
HOUSE BILL 2490

State of Washington

65th Legislature

2018 Regular Session

By Representatives Santos, Harris, Muri, Wylie, and Johnson; by request of Superintendent of Public Instruction

Read first time 01/10/18. Referred to Committee on Appropriations.

1 AN ACT Relating to the terms under which tribal schools may
2 participate in the state retirement systems as part of a state-tribal
3 education compact; amending RCW 28A.715.010, 41.32.010, and 41.35.01;
4 and creating a new section.

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

6 **Sec. 1.** RCW 28A.715.010 and 2013 c 242 s 2 are each amended to
7 read as follows:

8 (1) The superintendent of public instruction is authorized to
9 enter into state-tribal education compacts.

10 (2) No later than six months after July 28, 2013, the
11 superintendent of public instruction shall establish an application
12 and approval process, procedures, and timelines for the negotiation,
13 approval or disapproval, and execution of state-tribal education
14 compacts.

15 (3) The process may be initiated by submission, to the
16 superintendent of public instruction, of a resolution by:

17 (a) The governing body of a tribe in the state of Washington; or

18 (b) The governing body of any of the schools in Washington that
19 are currently funded by the federal bureau of Indian affairs, whether
20 directly or through a contract or compact with an Indian tribe or a
21 tribal consortium.

1 (4) The resolution must be accompanied by an application that
2 indicates the grade or grades from kindergarten through twelve that
3 will be offered and that demonstrates that the school will be
4 operated in compliance with all applicable laws, the rules adopted
5 thereunder, and the terms and conditions set forth in the
6 application.

7 (5) Within ninety days of receipt of a resolution and application
8 under this section, the superintendent must convene a government-to-
9 government meeting for the purpose of considering the resolution and
10 application and initiating negotiations.

11 (6) State-tribal education compacts must include provisions
12 regarding:

- 13 (a) Compliance;
- 14 (b) Notices of violation;
- 15 (c) Dispute resolution, which may include nonjudicial processes
16 such as mediation;
- 17 (d) Recordkeeping and auditing;
- 18 (e) The delineation of the respective roles and responsibilities;
- 19 (f) The term or length of the contract, and whether or not it is
20 renewable; and
- 21 (g) Provisions for compact termination.

22 (7) If a tribal school chooses to participate in the teachers'
23 retirement system, the school employees' retirement system, or both,
24 the state-tribal education compact must also include the following:

25 (a) Acknowledgment by the tribal school that it affirmatively
26 chooses to participate in the teachers' retirement system, the school
27 employees' retirement system, or both;

28 (b) Evidence that the person or persons who sign the compact on
29 behalf of a tribe, dependent Indian community, or subdivision thereof
30 have authority under tribal or community law to bind the tribe or
31 dependent Indian community to all provisions in the compact,
32 including any waiver of sovereign immunity;

33 (c) If the tribal school chooses to participate in the teachers'
34 retirement system:

35 (i) Agreement by the tribal school that it meets the definition
36 of an employer as defined in chapter 41.32 RCW;

37 (ii) Agreement by the tribal school to adhere to all reporting,
38 contribution, and auditing requirements as defined in chapter 41.32
39 RCW, and all rules adopted under authority of RCW 41.50.050(5);

1 (iii) Agreement between the superintendent of public instruction
2 and the tribal school that for the duration of the compact the school
3 will be a public school for the purposes of retirement plan
4 membership as defined in chapter 41.32 RCW; and

5 (iv) Agreement by the tribal school that, at the request of the
6 superintendent of public instruction, the tribal school will make
7 available to the superintendent any records the tribal school has
8 provided to the department of retirement systems as required under
9 the reporting, contribution, and auditing requirements defined in
10 chapter 41.32 RCW, and rules implementing that chapter;

11 (d) If the tribal school chooses to participate in the school
12 employees' retirement system:

13 (i) Agreement by the tribal school that it meets the definition
14 of an employer as defined in chapter 41.35 RCW;

15 (ii) Agreement by the tribal school to adhere to all reporting,
16 contribution, and auditing requirements as defined in chapter 41.35
17 RCW, and all rules adopted under authority of RCW 41.50.050(5); and

18 (iii) Agreement by the tribal school that, at the request of the
19 superintendent of public instruction, the tribal school will make
20 available to the superintendent any records the tribal school has
21 provided to the department of retirement systems as required under
22 the reporting, contribution, and auditing requirements defined in
23 chapter 41.35 RCW, and rules implementing that chapter;

24 (e) Agreement by the tribe or, if applicable, the dependent
25 Indian community, to a limited waiver of sovereign immunity and
26 consent to the jurisdiction of the Washington state courts for the
27 purpose of enforcing the reporting, contribution, and auditing
28 requirements defined in chapters 41.32 and 41.35 RCW and all rules
29 adopted under authority of RCW 41.50.050(5);

30 (f) Agreement by the tribal school to dissolution procedures
31 memorialized in the state-tribal education compact so that all
32 parties are aware of their expectations and duties if the compact
33 terminates or the tribal school chooses to no longer participate in
34 the state retirement systems at a future date;

35 (g) Acknowledgment by the tribal school that it has been advised
36 that choosing to no longer participate in the retirement systems may
37 result in federal tax implications for the governing body and its
38 employees that are outside the control of the state of Washington,
39 the department of retirement systems, and the superintendent of
40 public instruction, and that the tribal school is encouraged to seek

1 counsel before agreeing to any dissolution procedures in the compact;
2 and

3 (h) Acknowledgment by both parties that the pension plan
4 participation portions of the state-tribal education compact are null
5 and void if the federal internal revenue service issues guidance
6 stating that any portion of those sections are in conflict with the
7 plan qualification requirements for governmental plans in section
8 401(a) of the internal revenue code, and the conflict cannot be
9 resolved through administrative action, statutory change, or
10 amendment to the state-tribal education compact.

11 (8) For tribal schools that opt out of pension plan
12 participation, such schools' employees shall have no right to earn
13 additional service credit in the plan.

14 (9) The superintendent of public instruction shall adopt such
15 rules as are necessary to implement this chapter.

16 (10) "Tribal school" for the purposes of this section means any
17 school qualified to participate in a state-tribal education compact
18 under this section.

19 **Sec. 2.** RCW 41.32.010 and 2012 c 236 s 3 are each amended to
20 read as follows:

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

23 (1)(a) "Accumulated contributions" for plan 1 members, means the
24 sum of all regular annuity contributions and, except for the purpose
25 of withdrawal at the time of retirement, any amount paid under RCW
26 41.50.165(2) with regular interest thereon.

27 (b) "Accumulated contributions" for plan 2 members, means the sum
28 of all contributions standing to the credit of a member in the
29 member's individual account, including any amount paid under RCW
30 41.50.165(2), together with the regular interest thereon.

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

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

36 (4) "Annual increase" means, initially, fifty-nine cents per
37 month per year of service which amount shall be increased each July
38 1st by three percent, rounded to the nearest cent.

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

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

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

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

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

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

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

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

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

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

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

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

34 (ii) For an employee member of the retirement system teaching in
35 an extended school year program, two consecutive extended school
36 years, as defined by the employer school district, may be used as the
37 annual period for determining earnable compensation in lieu of the
38 two fiscal years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (i) Any compensation forgone by a member employed by a state
40 agency or institution during the 2009-2011 fiscal biennium as a

1 result of reduced work hours, mandatory or voluntary leave without
2 pay, temporary reduction in pay implemented prior to December 11,
3 2010, or temporary layoffs if the reduced compensation is an integral
4 part of the employer's expenditure reduction efforts, as certified by
5 the employer; and

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

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

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

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

25 (d) The elected position of the superintendent of public
26 instruction is an eligible position.

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

32 (17) "Employer" means the state of Washington, the school
33 district, or any agency of the state of Washington by which the
34 member is paid. Except as otherwise specifically provided in this
35 chapter, "employer" does not include a government contractor. For
36 purposes of this subsection, a "government contractor" is any entity,
37 including a partnership, limited liability company, for-profit or
38 nonprofit corporation, or person, that provides services pursuant to
39 a contract with an employer. The determination whether an employer-
40 employee relationship has been established is not based on the

1 relationship between a government contractor and an employer, but is
2 based solely on the relationship between a government contractor's
3 employee and an employer under this chapter. For the purposes of
4 retirement plan membership, this subsection includes tribal schools
5 who have chosen to participate in the retirement system and satisfied
6 the requirements of RCW 28A.715.010(7).

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

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

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

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

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

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

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

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

29 (26) "Member account" or "member's account" for purposes of plan
30 3 means the sum of the contributions and earnings on behalf of the
31 member in the defined contribution portion of plan 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (41) "Retirement system" means the Washington state teachers'
8 retirement system.

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

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

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

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

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

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

33 (i) A member employed in an eligible position or as a substitute
34 shall receive one service credit month for each month of September
35 through August of the following year if he or she earns earnable
36 compensation for eight hundred ten or more hours during that period
37 and is employed during nine of those months, except that a member may
38 not receive credit for any period prior to the member's employment in
39 an eligible position except as provided in RCW 41.32.812 and
40 41.50.132.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (vii) The department shall adopt rules implementing this
19 subsection.

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

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

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

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

30 (48) "Substitute teacher" means:

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

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

37 (49) "Teacher" means any person qualified to teach who is engaged
38 by a public school in an instructional, administrative, or
39 supervisory capacity. The term includes state, educational service
40 district, and school district superintendents and their assistants

1 and all employees certificated by the superintendent of public
2 instruction; and in addition thereto any full time school doctor who
3 is employed by a public school and renders service of an
4 instructional or educational nature.

5 **Sec. 3.** RCW 41.35.010 and 2012 c 236 s 4 are each amended to
6 read as follows:

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

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

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

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

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

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

27 (b) In calculating average final compensation under (a) of this
28 subsection, the department of retirement systems shall include any
29 compensation forgone by a member during the 2011-2013 fiscal biennium
30 as a result of reduced work hours, mandatory leave without pay,
31 temporary layoffs, or reductions to current pay if the reduced
32 compensation is an integral part of the employer's expenditure
33 reduction efforts, as certified by the employer. Reductions to
34 current pay shall not include elimination of previously agreed upon
35 future salary reductions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (13) "Employer," for plan 2 and plan 3 members, means a school
28 district ~~((or))~~, an educational service district, or tribal school
29 that has chosen to participate in the retirement system and has
30 satisfied the requirements of RCW 28A.715.010(7). Except as otherwise
31 specifically provided in this chapter, "employer" does not include a
32 government contractor. For purposes of this subsection, a "government
33 contractor" is any entity, including a partnership, limited liability
34 company, for-profit or nonprofit corporation, or person, that
35 provides services pursuant to a contract with an employer. The
36 determination whether an employer-employee relationship has been
37 established is not based on the relationship between a government
38 contractor and an employer, but is based solely on the relationship
39 between a government contractor's employee and an employer under this
40 chapter.

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

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

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

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

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

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

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

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

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

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

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

30 (25) "Plan 3" means the Washington school employees' retirement
31 system plan 3 providing the benefits and funding provisions covering
32 persons who first became members of the system on and after September
33 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

34 (26) "Regular interest" means such rate as the director may
35 determine.

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

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

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

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

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

8 (32) "Service" for plan 2 and plan 3 members means periods of
9 employment by a member in an eligible position or positions for one
10 or more employers for which compensation earnable is paid.
11 Compensation earnable earned for ninety or more hours in any calendar
12 month shall constitute one service credit month except as provided in
13 RCW 41.35.180. Compensation earnable earned for at least seventy
14 hours but less than ninety hours in any calendar month shall
15 constitute one-half service credit month of service. Compensation
16 earnable earned for less than seventy hours in any calendar month
17 shall constitute one-quarter service credit month of service. Time
18 spent in standby status, whether compensated or not, is not service.

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

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

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

29 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW
30 28A.400.300 is equal to two service credit months. Use of less than
31 forty-five days of sick leave is creditable as allowed under this
32 subsection as follows:

33 (i) Less than eleven days equals one-quarter service credit
34 month;

35 (ii) Eleven or more days but less than twenty-two days equals
36 one-half service credit month;

37 (iii) Twenty-two days equals one service credit month;

38 (iv) More than twenty-two days but less than thirty-three days
39 equals one and one-quarter service credit month; and

1 (v) Thirty-three or more days but less than forty-five days
2 equals one and one-half service credit month.

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

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

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

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

12 (37) "State treasurer" means the treasurer of the state of
13 Washington.

14 (38) "Substitute employee" means a classified employee who is
15 employed by an employer exclusively as a substitute for an absent
16 employee.

17 NEW SECTION. **Sec. 4.** The department of retirement systems shall
18 make reasonable efforts to seek guidance, if available, from the
19 federal internal revenue service to ensure this act does not
20 jeopardize qualification of the state retirement plans under section
21 401(a) of the internal revenue code. If the federal internal revenue
22 service issues guidance stating that this act is in conflict with the
23 plan qualification requirements for governmental plans in section
24 401(a) of the internal revenue code, and the conflict cannot be
25 resolved through administrative action or statutory change, then this
26 act is null and void.

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