pursuant to the  
35 rules adopted by the department.

1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 41.32 RCW  
2 under the subchapter heading "plan II" to read as follows:

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

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

13        (2) A retiree who has satisfied the break in employment requirement  
14 of subsection (1) of this section, may work up to five months per  
15 calendar year in an eligible position without suspension of his or her  
16 benefit.

17        (3) If the retiree opts to reestablish membership under RCW  
18 41.32.044, he or she terminates his or her retirement status and  
19 immediately becomes a member. Retirement benefits shall not accrue  
20 during the period of membership and the individual shall make  
21 contributions and receive membership credit. Such a member shall have  
22 the right to again retire if eligible.

23        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 41.32 RCW  
24 under the subchapter heading provisions applicable to "plan III" to  
25 read as follows:

26        (1)(a) If a retiree enters employment with an employer sooner than  
27 one calendar month after his or her accrual date, the retiree's monthly  
28 retirement allowance will be reduced by five and one-half percent for  
29 every seven hours worked during that month. This reduction will be  
30 applied each month until the retiree remains absent from employment  
31 with an employer for one full calendar month.

32        (b) The benefit reduction provided in (a) of this subsection will  
33 accrue for a maximum of twenty days per month. Any benefit reduction  
34 over one hundred percent will be applied to the benefit the retiree is  
35 eligible to receive in subsequent months.

36        (2) A retiree who has satisfied the break in employment requirement  
37 of subsection (1) of this section, may work up to five months per

1 calendar year in an eligible position without suspension of his or her  
2 benefit.

3 (3) If the retiree opts to reestablish membership under RCW  
4 41.32.044, he or she terminates his or her retirement status and  
5 immediately becomes a member. Retirement benefits shall not accrue  
6 during the period of membership and the individual shall make  
7 contributions and receive membership credit. Such a member shall have  
8 the right to again retire if eligible.

9 **Sec. 10.** RCW 41.40.010 and 1995 c 345 s 10, 1995 c 286 s 1, and  
10 1995 c 244 s 3 are each reenacted and amended to read as follows:

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

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

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

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

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

30 (b) "Employer" for plan II members, means every branch, department,  
31 agency, commission, board, and office of the state, and any political  
32 subdivision and municipal corporation of the state admitted into the  
33 retirement system, including public agencies created pursuant to RCW  
34 35.63.070, 36.70.060, and 39.34.030.

35 (5) "Member" means any employee included in the membership of the  
36 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045  
37 does not prohibit a person otherwise eligible for membership in the



1 retirement system from establishing such membership effective when he  
2 or she first entered an eligible position.

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

4 (a) Any person who became a member of the system prior to April 1,  
5 1949;

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

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

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

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

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

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

36 (8)(a) "Compensation earnable" for plan I members, means salaries  
37 or wages earned during a payroll period for personal services and where  
38 the compensation is not all paid in money, maintenance compensation

1 shall be included upon the basis of the schedules established by the  
2 member's employer.

3 (i) "Compensation earnable" for plan I members also includes the  
4 following actual or imputed payments, which are not paid for personal  
5 services:

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

13 (B) If a leave of absence is taken by an individual for the purpose  
14 of serving in the state legislature, the salary which would have been  
15 received for the position from which the leave of absence was taken,  
16 shall be considered as compensation earnable if the employee's  
17 contribution is paid by the employee and the employer's contribution is  
18 paid by the employer or employee;

19 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and  
20 72.09.240;

21 (D) Compensation that a member would have received but for a  
22 disability occurring in the line of duty only as authorized by RCW  
23 41.40.038;

24 (E) Compensation that a member receives due to participation in the  
25 leave sharing program only as authorized by RCW 41.04.650 through  
26 41.04.670; and

27 (F) Compensation that a member receives for being in standby  
28 status. For the purposes of this section, a member is in standby  
29 status when not being paid for time actually worked and the employer  
30 requires the member to be prepared to report immediately for work, if  
31 the need arises, although the need may not arise. Standby compensation  
32 is regular salary for the purposes of RCW 41.50.150(2).

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

34 (A) Remuneration for unused sick leave authorized under RCW  
35 41.04.340, 28A.400.210, or 28A.310.490;

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

38 (b) "Compensation earnable" for plan II members, means salaries or  
39 wages earned by a member during a payroll period for personal services,

1 including overtime payments, and shall include wages and salaries  
2 deferred under provisions established pursuant to sections 403(b),  
3 414(h), and 457 of the United States Internal Revenue Code, but shall  
4 exclude nonmoney maintenance compensation and lump sum or other  
5 payments for deferred annual sick leave, unused accumulated vacation,  
6 unused accumulated annual leave, or any form of severance pay.

7 "Compensation earnable" for plan II members also includes the  
8 following actual or imputed payments, which are not paid for personal  
9 services:

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

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

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

22 (B) Such member's actual compensation earnable received for  
23 nonlegislative public employment and legislative service combined. Any  
24 additional contributions to the retirement system required because  
25 compensation earnable under ~~((b)(ii)(B))~~ (b)(ii)(A) of this  
26 subsection is greater than compensation earnable under ~~((b)(ii)(A))~~  
27 (b)(ii)(B) of this subsection shall be paid by the member for both  
28 member and employer contributions;

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

31 (iv) Compensation that a member would have received but for a  
32 disability occurring in the line of duty only as authorized by RCW  
33 41.40.038;

34 (v) Compensation that a member receives due to participation in the  
35 leave sharing program only as authorized by RCW 41.04.650 through  
36 41.04.670; and

37 (vi) Compensation that a member receives for being in standby  
38 status. For the purposes of this section, a member is in standby  
39 status when not being paid for time actually worked and the employer

1 requires the member to be prepared to report immediately for work, if  
2 the need arises, although the need may not arise. Standby compensation  
3 is regular salary for the purposes of RCW 41.50.150(2).

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

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

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

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

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

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

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

6 (b) "Service" for plan II members, means periods of employment by  
7 a member in an eligible position or positions for one or more employers  
8 for which compensation earnable is paid. Compensation earnable earned  
9 for ninety or more hours in any calendar month shall constitute one  
10 service credit month except as provided in RCW 41.40.088. Compensation  
11 earnable earned for at least seventy hours but less than ninety hours  
12 in any calendar month shall constitute one-half service credit month of  
13 service. Compensation earnable earned for less than seventy hours in  
14 any calendar month shall constitute one-quarter service credit month of  
15 service. Time spent in standby status, whether compensated or not, is  
16 not service.

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

19 (i) Service in any state elective position shall be deemed to be  
20 full time service, except that persons serving in state elective  
21 positions who are members of the teachers' retirement system or law  
22 enforcement officers' and fire fighters' retirement system at the time  
23 of election or appointment to such position may elect to continue  
24 membership in the teachers' retirement system or law enforcement  
25 officers' and fire fighters' retirement system.

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

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

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

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

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

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

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

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

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

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

14 (13) "Membership service" means:

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

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

20 (c) Service not to exceed six consecutive months of probationary  
21 service rendered after April 1, 1949, and prior to becoming a member,  
22 in the case of any member, upon payment in full by such member of the  
23 total amount of the employer's contribution to the retirement fund  
24 which would have been required under the law in effect when such  
25 probationary service was rendered if the member had been a member  
26 during such period, except that the amount of the employer's  
27 contribution shall be calculated by the director based on the first  
28 month's compensation earnable as a member;

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

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

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

4 (15) "Regular interest" means such rate as the director may  
5 determine.

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

10 (17)(a) "Average final compensation" for plan I members, means the  
11 annual average of the greatest compensation earnable by a member during  
12 any consecutive two year period of service credit months for which  
13 service credit is allowed; or if the member has less than two years of  
14 service credit months then the annual average compensation earnable  
15 during the total years of service for which service credit is allowed.

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

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

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

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

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

32 (22) "Employee" (~~means any person who may become eligible for~~  
33 ~~membership under this chapter, as set forth in RCW 41.40.023)) or  
34 "employed" means a person who is providing services for compensation to  
35 an employer, unless the person is free from the employer's direction  
36 and control over the performance of work. The department shall adopt  
37 rules and interpret this subsection consistent with common law.~~

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

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

6 (25) "Eligible position" means:

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

13 (b) Any position occupied by an elected official or person  
14 appointed directly by the governor for which compensation is paid.

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

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

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

24 (29) "Retiree" means any person (~~(in receipt of)~~) who has begun  
25 accruing a retirement allowance or other benefit provided by this  
26 chapter resulting from service rendered to an employer while a member.  
27 (~~(A person is in receipt of a retirement allowance as defined in~~  
28 ~~subsection (21) of this section or other benefit as provided by this~~  
29 ~~chapter when the department mails, causes to be mailed, or otherwise~~  
30 ~~transmits the retirement allowance warrant.))~~)

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

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

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

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



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

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

8 (36) "Index A" means the index for the year prior to the  
9 determination of a postretirement adjustment.

10 (37) "Index B" means the index for the year prior to index A.

11 (38) "Index year" means the earliest calendar year in which the  
12 index is more than sixty percent of index A.

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

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

18 (41) "Separation from service" occurs when a person has terminated  
19 all employment with an employer.

20 **Sec. 11.** RCW 41.40.023 and 1994 c 298 s 8 and 1994 c 197 s 24 are  
21 each reenacted and amended to read as follows:

22 Membership in the retirement system shall consist of all regularly  
23 compensated employees and appointive and elective officials of  
24 employers, as defined in this chapter, with the following exceptions:

25 (1) Persons in ineligible positions;

26 (2) Employees of the legislature except the officers thereof  
27 elected by the members of the senate and the house and legislative  
28 committees, unless membership of such employees be authorized by the  
29 said committee;

30 (3)(a) Persons holding elective offices or persons appointed  
31 directly by the governor: PROVIDED, That such persons shall have the  
32 option of applying for membership during such periods of employment:  
33 AND PROVIDED FURTHER, That any persons holding or who have held  
34 elective offices or persons appointed by the governor who are members  
35 in the retirement system and who have, prior to becoming such members,  
36 previously held an elective office, and did not at the start of such  
37 initial or successive terms of office exercise their option to become  
38 members, may apply for membership to be effective during such term or

1 terms of office, and shall be allowed to establish the service credit  
2 applicable to such term or terms of office upon payment of the employee  
3 contributions therefor by the employee with interest as determined by  
4 the director and employer contributions therefor by the employer or  
5 employee with interest as determined by the director: AND PROVIDED  
6 FURTHER, That all contributions with interest submitted by the employee  
7 under this subsection shall be placed in the employee's individual  
8 account in the employee's savings fund and be treated as any other  
9 contribution made by the employee, with the exception that any  
10 contributions submitted by the employee in payment of the employer's  
11 obligation, together with the interest the director may apply to the  
12 employer's contribution, shall not be considered part of the member's  
13 annuity for any purpose except withdrawal of contributions;

14 (b) A member holding elective office who has elected to apply for  
15 membership pursuant to (a) of this subsection and who later wishes to  
16 be eligible for a retirement allowance shall have the option of ending  
17 his or her membership in the retirement system. A member wishing to  
18 end his or her membership under this subsection must file, on a form  
19 supplied by the department, a statement indicating that the member  
20 agrees to irrevocably abandon any claim for service for future periods  
21 served as an elected official. A member who receives more than fifteen  
22 thousand dollars per year in compensation for his or her elective  
23 service, adjusted annually for inflation by the director, is not  
24 eligible for the option provided by this subsection (3)(b);

25 (4) Employees holding membership in, or receiving pension benefits  
26 under, any retirement plan operated wholly or in part by an agency of  
27 the state or political subdivision thereof, or who are by reason of  
28 their current employment contributing to or otherwise establishing the  
29 right to receive benefits from any such retirement plan: PROVIDED,  
30 HOWEVER, In any case where the retirement system has in existence an  
31 agreement with another retirement system in connection with exchange of  
32 service credit or an agreement whereby members can retain service  
33 credit in more than one system, such an employee shall be allowed  
34 membership rights should the agreement so provide: AND PROVIDED  
35 FURTHER, That an employee shall be allowed membership if otherwise  
36 eligible while receiving survivor's benefits: AND PROVIDED FURTHER,  
37 That an employee shall not either before or after June 7, 1984, be  
38 excluded from membership or denied service credit pursuant to this  
39 subsection solely on account of: (a) Membership in the plan created

1 under chapter 2.14 RCW; or (b) enrollment under the relief and  
2 compensation provisions or the pension provisions of the volunteer fire  
3 fighters' relief and pension fund under chapter 41.24 RCW;

4 (5) Patient and inmate help in state charitable, penal, and  
5 correctional institutions;

6 (6) "Members" of a state veterans' home or state soldiers' home;

7 (7) Persons employed by an institution of higher learning or  
8 community college, primarily as an incident to and in furtherance of  
9 their education or training, or the education or training of a spouse;

10 (8) Employees of an institution of higher learning or community  
11 college during the period of service necessary to establish eligibility  
12 for membership in the retirement plans operated by such institutions;

13 (9) Persons rendering professional services to an employer on a  
14 fee, retainer, or contract basis or when the income from these services  
15 is less than fifty percent of the gross income received from the  
16 person's practice of a profession;

17 (10) Persons appointed after April 1, 1963, by the liquor control  
18 board as agency vendors;

19 (11) Employees of a labor guild, association, or organization:  
20 PROVIDED, That elective officials and employees of a labor guild,  
21 association, or organization which qualifies as an employer within this  
22 chapter shall have the option of applying for membership;

23 (12) (~~(Plan F)~~) Retirement system retirees (~~(employed in eligible~~  
24 ~~positions on a temporary basis for a period not to exceed five months~~  
25 ~~in a calendar year: PROVIDED, That if such employees are employed for~~  
26 ~~more than five months in a calendar year in an eligible position they~~  
27 ~~shall become members of the system prospectively))): PROVIDED, That  
28 following reemployment in an eligible position, a retiree may elect to  
29 prospectively become a member of the retirement system if otherwise  
30 eligible;~~

31 (13) Persons employed by or appointed or elected as an official of  
32 a first class city that has its own retirement system: PROVIDED, That  
33 any member elected or appointed to an elective office on or after April  
34 1, 1971, shall have the option of continuing as a member of this system  
35 in lieu of becoming a member of the city system. A member who elects  
36 to continue as a member of this system shall pay the appropriate member  
37 contributions and the city shall pay the employer contributions at the  
38 rates prescribed by this chapter. The city shall also transfer to this  
39 system all of such member's accumulated contributions together with

1 such further amounts as necessary to equal all employee and employer  
2 contributions which would have been paid into this system on account of  
3 such service with the city and thereupon the member shall be granted  
4 credit for all such service. Any city that becomes an employer as  
5 defined in RCW 41.40.010(4) as the result of an individual's election  
6 under this subsection shall not be required to have all employees  
7 covered for retirement under the provisions of this chapter. Nothing  
8 in this subsection shall prohibit a city of the first class with its  
9 own retirement system from: (a) Transferring all of its current  
10 employees to the retirement system established under this chapter, or  
11 (b) allowing newly hired employees the option of continuing coverage  
12 under the retirement system established by this chapter.

13 Notwithstanding any other provision of this chapter, persons  
14 transferring from employment with a first class city of over four  
15 hundred thousand population that has its own retirement system to  
16 employment with the state department of agriculture may elect to remain  
17 within the retirement system of such city and the state shall pay the  
18 employer contributions for such persons at like rates as prescribed for  
19 employers of other members of such system;

20 (14) Employees who (a) are not citizens of the United States, (b)  
21 do not reside in the United States, and (c) perform duties outside of  
22 the United States;

23 (15) Employees who (a) are not citizens of the United States, (b)  
24 are not covered by chapter 41.48 RCW, (c) are not excluded from  
25 membership under this chapter or chapter 41.04 RCW, (d) are residents  
26 of this state, and (e) make an irrevocable election to be excluded from  
27 membership, in writing, which is submitted to the director within  
28 thirty days after employment in an eligible position;

29 (16) Employees who are citizens of the United States and who reside  
30 and perform duties for an employer outside of the United States:  
31 PROVIDED, That unless otherwise excluded under this chapter or chapter  
32 41.04 RCW, the employee may apply for membership (a) within thirty days  
33 after employment in an eligible position and membership service credit  
34 shall be granted from the first day of membership service, and (b)  
35 after this thirty-day period, but membership service credit shall be  
36 granted only if payment is made for the noncredited membership service  
37 under RCW 41.50.165(2), otherwise service shall be from the date of  
38 application;

1 (17) The city manager or chief administrative officer of a city or  
2 town, other than a retiree, who serves at the pleasure of an appointing  
3 authority: PROVIDED, That such persons shall have the option of  
4 applying for membership within thirty days from date of their  
5 appointment to such positions. Persons serving in such positions as of  
6 April 4, 1986, shall continue to be members in the retirement system  
7 unless they notify the director in writing prior to December 31, 1986,  
8 of their desire to withdraw from membership in the retirement system.  
9 A member who withdraws from membership in the system under this section  
10 shall receive a refund of the member's accumulated contributions.

11 Persons serving in such positions who have not opted for membership  
12 within the specified thirty days, may do so by paying the amount  
13 required under RCW 41.50.165(2) for the period from the date of their  
14 appointment to the date of acceptance into membership;

15 (18) Persons enrolled in state-approved apprenticeship programs,  
16 authorized under chapter 49.04 RCW, and who are employed by local  
17 governments to earn hours to complete such apprenticeship programs, if  
18 the employee is a member of a union-sponsored retirement plan and is  
19 making contributions to such a retirement plan or if the employee is a  
20 member of a Taft-Hartley retirement plan.

21 **Sec. 12.** RCW 41.40.150 and 1994 c 197 s 26 are each amended to  
22 read as follows:

23 Should any member die, or should the individual separate or be  
24 separated from service without leave of absence before attaining age  
25 sixty years, or should the individual become a beneficiary, except a  
26 beneficiary of an optional retirement allowance as provided by RCW  
27 41.40.188, the individual shall thereupon cease to be a member except;

28 (1) As provided in RCW 41.40.170.

29 (2) An employee not previously retired who reenters service shall  
30 upon completion of six months of continuous service and upon the  
31 restoration, in one lump sum or in annual installments, of all  
32 withdrawn contributions: (a) With interest as computed by the  
33 director, which restoration must be completed within a total period of  
34 five years of membership service following the member's first  
35 resumption of employment or (b) paying the amount required under RCW  
36 41.50.165(2), be returned to the status, either as an original member  
37 or new member which the member held at time of separation.

1 (3) A member who separates or has separated after having completed  
2 at least five years of service shall remain a member during the period  
3 of absence from service for the exclusive purpose of receiving a  
4 retirement allowance to begin at attainment of age sixty-five, however,  
5 such a member may on written notice to the director elect to receive a  
6 reduced retirement allowance on or after age sixty which allowance  
7 shall be the actuarial equivalent of the sum necessary to pay regular  
8 retirement benefits as of age sixty-five: PROVIDED, That if such  
9 member should withdraw all or part of the member's accumulated  
10 contributions except those additional contributions made pursuant to  
11 RCW 41.40.330(2), the individual shall thereupon cease to be a member  
12 and this section shall not apply.

13 ~~(4)((a) The recipient of a retirement allowance who is employed in  
14 an eligible position other than under RCW 41.40.023(12) shall be  
15 considered to have terminated his or her retirement status and shall  
16 immediately become a member of the retirement system with the status of  
17 membership the member held as of the date of retirement. Retirement  
18 benefits shall be suspended during the period of eligible employment  
19 and the individual shall make contributions and receive membership  
20 credit. Such a member shall have the right to again retire if eligible  
21 in accordance with RCW 41.40.180: PROVIDED, That where any such right  
22 to retire is exercised to become effective before the member has  
23 rendered two uninterrupted years of service the type of retirement  
24 allowance the member had at the time of the member's previous  
25 retirement shall be reinstated;~~

26 ~~(b))~~ The recipient of a retirement allowance elected to office or  
27 appointed to office directly by the governor, and who shall apply for  
28 and be accepted in membership as provided in RCW 41.40.023(3) shall be  
29 considered to have terminated his or her retirement status and shall  
30 become a member of the retirement system with the status of membership  
31 the member held as of the date of retirement. Retirement benefits  
32 shall be suspended from the date of return to membership until the date  
33 when the member again retires and the member shall make contributions  
34 and receive membership credit. Such a member shall have the right to  
35 again retire if eligible in accordance with RCW 41.40.180: PROVIDED,  
36 That where any such right to retire is exercised to become effective  
37 before the member has rendered six uninterrupted months of service the  
38 type of retirement allowance the member had at the time of the member's  
39 previous retirement shall be reinstated, but no additional service

1 credit shall be allowed: AND PROVIDED FURTHER, That if such a  
2 recipient of a retirement allowance does not elect to apply for reentry  
3 into membership as provided in RCW 41.40.023(3), the member shall be  
4 considered to remain in a retirement status and the individual's  
5 retirement benefits shall continue without interruption.

6 (5) Any member who leaves the employment of an employer and enters  
7 the employ of a public agency or agencies of the state of Washington,  
8 other than those within the jurisdiction of this retirement system, and  
9 who establishes membership in a retirement system or a pension fund  
10 operated by such agency or agencies and who shall continue membership  
11 therein until attaining age sixty, shall remain a member for the  
12 exclusive purpose of receiving a retirement allowance without the  
13 limitation found in RCW 41.40.180(1) to begin on attainment of age  
14 sixty-five; however, such a member may on written notice to the  
15 director elect to receive a reduced retirement allowance on or after  
16 age sixty which allowance shall be the actuarial equivalent of the sum  
17 necessary to pay regular retirement benefits commencing at age sixty-  
18 five: PROVIDED, That if such member should withdraw all or part of the  
19 member's accumulated contributions except those additional  
20 contributions made pursuant to RCW 41.40.330(2), the individual shall  
21 thereupon cease to be a member and this section shall not apply.

22 **Sec. 13.** RCW 41.40.690 and 1990 c 274 s 11 are each amended to  
23 read as follows:

24 (1) Except as provided in section 14 of this act, no retiree under  
25 the provisions of plan II shall be eligible to receive such retiree's  
26 monthly retirement allowance if he or she is employed in an eligible  
27 position as defined in RCW 41.40.010 or 41.32.010, or as a law  
28 enforcement officer or fire fighter as defined in RCW 41.26.030, except  
29 that((÷

30 (a)) a retiree who ends his or her membership in the retirement  
31 system pursuant to RCW 41.40.023(3)(b) is not subject to this section  
32 if the retiree's only employment is as an elective official of a city  
33 or town((÷and

34 (b) ~~A plan II retiree may work in eligible positions on a temporary~~  
35 ~~basis for up to five months in a calendar year)).~~

36 (2) If a retiree's benefits have been suspended under this section,  
37 his or her benefits shall be reinstated when the retiree terminates the  
38 employment that caused his or her benefits to be suspended. Upon

1 reinstatement, the retiree's benefits shall be actuarially recomputed  
2 pursuant to the rules adopted by the department.

3 (3) The department shall adopt rules implementing this section.

4 NEW SECTION. **Sec. 14.** A new section is added to chapter 41.40 RCW  
5 under the subchapter heading "provisions applicable to plan I and plan  
6 II" to read as follows:

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

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

17 (2) A retiree who has satisfied the break in employment requirement  
18 of subsection (1) of this section, may work up to five months per  
19 calendar year in an eligible position without suspension of his or her  
20 benefit.

21 (3) If the retiree opts to reestablish membership under RCW  
22 41.40.023(12), he or she terminates his or her retirement status and  
23 becomes a member. Retirement benefits shall not accrue during the  
24 period of membership and the individual shall make contributions and  
25 receive membership credit. Such a member shall have the right to again  
26 retire if eligible in accordance with RCW 41.40.180. However, if the  
27 right to retire is exercised to become effective before the member has  
28 rendered two uninterrupted years of service, the retirement formula and  
29 survivor options the member had at the time of the member's previous  
30 retirement shall be reinstated.

31 **Sec. 15.** RCW 41.50.130 and 1994 c 177 s 3 are each amended to read  
32 as follows:

33 (1) The director may at any time correct errors appearing in the  
34 records of the retirement systems listed in RCW 41.50.030. Should any  
35 error in such records result in any member, beneficiary, or other  
36 person or entity receiving more or less than he or she would have been  
37 entitled to had the records been correct, the director, subject to the



1 conditions set forth in this section, shall adjust the payment in such  
2 a manner that the benefit to which such member, beneficiary, or other  
3 person or entity was correctly entitled shall be paid in accordance  
4 with the following:

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

10 (b) In the case of overpayments to a ~~((member))~~ retiree or other  
11 beneficiary, the retirement system shall adjust the payment ~~((in such~~  
12 ~~a manner))~~ so that the retiree or beneficiary receives the benefit to  
13 which ((such member or beneficiary was)) he or she is correctly  
14 entitled ((shall be reduced by an amount equal to the actuarial  
15 equivalent of the amount of overpayment. Alternatively the member)).  
16 The retiree or beneficiary shall ((have the option of repaying)) either  
17 repay the overpayment in a lump sum within ninety days of notification  
18 ((and receive the proper benefit in the future. In the case of  
19 overpayments to a member, beneficiary, or other person or entity  
20 resulting from actual fraud on the part of the member, beneficiary, or  
21 other person or entity, the benefits shall be adjusted to reflect the  
22 full amount of such overpayment, plus interest at the rate of one  
23 percent per month on the outstanding balance)) or, if he or she is  
24 entitled to a continuing benefit, elect to have that benefit  
25 actuarially reduced by an amount equal to the overpayment. The retiree  
26 or beneficiary is not responsible for repaying the overpayment if the  
27 employer is liable under section 16 of this act.

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

32 (2) Except in the case of actual fraud, in the case of overpayments  
33 to a member or beneficiary, the benefits shall be adjusted to reflect  
34 only the amount of overpayments made within three years of discovery of  
35 the error, notwithstanding any provision to the contrary in chapter  
36 4.16 RCW.

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

1       ~~(b) In the case of overpayments which result from the failure of an~~  
2 ~~employer to report properly to the department the employment of a~~  
3 ~~retiree from information received in subparagraph (a), the employer~~  
4 ~~shall, upon receipt of a billing from the department, pay into the~~  
5 ~~appropriate retirement system the amount of the overpayment plus~~  
6 ~~interest as determined by the director. However, except in the case of~~  
7 ~~actual employer fraud, the overpayments charged to the employer under~~  
8 ~~this subsection shall not exceed five thousand dollars for each year of~~  
9 ~~overpayments received by a retiree. The retiree's benefits upon~~  
10 ~~reretirement shall not be reduced because of such overpayment except as~~  
11 ~~necessary to recapture contributions required for periods of~~  
12 ~~employment.~~

13       ~~(c) The provision of this subsection regarding the reduction of~~  
14 ~~retirees' benefits shall apply to recovery actions commenced on or~~  
15 ~~after January 1, 1986, even though the overpayments resulting from~~  
16 ~~retiree employment were discovered by the department prior to that~~  
17 ~~date. The provisions of this subsection regarding the billing of~~  
18 ~~employers for overpayments shall apply to overpayments made after~~  
19 ~~January 1, 1986.~~

20       ~~(4))~~ Except in the case of actual fraud, no monthly benefit shall  
21 be reduced by more than fifty percent of the member's or beneficiary's  
22 corrected benefit. Any overpayment not recovered due to the inability  
23 to actuarially reduce a member's benefit due to: (a) The provisions of  
24 this subsection; or (b) the fact that the retiree's monthly retirement  
25 allowance is less than the monthly payment required to effectuate an  
26 actuarial reduction, shall constitute a claim against the estate of a  
27 member, beneficiary, or other person or entity in receipt of an  
28 overpayment.

29       ~~((+5))~~ (4) Except as provided in subsection (2) of this section,  
30 obligations of employers or members until paid to the department shall  
31 constitute a debt from the employer or member to the department,  
32 recovery of which shall not be barred by laches or statutes of  
33 limitation.

34       NEW SECTION. Sec. 16. A new section is added to chapter 41.50 RCW  
35 to read as follows:

36       (1) Retirement system employers shall elicit on a written form from  
37 all new employees as to their having been retired from a retirement  
38 system listed in RCW 41.50.030. Employers must report any retirees in

1 their employ to the department. If a retiree works in excess of  
2 applicable postretirement employment restrictions and the employer  
3 failed to report the employment of the retiree, that employer is liable  
4 for the loss to the trust fund.

5 (2) If an employer erroneously reports to the department that an  
6 employee has separated from service such that a person receives a  
7 retirement allowance in contravention of the applicable retirement  
8 system statutes, the person's retirement status shall remain unaffected  
9 and the employer is liable for the resulting overpayments.

10 (3) Upon receipt of a billing from the department, the employer  
11 shall pay into the appropriate retirement system trust fund the amount  
12 of the overpayment plus interest as determined by the director. The  
13 employer's liability under this section shall not exceed the amount of  
14 overpayments plus interest received by the retiree within three years  
15 of the date of discovery, except in the case of fraud. In the case of  
16 fraud, the employer is liable for the entire overpayment plus interest.

17 NEW SECTION. **Sec. 17.** This act applies to all overpayments  
18 discovered by the department of retirement systems on or after the  
19 effective date of this act, except that sections 10, 12, 14, 15, and 16  
20 of this act apply retroactively to any person who retired under chapter  
21 234, Laws of 1992.

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