

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2771

Chapter 236, Laws of 2012

62nd Legislature
2012 Regular Session

STATE RETIREMENT SYSTEMS--EMPLOYER/EMPLOYEE RELATIONSHIPS

EFFECTIVE DATE: 06/07/12

Passed by the House March 3, 2012
Yeas 91 Nays 5

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 1, 2012
Yeas 38 Nays 10

BRAD OWEN

President of the Senate

Approved March 30, 2012, 1:11 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2771** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 30, 2012

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2771

AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

State of Washington **62nd Legislature** **2012 Regular Session**

By Representatives Pettigrew, Cody, and Springer

Read first time 02/03/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to employer and employee relationships under the
2 state retirement systems; amending RCW 41.26.030, 41.32.010, and
3 41.40.010; reenacting and amending RCW 41.35.010 and 41.37.010; adding
4 a new section to chapter 41.04 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) On August 18, 2011, the state supreme
7 court entered an opinion in the matter of *Dolan v. King County*, Cause
8 No. 82842-3. The court recognized that a public employees' retirement
9 system eligible employee must work for a public employees' retirement
10 system employer under RCW 41.40.010. However, the court did not
11 explain how such an employee can be an employee of a government
12 contractor and also of a government employer. The legislature
13 determines it necessary and appropriate to affirmatively state that a
14 governmental contractor is not an employer for purposes of the state's
15 public pension systems, including the public employees' retirement
16 system, whether or not the contractor is providing mandatory or
17 discretionary governmental services, and whether or not the contractor
18 is a for-profit or not-for-profit entity.

1 (2) The legislature has not intended in its pension legislation to
2 provide retirement system eligibility to employees of government
3 contractors. Only in specific circumstances, such as employees of
4 entities, including nonprofits, created by government under the
5 interlocal cooperation act in chapter 39.34 RCW, has the legislature
6 and department of retirement systems permitted retirement system
7 eligibility for employees of government contractors. The department's
8 rules in WAC 415-02-110 conform to the purpose and intent of the
9 legislature regarding public pension eligibility.

10 (3) It is the purpose of this act to more clearly state and to
11 confirm that employees of for-profit or not-for-profit corporations or
12 other entities providing services under governmental contracts are not,
13 as a result of providing such governmental service, eligible for
14 membership in the various public retirement programs. The state and
15 its local governments have not provided for such eligibility and such
16 eligibility would create unfunded liability for state and local
17 governments and potential impacts on the integrity of the public
18 pension systems.

19 (4) This act provides cross-references to existing statutes that
20 affect eligibility for pensions under the retirement systems authorized
21 by chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 41.50 RCW and to the
22 relevant definition sections of those chapters. Except as provided,
23 this act is technical in nature and neither enhances nor diminishes
24 existing pension rights. It is not the intent of the legislature to
25 change the substance or effect of any statute previously enacted.
26 Rather, this act provides cross-references to applicable statutes in
27 order to aid with the administration of eligibility and benefits
28 authorized in chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 41.50
29 RCW.

30 (5) This act shall apply solely to eligibility for state-sponsored
31 public employee pension plans under chapters 41.26, 41.32, 41.35,
32 41.37, and 41.40 RCW and shall not affect any other statute or rule
33 regarding employee benefits, status, or workplace protections.

34 (6) This act is curative and remedial, but does not affect the
35 state supreme court decision in *Dolan v. King County*, Cause No. 82842-
36 3, and the right established therein of King county public defenders
37 and staff to public employees' retirement system enrollment and
38 eligibility.

1 **Sec. 2.** RCW 41.26.030 and 2011 1st sp.s. c 5 s 1 are each amended
2 to read as follows:

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

5 (1) "Accumulated contributions" means the employee's contributions
6 made by a member, including any amount paid under RCW 41.50.165(2),
7 plus accrued interest credited thereon.

8 (2) "Actuarial reserve" means a method of financing a pension or
9 retirement plan wherein reserves are accumulated as the liabilities for
10 benefit payments are incurred in order that sufficient funds will be
11 available on the date of retirement of each member to pay the member's
12 future benefits during the period of retirement.

13 (3) "Actuarial valuation" means a mathematical determination of the
14 financial condition of a retirement plan. It includes the computation
15 of the present monetary value of benefits payable to present members,
16 and the present monetary value of future employer and employee
17 contributions, giving effect to mortality among active and retired
18 members and also to the rates of disability, retirement, withdrawal
19 from service, salary and interest earned on investments.

20 (4)(a) "Basic salary" for plan 1 members, means the basic monthly
21 rate of salary or wages, including longevity pay but not including
22 overtime earnings or special salary or wages, upon which pension or
23 retirement benefits will be computed and upon which employer
24 contributions and salary deductions will be based.

25 (b) "Basic salary" for plan 2 members, means salaries or wages
26 earned by a member during a payroll period for personal services,
27 including overtime payments, and shall include wages and salaries
28 deferred under provisions established pursuant to sections 403(b),
29 414(h), and 457 of the United States Internal Revenue Code, but shall
30 exclude lump sum payments for deferred annual sick leave, unused
31 accumulated vacation, unused accumulated annual leave, or any form of
32 severance pay. In any year in which a member serves in the legislature
33 the member shall have the option of having such member's basic salary
34 be the greater of:

35 (i) The basic salary the member would have received had such member
36 not served in the legislature; or

37 (ii) Such member's actual basic salary received for nonlegislative
38 public employment and legislative service combined. Any additional

1 contributions to the retirement system required because basic salary
2 under (b)(i) of this subsection is greater than basic salary under
3 (b)(ii) of this subsection shall be paid by the member for both member
4 and employer contributions.

5 (5)(a) "Beneficiary" for plan 1 members, means any person in
6 receipt of a retirement allowance, disability allowance, death benefit,
7 or any other benefit described herein.

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

11 (6)(a) "Child" or "children" means an unmarried person who is under
12 the age of eighteen or mentally or physically disabled as determined by
13 the department, except a person who is disabled and in the full time
14 care of a state institution, who is:

15 (i) A natural born child;

16 (ii) A stepchild where that relationship was in existence prior to
17 the date benefits are payable under this chapter;

18 (iii) A posthumous child;

19 (iv) A child legally adopted or made a legal ward of a member prior
20 to the date benefits are payable under this chapter; or

21 (v) An illegitimate child legitimized prior to the date any
22 benefits are payable under this chapter.

23 (b) A person shall also be deemed to be a child up to and including
24 the age of twenty years and eleven months while attending any high
25 school, college, or vocational or other educational institution
26 accredited, licensed, or approved by the state, in which it is located,
27 including the summer vacation months and all other normal and regular
28 vacation periods at the particular educational institution after which
29 the child returns to school.

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

32 (8) "Director" means the director of the department.

33 (9) "Disability board" for plan 1 members means either the county
34 disability board or the city disability board established in RCW
35 41.26.110.

36 (10) "Disability leave" means the period of six months or any
37 portion thereof during which a member is on leave at an allowance equal

1 to the member's full salary prior to the commencement of disability
2 retirement. The definition contained in this subsection shall apply
3 only to plan 1 members.

4 (11) "Disability retirement" for plan 1 members, means the period
5 following termination of a member's disability leave, during which the
6 member is in receipt of a disability retirement allowance.

7 (12) "Domestic partners" means two adults who have registered as
8 domestic partners under RCW 26.60.020.

9 (13) "Employee" means any law enforcement officer or firefighter as
10 defined in subsections (16) and (18) of this section.

11 (14)(a) "Employer" for plan 1 members, means the legislative
12 authority of any city, town, county, or district or the elected
13 officials of any municipal corporation that employs any law enforcement
14 officer and/or firefighter, any authorized association of such
15 municipalities, and, except for the purposes of RCW 41.26.150, any
16 labor guild, association, or organization, which represents the
17 firefighters or law enforcement officers of at least seven cities of
18 over 20,000 population and the membership of each local lodge or
19 division of which is composed of at least sixty percent law enforcement
20 officers or firefighters as defined in this chapter.

21 (b) "Employer" for plan 2 members, means the following entities to
22 the extent that the entity employs any law enforcement officer and/or
23 firefighter:

24 (i) The legislative authority of any city, town, county, or
25 district;

26 (ii) The elected officials of any municipal corporation;

27 (iii) The governing body of any other general authority law
28 enforcement agency; or

29 (iv) A four-year institution of higher education having a fully
30 operational fire department as of January 1, 1996.

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

1 between a government contractor and an "employer," but is based solely
2 on the relationship between a government contractor's employee and an
3 "employer" under this chapter.

4 (15)(a) "Final average salary" for plan 1 members, means (i) for a
5 member holding the same position or rank for a minimum of twelve months
6 preceding the date of retirement, the basic salary attached to such
7 same position or rank at time of retirement; (ii) for any other member,
8 including a civil service member who has not served a minimum of twelve
9 months in the same position or rank preceding the date of retirement,
10 the average of the greatest basic salaries payable to such member
11 during any consecutive twenty-four month period within such member's
12 last ten years of service for which service credit is allowed, computed
13 by dividing the total basic salaries payable to such member during the
14 selected twenty-four month period by twenty-four; (iii) in the case of
15 disability of any member, the basic salary payable to such member at
16 the time of disability retirement; (iv) in the case of a member who
17 hereafter vests pursuant to RCW 41.26.090, the basic salary payable to
18 such member at the time of vesting.

19 (b) "Final average salary" for plan 2 members, means the monthly
20 average of the member's basic salary for the highest consecutive sixty
21 service credit months of service prior to such member's retirement,
22 termination, or death. Periods constituting authorized unpaid leaves
23 of absence may not be used in the calculation of final average salary.

24 (c) In calculating final average salary under (a) or (b) of this
25 subsection, the department of retirement systems shall include:

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

33 (ii) Any compensation forgone by a member employed by the state or
34 a local government employer during the 2011-2013 fiscal biennium as a
35 result of reduced work hours, mandatory leave without pay, temporary
36 layoffs, or reductions to current pay if the reduced compensation is an
37 integral part of the employer's expenditure reduction efforts, as

1 certified by the employer. Reductions to current pay shall not include
2 elimination of previously agreed upon future salary increases.

3 (16) "Firefighter" means:

4 (a) Any person who is serving on a full time, fully compensated
5 basis as a member of a fire department of an employer and who is
6 serving in a position which requires passing a civil service
7 examination for firefighter, and who is actively employed as such;

8 (b) Anyone who is actively employed as a full time firefighter
9 where the fire department does not have a civil service examination;

10 (c) Supervisory firefighter personnel;

11 (d) Any full time executive secretary of an association of fire
12 protection districts authorized under RCW 52.12.031. The provisions of
13 this subsection (16)(d) shall not apply to plan 2 members;

14 (e) The executive secretary of a labor guild, association or
15 organization (which is an employer under subsection (14) of this
16 section), if such individual has five years previous membership in a
17 retirement system established in chapter 41.16 or 41.18 RCW. The
18 provisions of this subsection (16)(e) shall not apply to plan 2
19 members;

20 (f) Any person who is serving on a full time, fully compensated
21 basis for an employer, as a fire dispatcher, in a department in which,
22 on March 1, 1970, a dispatcher was required to have passed a civil
23 service examination for firefighter;

24 (g) Any person who on March 1, 1970, was employed on a full time,
25 fully compensated basis by an employer, and who on May 21, 1971, was
26 making retirement contributions under the provisions of chapter 41.16
27 or 41.18 RCW; and

28 (h) Any person who is employed on a full-time, fully compensated
29 basis by an employer as an emergency medical technician.

30 (17) "General authority law enforcement agency" means any agency,
31 department, or division of a municipal corporation, political
32 subdivision, or other unit of local government of this state, and any
33 agency, department, or division of state government, having as its
34 primary function the detection and apprehension of persons committing
35 infractions or violating the traffic or criminal laws in general, but
36 not including the Washington state patrol. Such an agency, department,
37 or division is distinguished from a limited authority law enforcement
38 agency having as one of its functions the apprehension or detection of

1 persons committing infractions or violating the traffic or criminal
2 laws relating to limited subject areas, including but not limited to,
3 the state departments of natural resources and social and health
4 services, the state gambling commission, the state lottery commission,
5 the state parks and recreation commission, the state utilities and
6 transportation commission, the state liquor control board, and the
7 state department of corrections. A general authority law enforcement
8 agency under this chapter does not include a government contractor.

9 (18) "Law enforcement officer" beginning January 1, 1994, means any
10 person who is commissioned and employed by an employer on a full time,
11 fully compensated basis to enforce the criminal laws of the state of
12 Washington generally, with the following qualifications:

13 (a) No person who is serving in a position that is basically
14 clerical or secretarial in nature, and who is not commissioned shall be
15 considered a law enforcement officer;

16 (b) Only those deputy sheriffs, including those serving under a
17 different title pursuant to county charter, who have successfully
18 completed a civil service examination for deputy sheriff or the
19 equivalent position, where a different title is used, and those persons
20 serving in unclassified positions authorized by RCW 41.14.070 except a
21 private secretary will be considered law enforcement officers;

22 (c) Only such full time commissioned law enforcement personnel as
23 have been appointed to offices, positions, or ranks in the police
24 department which have been specifically created or otherwise expressly
25 provided for and designated by city charter provision or by ordinance
26 enacted by the legislative body of the city shall be considered city
27 police officers;

28 (d) The term "law enforcement officer" also includes the executive
29 secretary of a labor guild, association or organization (which is an
30 employer under subsection (14) of this section) if that individual has
31 five years previous membership in the retirement system established in
32 chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not
33 apply to plan 2 members; and

34 (e) The term "law enforcement officer" also includes a person
35 employed on or after January 1, 1993, as a public safety officer or
36 director of public safety, so long as the job duties substantially
37 involve only either police or fire duties, or both, and no other duties
38 in a city or town with a population of less than ten thousand. The

1 provisions of this subsection (18)(e) shall not apply to any public
2 safety officer or director of public safety who is receiving a
3 retirement allowance under this chapter as of May 12, 1993.

4 (19) "Medical services" for plan 1 members, shall include the
5 following as minimum services to be provided. Reasonable charges for
6 these services shall be paid in accordance with RCW 41.26.150.

7 (a) Hospital expenses: These are the charges made by a hospital,
8 in its own behalf, for

9 (i) Board and room not to exceed semiprivate room rate unless
10 private room is required by the attending physician due to the
11 condition of the patient.

12 (ii) Necessary hospital services, other than board and room,
13 furnished by the hospital.

14 (b) Other medical expenses: The following charges are considered
15 "other medical expenses", provided that they have not been considered
16 as "hospital expenses".

17 (i) The fees of the following:

18 (A) A physician or surgeon licensed under the provisions of chapter
19 18.71 RCW;

20 (B) An osteopathic physician and surgeon licensed under the
21 provisions of chapter 18.57 RCW;

22 (C) A chiropractor licensed under the provisions of chapter 18.25
23 RCW.

24 (ii) The charges of a registered graduate nurse other than a nurse
25 who ordinarily resides in the member's home, or is a member of the
26 family of either the member or the member's spouse.

27 (iii) The charges for the following medical services and supplies:

28 (A) Drugs and medicines upon a physician's prescription;

29 (B) Diagnostic X-ray and laboratory examinations;

30 (C) X-ray, radium, and radioactive isotopes therapy;

31 (D) Anesthesia and oxygen;

32 (E) Rental of iron lung and other durable medical and surgical
33 equipment;

34 (F) Artificial limbs and eyes, and casts, splints, and trusses;

35 (G) Professional ambulance service when used to transport the
36 member to or from a hospital when injured by an accident or stricken by
37 a disease;

1 (H) Dental charges incurred by a member who sustains an accidental
2 injury to his or her teeth and who commences treatment by a legally
3 licensed dentist within ninety days after the accident;

4 (I) Nursing home confinement or hospital extended care facility;

5 (J) Physical therapy by a registered physical therapist;

6 (K) Blood transfusions, including the cost of blood and blood
7 plasma not replaced by voluntary donors;

8 (L) An optometrist licensed under the provisions of chapter 18.53
9 RCW.

10 (20) "Member" means any firefighter, law enforcement officer, or
11 other person as would apply under subsections (16) or (18) of this
12 section whose membership is transferred to the Washington law
13 enforcement officers' and firefighters' retirement system on or after
14 March 1, 1970, and every law enforcement officer and firefighter who is
15 employed in that capacity on or after such date.

16 (21) "Plan 1" means the law enforcement officers' and firefighters'
17 retirement system, plan 1 providing the benefits and funding provisions
18 covering persons who first became members of the system prior to
19 October 1, 1977.

20 (22) "Plan 2" means the law enforcement officers' and firefighters'
21 retirement system, plan 2 providing the benefits and funding provisions
22 covering persons who first became members of the system on and after
23 October 1, 1977.

24 (23) "Position" means the employment held at any particular time,
25 which may or may not be the same as civil service rank.

26 (24) "Regular interest" means such rate as the director may
27 determine.

28 (25) "Retiree" for persons who establish membership in the
29 retirement system on or after October 1, 1977, means any member in
30 receipt of a retirement allowance or other benefit provided by this
31 chapter resulting from service rendered to an employer by such member.

32 (26) "Retirement fund" means the "Washington law enforcement
33 officers' and firefighters' retirement system fund" as provided for
34 herein.

35 (27) "Retirement system" means the "Washington law enforcement
36 officers' and firefighters' retirement system" provided herein.

37 (28)(a) "Service" for plan 1 members, means all periods of
38 employment for an employer as a firefighter or law enforcement officer,

1 for which compensation is paid, together with periods of suspension not
2 exceeding thirty days in duration. For the purposes of this chapter
3 service shall also include service in the armed forces of the United
4 States as provided in RCW 41.26.190. Credit shall be allowed for all
5 service credit months of service rendered by a member from and after
6 the member's initial commencement of employment as a firefighter or law
7 enforcement officer, during which the member worked for seventy or more
8 hours, or was on disability leave or disability retirement. Only
9 service credit months of service shall be counted in the computation of
10 any retirement allowance or other benefit provided for in this chapter.

11 (i) For members retiring after May 21, 1971 who were employed under
12 the coverage of a prior pension act before March 1, 1970, "service"
13 shall also include (A) such military service not exceeding five years
14 as was creditable to the member as of March 1, 1970, under the member's
15 particular prior pension act, and (B) such other periods of service as
16 were then creditable to a particular member under the provisions of RCW
17 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit
18 be allowed for any service rendered prior to March 1, 1970, where the
19 member at the time of rendition of such service was employed in a
20 position covered by a prior pension act, unless such service, at the
21 time credit is claimed therefor, is also creditable under the
22 provisions of such prior act.

23 (ii) A member who is employed by two employers at the same time
24 shall only be credited with service to one such employer for any month
25 during which the member rendered such dual service.

26 (b) "Service" for plan 2 members, means periods of employment by a
27 member for one or more employers for which basic salary is earned for
28 ninety or more hours per calendar month which shall constitute a
29 service credit month. Periods of employment by a member for one or
30 more employers for which basic salary is earned for at least seventy
31 hours but less than ninety hours per calendar month shall constitute
32 one-half service credit month. Periods of employment by a member for
33 one or more employers for which basic salary is earned for less than
34 seventy hours shall constitute a one-quarter service credit month.

35 Members of the retirement system who are elected or appointed to a
36 state elective position may elect to continue to be members of this
37 retirement system.

1 Service credit years of service shall be determined by dividing the
2 total number of service credit months of service by twelve. Any
3 fraction of a service credit year of service as so determined shall be
4 taken into account in the computation of such retirement allowance or
5 benefits.

6 If a member receives basic salary from two or more employers during
7 any calendar month, the individual shall receive one service credit
8 month's service credit during any calendar month in which multiple
9 service for ninety or more hours is rendered; or one-half service
10 credit month's service credit during any calendar month in which
11 multiple service for at least seventy hours but less than ninety hours
12 is rendered; or one-quarter service credit month during any calendar
13 month in which multiple service for less than seventy hours is
14 rendered.

15 (29) "Service credit month" means a full service credit month or an
16 accumulation of partial service credit months that are equal to one.

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

19 (31) "State actuary" or "actuary" means the person appointed
20 pursuant to RCW 44.44.010(2).

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

24 (33) "Surviving spouse" means the surviving widow or widower of a
25 member. "Surviving spouse" shall not include the divorced spouse of a
26 member except as provided in RCW 41.26.162.

27 **Sec. 3.** RCW 41.32.010 and 2011 1st sp.s. c 5 s 2 are each amended
28 to read as follows:

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

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

35 (b) "Accumulated contributions" for plan 2 members, means the sum
36 of all contributions standing to the credit of a member in the member's

1 individual account, including any amount paid under RCW 41.50.165(2),
2 together with the regular interest thereon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (ii) For an employee member of the retirement system teaching in an
7 extended school year program, two consecutive extended school years, as
8 defined by the employer school district, may be used as the annual
9 period for determining earnable compensation in lieu of the two fiscal
10 years.

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

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

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

33 (iv) For members employed less than full time under written
34 contract with a school district, or community college district, in an
35 instructional position, for which the member receives service credit of
36 less than one year in all of the years used to determine the earnable
37 compensation used for computing benefits due under RCW 41.32.497,
38 41.32.498, and 41.32.520, the member may elect to have earnable

1 compensation defined as provided in RCW 41.32.345. For the purposes of
2 this subsection, the term "instructional position" means a position in
3 which more than seventy-five percent of the member's time is spent as
4 a classroom instructor (including office hours), a librarian, a
5 psychologist, a social worker, a nurse, a physical therapist, an
6 occupational therapist, a speech language pathologist or audiologist,
7 or a counselor. Earnable compensation shall be so defined only for the
8 purpose of the calculation of retirement benefits and only as necessary
9 to insure that members who receive fractional service credit under RCW
10 41.32.270 receive benefits proportional to those received by members
11 who have received full-time service credit.

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

13 (A) Remuneration for unused sick leave authorized under RCW
14 41.04.340, 28A.400.210, or 28A.310.490;

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

17 (b) "Earnable compensation" for plan 2 and plan 3 members, means
18 salaries or wages earned by a member during a payroll period for
19 personal services, including overtime payments, and shall include wages
20 and salaries deferred under provisions established pursuant to sections
21 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
22 shall exclude lump sum payments for deferred annual sick leave, unused
23 accumulated vacation, unused accumulated annual leave, or any form of
24 severance pay.

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

28 (i) Retroactive payments to an individual by an employer on
29 reinstatement of the employee in a position or payments by an employer
30 to an individual in lieu of reinstatement in a position which are
31 awarded or granted as the equivalent of the salary or wages which the
32 individual would have earned during a payroll period shall be
33 considered earnable compensation, to the extent provided above, and the
34 individual shall receive the equivalent service credit.

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

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

3 (B) Such member's actual earnable compensation received for
4 teaching and legislative service combined. Any additional
5 contributions to the retirement system required because compensation
6 earnable under (b)(ii)(A) of this subsection is greater than
7 compensation earnable under (b)(ii)(B) of this subsection shall be paid
8 by the member for both member and employer contributions.

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

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

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

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

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

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

37 (d) The elected position of the superintendent of public
38 instruction is an eligible position.

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

6 (17) "Employer" means the state of Washington, the school district,
7 or any agency of the state of Washington by which the member is paid.
8 Except as otherwise specifically provided in this chapter, "employer"
9 does not include a government contractor. For purposes of this
10 subsection, a "government contractor" is any entity, including a
11 partnership, limited liability company, for-profit or nonprofit
12 corporation, or person, that provides services pursuant to a contract
13 with an employer. The determination whether an employer-employee
14 relationship has been established is not based on the relationship
15 between a government contractor and an employer, but is based solely on
16 the relationship between a government contractor's employee and an
17 employer under this chapter.

18 (18) "Fiscal year" means a year which begins July 1st and ends June
19 30th of the following year.

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

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

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

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

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

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

34 (25) "Member" means any teacher included in the membership of the
35 retirement system who has not been removed from membership under RCW
36 41.32.878 or 41.32.768. Also, any other employee of the public schools
37 who, on July 1, 1947, had not elected to be exempt from membership and

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

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

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

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

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

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

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

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

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

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

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

1 (36) "Public school" means any institution or activity operated by
2 the state of Washington or any instrumentality or political subdivision
3 thereof employing teachers, except the University of Washington and
4 Washington State University.

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

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

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

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

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

20 (41) "Retirement system" means the Washington state teachers'
21 retirement system.

22 (42) "Separation from service or employment" occurs when a person
23 has terminated all employment with an employer. Separation from
24 service or employment does not occur, and if claimed by an employer or
25 employee may be a violation of RCW 41.32.055, when an employee and
26 employer have a written or oral agreement to resume employment with the
27 same employer following termination. Mere expressions or inquiries
28 about postretirement employment by an employer or employee that do not
29 constitute a commitment to reemploy the employee after retirement are
30 not an agreement under this section.

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

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

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

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

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

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

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

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

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

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

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

37 (II) A half-service credit month is earned in those calendar months

1 where earnable compensation is earned for at least seventy hours but
2 less than ninety hours; and

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

6 (iii) Any person who is a member of the teachers' retirement system
7 and who is elected or appointed to a state elective position may
8 continue to be a member of the retirement system and continue to
9 receive a service credit month for each of the months in a state
10 elective position by making the required member contributions.

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

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

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

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

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

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

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

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

33 (vii) The department shall adopt rules implementing this
34 subsection.

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

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

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

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

6 (48) "Substitute teacher" means:

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

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

13 (49) "Teacher" means any person qualified to teach who is engaged
14 by a public school in an instructional, administrative, or supervisory
15 capacity. The term includes state, educational service district, and
16 school district superintendents and their assistants and all employees
17 certificated by the superintendent of public instruction; and in
18 addition thereto any full time school doctor who is employed by a
19 public school and renders service of an instructional or educational
20 nature.

21 **Sec. 4.** RCW 41.35.010 and 2011 1st sp.s. c 5 s 3 are each
22 reenacted and amended to read as follows:

23 The definitions in this section apply throughout this chapter,
24 unless the context clearly requires otherwise.

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

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

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

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

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

7 (b) In calculating average final compensation under (a) of this
8 subsection, the department of retirement systems shall include any
9 compensation forgone by a member during the 2011-2013 fiscal biennium
10 as a result of reduced work hours, mandatory leave without pay,
11 temporary layoffs, or reductions to current pay if the reduced
12 compensation is an integral part of the employer's expenditure
13 reduction efforts, as certified by the employer. Reductions to current
14 pay shall not include elimination of previously agreed upon future
15 salary reductions.

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

20 (7) "Classified employee" means an employee of a school district or
21 an educational service district who is not eligible for membership in
22 the teachers' retirement system established under chapter 41.32 RCW.

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

31 (b) "Compensation earnable" for plan 2 and plan 3 members also
32 includes the following actual or imputed payments, which are not paid
33 for personal services:

34 (i) Retroactive payments to an individual by an employer on
35 reinstatement of the employee in a position, or payments by an employer
36 to an individual in lieu of reinstatement, which are awarded or granted
37 as the equivalent of the salary or wage which the individual would have

1 earned during a payroll period shall be considered compensation
2 earnable to the extent provided in this subsection, and the individual
3 shall receive the equivalent service credit;

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

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

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

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

17 (iv) Compensation that a member would have received but for a
18 disability occurring in the line of duty only as authorized by RCW
19 41.40.038;

20 (v) Compensation that a member receives due to participation in the
21 leave sharing program only as authorized by RCW 41.04.650 through
22 41.04.670; and

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

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

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

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

37 (12) "Employee" or "employed" means a person who is providing
38 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 (13) "Employer," for plan 2 and plan 3 members, means a school
5 district or an educational service district. Except as otherwise
6 specifically provided in this chapter, "employer" does not include a
7 government contractor. For purposes of this subsection, a "government
8 contractor" is any entity, including a partnership, limited liability
9 company, for-profit or nonprofit corporation, or person, that provides
10 services pursuant to a contract with an employer. The determination
11 whether an employer-employee relationship has been established is not
12 based on the relationship between a government contractor and an
13 employer, but is based solely on the relationship between a government
14 contractor's employee and an employer under this chapter.

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

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

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

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

24 (18) "Ineligible position" means any position which does not
25 conform with the requirements set forth in subsection (22) of this
26 section.

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

30 (20) "Member" means any employee included in the membership of the
31 retirement system, as provided for in RCW 41.35.030.

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

35 (22) "Membership service" means all service rendered as a member.

36 (23) "Pension" means payments for life derived from contributions
37 made by the employer. All pensions shall be paid in monthly
38 installments.

1 (24) "Plan 2" means the Washington school employees' retirement
2 system plan 2 providing the benefits and funding provisions covering
3 persons who first became members of the public employees' retirement
4 system on and after October 1, 1977, and transferred to the Washington
5 school employees' retirement system under RCW 41.40.750.

6 (25) "Plan 3" means the Washington school employees' retirement
7 system plan 3 providing the benefits and funding provisions covering
8 persons who first became members of the system on and after September
9 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

10 (26) "Regular interest" means such rate as the director may
11 determine.

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

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

17 (29) "Retirement allowance" for plan 2 and plan 3 members means
18 monthly payments to a retiree or beneficiary as provided in this
19 chapter.

20 (30) "Retirement system" means the Washington school employees'
21 retirement system provided for in this chapter.

22 (31) "Separation from service" occurs when a person has terminated
23 all employment with an employer.

24 (32) "Service" for plan 2 and plan 3 members means periods of
25 employment by a member in an eligible position or positions for one or
26 more employers for which compensation earnable is paid. Compensation
27 earnable earned for ninety or more hours in any calendar month shall
28 constitute one service credit month except as provided in RCW
29 41.35.180. Compensation earnable earned for at least seventy hours but
30 less than ninety hours in any calendar month shall constitute one-half
31 service credit month of service. Compensation earnable earned for less
32 than seventy hours in any calendar month shall constitute one-quarter
33 service credit month of service. Time spent in standby status, whether
34 compensated or not, is not service.

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

37 (a) Service in any state elective position shall be deemed to be
38 full-time service.

1 (b) A member shall receive a total of not more than twelve service
2 credit months of service for such calendar year. If an individual is
3 employed in an eligible position by one or more employers the
4 individual shall receive no more than one service credit month during
5 any calendar month in which multiple service for ninety or more hours
6 is rendered.

7 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW
8 28A.400.300 is equal to two service credit months. Use of less than
9 forty-five days of sick leave is creditable as allowed under this
10 subsection as follows:

- 11 (i) Less than eleven days equals one-quarter service credit month;
- 12 (ii) Eleven or more days but less than twenty-two days equals one-
13 half service credit month;
- 14 (iii) Twenty-two days equals one service credit month;
- 15 (iv) More than twenty-two days but less than thirty-three days
16 equals one and one-quarter service credit month; and
- 17 (v) Thirty-three or more days but less than forty-five days equals
18 one and one-half service credit month.

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

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

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

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

28 (37) "State treasurer" means the treasurer of the state of
29 Washington.

30 (38) "Substitute employee" means a classified employee who is
31 employed by an employer exclusively as a substitute for an absent
32 employee.

33 **Sec. 5.** RCW 41.37.010 and 2011 1st sp.s. c 5 s 4 and 2011 c 68 s
34 1 are each reenacted and amended to read as follows:

35 The definitions in this section apply throughout this chapter,
36 unless the context clearly requires otherwise.

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

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

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

10 (4) "Annuity" means payments for life derived from accumulated
11 contributions of a member. All annuities shall be paid in monthly
12 installments.

13 (5)(a) "Average final compensation" means the member's average
14 compensation earnable of the highest consecutive sixty months of
15 service credit months prior to such member's retirement, termination,
16 or death. Periods constituting authorized leaves of absence may not be
17 used in the calculation of average final compensation except under RCW
18 41.37.290.

19 (b) In calculating average final compensation under (a) of this
20 subsection, the department of retirement systems shall include:

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

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

35 (6) "Beneficiary" means any person in receipt of a retirement
36 allowance or other benefit provided by this chapter resulting from
37 service rendered to an employer by another person.

1 (7)(a) "Compensation earnable" for members, means salaries or wages
2 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 or other
7 payments for deferred annual sick leave, unused accumulated vacation,
8 unused accumulated annual leave, or any form of severance pay.

9 (b) "Compensation earnable" for members also includes the following
10 actual or imputed payments, which are not paid for personal services:

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

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

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

23 (B) Such member's actual compensation earnable received for
24 nonlegislative public employment and legislative service combined. Any
25 additional contributions to the retirement system required because
26 compensation earnable under (b)(ii)(A) of this subsection is greater
27 than compensation earnable under (b)(ii)(B) of this subsection shall be
28 paid by the member for both 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 41.37.060;

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

1 status when not being paid for time actually worked and the employer
2 requires the member to be prepared to report immediately for work, if
3 the need arises, although the need may not arise.

4 (8) "Department" means the department of retirement systems created
5 in chapter 41.50 RCW.

6 (9) "Director" means the director of the department.

7 (10) "Eligible position" means any permanent, full-time position
8 included in subsection (19) of this section.

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

14 (12) "Employer" means the Washington state department of
15 corrections, the Washington state parks and recreation commission, the
16 Washington state gambling commission, the Washington state patrol, the
17 Washington state department of natural resources, and the Washington
18 state liquor control board; any county corrections department; any city
19 corrections department not covered under chapter 41.28 RCW; and any
20 public corrections entity created under RCW 39.34.030 by counties,
21 cities not covered under chapter 41.28 RCW, or both. Except as
22 otherwise specifically provided in this chapter, "employer" does not
23 include a government contractor. For purposes of this subsection, a
24 "government contractor" is any entity, including a partnership, limited
25 liability company, for-profit or nonprofit corporation, or person, that
26 provides services pursuant to a contract with an employer. The
27 determination whether an employer-employee relationship has been
28 established is not based on the relationship between a government
29 contractor and an employer, but is based solely on the relationship
30 between a government contractor's employee and an employer under this
31 chapter.

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

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

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

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

4 (17) "Ineligible position" means any position which does not
5 conform with the requirements set forth in subsection (10) of this
6 section.

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

10 (19) "Member" means any employee employed by an employer on a full-
11 time basis:

12 (a) Who is in a position that requires completion of a certified
13 criminal justice training course and is authorized by their employer to
14 arrest, conduct criminal investigations, enforce the criminal laws of
15 the state of Washington, and carry a firearm as part of the job;

16 (b) Whose primary responsibility is to ensure the custody and
17 security of incarcerated or probationary individuals as a corrections
18 officer, probation officer, or jailer;

19 (c) Who is a limited authority Washington peace officer, as defined
20 in RCW 10.93.020, for an employer; or

21 (d) Whose primary responsibility is to supervise members eligible
22 under this subsection.

23 (20) "Membership service" means all service rendered as a member.

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

27 (22) "Plan" means the Washington public safety employees'
28 retirement system plan 2.

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

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

34 (25) "Retirement" means withdrawal from active service with a
35 retirement allowance as provided by this chapter.

36 (26) "Retirement allowance" means monthly payments to a retiree or
37 beneficiary as provided in this chapter.

1 (27) "Retirement system" means the Washington public safety
2 employees' retirement system provided for in this chapter.

3 (28) "Separation from service" occurs when a person has terminated
4 all employment with an employer.

5 (29) "Service" means periods of employment by a member on or after
6 July 1, 2006, for one or more employers for which compensation earnable
7 is paid. Compensation earnable earned for ninety or more hours in any
8 calendar month shall constitute one service credit month. Compensation
9 earnable earned for at least seventy hours but less than ninety hours
10 in any calendar month shall constitute one-half service credit month of
11 service. Compensation earnable earned for less than seventy hours in
12 any calendar month shall constitute one-quarter service credit month of
13 service. Time spent in standby status, whether compensated or not, is
14 not service.

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

17 (a) Service in any state elective position shall be deemed to be
18 full-time service.

19 (b) A member shall receive a total of not more than twelve service
20 credit months of service for such calendar year. If 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 ninety or more hours
24 is rendered.

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

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

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

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

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

36 **Sec. 6.** RCW 41.40.010 and 2011 1st sp.s. c 5 s 5 are each amended
37 to read as follows:

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

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

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

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

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

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

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

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

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

34 (i) Any compensation forgone by the member during the 2009-2011
35 fiscal biennium as a result of reduced work hours, voluntary leave
36 without pay, temporary reduction in pay implemented prior to December
37 11, 2010, or temporary furloughs if the reduced compensation is an

1 integral part of the employer's expenditure reduction efforts, as
2 certified by the employer; and

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

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

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

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

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

25 (A) Retroactive payments to an individual by an employer on
26 reinstatement of the employee in a position, or payments by an employer
27 to an individual in lieu of reinstatement in a position which are
28 awarded or granted as the equivalent of the salary or wage which the
29 individual would have earned during a payroll period shall be
30 considered compensation earnable and the individual shall receive the
31 equivalent service credit;

32 (B) If a leave of absence is taken by an individual for the purpose
33 of serving in the state legislature, the salary which would have been
34 received for the position from which the leave of absence was taken,
35 shall be considered as compensation earnable if the employee's
36 contribution is paid by the employee and the employer's contribution is
37 paid by the employer or employee;

1 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
2 72.09.240;

3 (D) Compensation that a member would have received but for a
4 disability occurring in the line of duty only as authorized by RCW
5 41.40.038;

6 (E) Compensation that a member receives due to participation in the
7 leave sharing program only as authorized by RCW 41.04.650 through
8 41.04.670; and

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

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

15 (A) Remuneration for unused sick leave authorized under RCW
16 41.04.340, 28A.400.210, or 28A.310.490;

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

19 (b) "Compensation earnable" for plan 2 and plan 3 members, means
20 salaries or wages earned by a member during a payroll period for
21 personal services, including overtime payments, and shall include wages
22 and salaries deferred under provisions established pursuant to sections
23 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
24 shall exclude nonmoney maintenance compensation and lump sum or other
25 payments for deferred annual sick leave, unused accumulated vacation,
26 unused accumulated annual leave, or any form of severance pay.

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

30 (i) Retroactive payments to an individual by an employer on
31 reinstatement of the employee in a position, or payments by an employer
32 to an individual in lieu of reinstatement in a position which are
33 awarded or granted as the equivalent of the salary or wage which the
34 individual would have earned during a payroll period shall be
35 considered compensation earnable to the extent provided above, and the
36 individual shall receive the equivalent service credit;

37 (ii) In any year in which a member serves in the legislature, the

1 member shall have the option of having such member's compensation
2 earnable be the greater of:

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

5 (B) Such member's actual compensation earnable received for
6 nonlegislative public employment and legislative service combined. Any
7 additional contributions to the retirement system required because
8 compensation earnable under (b)(ii)(A) of this subsection is greater
9 than compensation earnable under (b)(ii)(B) of this subsection shall be
10 paid by the member for both member and employer contributions;

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

13 (iv) Compensation that a member would have received but for a
14 disability occurring in the line of duty only as authorized by RCW
15 41.40.038;

16 (v) Compensation that a member receives due to participation in the
17 leave sharing program only as authorized by RCW 41.04.650 through
18 41.04.670; and

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

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

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

27 (11) "Eligible position" means:

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

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

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

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

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

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

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

36 (15) "Index" means, for any calendar year, that year's annual
37 average consumer price index, Seattle, Washington area, for urban wage

1 earners and clerical workers, all items, compiled by the bureau of
2 labor statistics, United States department of labor.

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

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

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

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

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

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

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

22 (23) "Membership service" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 postretirement employment by an employer or employee that do not
2 constitute a commitment to reemploy the employee after retirement are
3 not an agreement under this subsection.

4 (37)(a) "Service" for plan 1 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 1 "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 2 and plan 3 members, means periods of
7 employment by a member in an eligible position or positions for one or
8 more employers for which compensation earnable is paid. Compensation
9 earnable earned for ninety or more hours in any calendar month shall
10 constitute one service credit month except as provided in RCW
11 41.40.088. Compensation earnable earned for at least seventy hours but
12 less than ninety hours in any calendar month shall constitute one-half
13 service credit month of service. Compensation earnable earned for less
14 than seventy hours in any calendar month shall constitute one-quarter
15 service credit month of service. Time spent in standby status, whether
16 compensated or not, is 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 Washington school employees'
22 retirement system, teachers' retirement system, public safety
23 employees' retirement system, or law enforcement officers' and
24 firefighters' retirement system at the time of election or appointment
25 to such position may elect to continue membership in the Washington
26 school employees' retirement system, teachers' retirement system,
27 public safety employees' retirement system, or law enforcement
28 officers' and firefighters' retirement system.

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

35 (iii) Up to forty-five days of sick leave may be creditable as
36 service solely for the purpose of determining eligibility to retire
37 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of

1 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal
2 to two service credit months. Use of less than forty-five days of sick
3 leave is creditable as allowed under this subsection as follows:

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

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

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

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

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

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

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

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

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

21 (42) "State treasurer" means the treasurer of the state of
22 Washington.

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

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.04 RCW
27 to read as follows:

28 (1) This act is curative and remedial and is applicable to any
29 future determination of eligibility for membership in a retirement
30 system under chapters 41.26, 41.32, 41.35, 41.37, and 41.40 RCW.

31 (2) This act does not apply to or contravene any prior final
32 decision of the state supreme court regarding the interpretation of the
33 statutes addressed in this act.

34 NEW SECTION. **Sec. 8.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

Passed by the House March 3, 2012.

Passed by the Senate March 1, 2012.

Approved by the Governor March 30, 2012.

Filed in Office of Secretary of State March 30, 2012.