
HOUSE BILL 3038

State of Washington

56th Legislature

2000 Regular Session

By Representatives Radcliff, Carlson, DeBolt, D. Schmidt, Schoesler, Thomas, Parlette and Koster

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1 AN ACT Relating to the performance pay incentive plan for
2 exceptional teachers; amending RCW 28A.400.200, 28A.405.100,
3 28A.415.010, 28A.300.130, and 41.32.010; adding a new section to
4 chapter 28A.400 RCW; creating new sections; and providing an expiration
5 date.

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

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

8 (1) Washington state has made considerable progress in the area of
9 education reform. The state will soon require our public school
10 students to meet performance-based standards to progress through the
11 education system.

12 (2) Because the state is requiring students to pass tough
13 assessments, our teachers will be required to bring students to the
14 educational level necessary to graduate.

15 (3) Historically, teachers have been compensated based on their
16 length of service and level of education. This offers little financial
17 incentive for teachers to find innovative and creative methods of
18 teaching.

1 (4) Districts must have flexibility to reward exceptional teachers
2 who are also willing to acquire skills important to the districts'
3 learning goals.

4 Therefore, the legislature intends to offer a performance pay
5 incentive to a number of teachers who are exceptional in the classroom
6 and have an extraordinary and positive impact on student learning.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.400
8 RCW to read as follows:

9 (1) School districts may choose to participate in the performance
10 pay incentive plan. Once a district has chosen to participate, schools
11 may offer the performance pay incentive plan to classroom teachers.
12 "Classroom teachers," as used in this section, are school personnel
13 with duty codes of 31, 32, or 33 according to the superintendent of
14 public instruction's school district personnel summary profiles.
15 Participating districts shall make every effort to ensure that at least
16 one classroom teacher in each building is eligible to participate.

17 (2) Classroom teachers are eligible to participate, to the extent
18 they wish to participate, in the performance pay incentive plan for the
19 purpose of receiving one incentive per school year.

20 (3) Subject to legislative appropriation, it is the intent of the
21 legislature to provide incentives for twenty-five percent of the
22 state's classroom teachers.

23 (4) School districts choosing to offer the program shall notify the
24 superintendent of public instruction by July 1st before the school year
25 in which they intend to participate. The superintendent of public
26 instruction shall notify districts by July 31st before the year of
27 participation of the number of incentives available to them. The
28 number of incentives shall be based on the number of classroom teachers
29 in a district. Twenty-five percent of teachers in the district funded
30 pursuant to the biennial appropriations act, including general
31 apportionment, special education, transitional bilingual, and learning
32 assistance program funds, are eligible. In participating districts
33 with fewer than four teachers, at least one classroom teacher from each
34 school building is eligible to receive an incentive.

35 (5) The school principal, in consultation with other educational
36 staff and parents, shall annually nominate the classroom teachers who
37 are eligible to participate. The manner of selecting the classroom
38 teachers who are eligible is not subject to collective bargaining. The

1 selection criteria shall include but not be limited to: Performance
2 and evaluations during the previous school year, to the extent that
3 these are public record, and, in middle and high schools, input from
4 students. The principal shall notify the classroom teachers nominated
5 to participate before the beginning of the school year.

6 (a) Input from students shall be in the form of a student survey or
7 other method, selected by the school, of gathering student perceptions
8 of teachers.

9 (b) The survey shall be designed so that students rate teachers
10 based on how much the students learned, how well the teacher
11 communicated the lessons, and how willing the teacher was to offer
12 additional help. In addition to these areas, schools are encouraged to
13 identify other areas important to student learning to be included on
14 the survey.

15 (6) Schools shall notify the superintendent of public instruction
16 of those classroom teachers who have earned the incentive by June 30th
17 of the year in which they will receive the incentive.

18 (7) Incentives shall be awarded by the end of the school year.

19 (8) Incentives shall be awarded in the amount of one thousand
20 dollars and shall be one-time incentives. Classroom teachers are
21 eligible for one incentive per year, and the incentives shall not
22 become part of the district or state salary schedule.

23 (9) In order to receive an incentive, a classroom teacher must meet
24 at least the following two criteria:

25 (a) The classroom teacher must receive an exceptional status on his
26 or her second annual performance evaluation required by RCW 28A.405.100
27 by the completion of the school year in which the teacher is nominated
28 for the award. Such status shall be defined by the employee's ability
29 to have a positive impact on student learning. Positive impact on
30 student learning means that a teacher, through instruction and
31 assessment, has been able to document students' increased knowledge or
32 demonstration of a skill or skills related to the state goals and
33 essential academic learning requirements. School districts may
34 identify additional criteria that must be met to achieve an exceptional
35 status.

36 (b) The classroom teacher must demonstrate knowledge or skill in
37 one particular subject or curricular area that must be identified by
38 participating school districts no later than July 1st of each year.
39 Participating districts shall annually identify where student learning

1 could best be enhanced by teachers gaining or having knowledge or skill
2 in an area. The legislature also intends that skill areas align with
3 the mission and learning improvement plan of the district as stated in
4 the district's annual performance report required by RCW 28A.655.110.
5 The principal and classroom teacher will have a performance plan that
6 includes one or more of the following:

7 (i) The type of knowledge or skill the classroom teacher will gain;

8 (ii) The method by which a classroom teacher will enhance existing
9 knowledge or skill; and

10 (iii) The method by which the classroom teacher will share the
11 knowledge or skill with other teachers in the building.

12 (10) The performance pay incentive plan established by this section
13 is not a part of basic education. Payments made under the performance
14 pay incentive plan are not basic education program salaries under RCW
15 28A.400.200.

16 (11) If the legislature revokes any benefits granted under this
17 section, no affected employee is entitled to receive such benefits as
18 a matter of contractual right.

19 (12) This program does not apply during a time in which a district
20 has a collective bargaining agreement that was in effect on the
21 effective date of this section that would require bargaining regarding
22 this program. For collective bargaining agreements entered into after
23 the effective date of this section, this program may not be the subject
24 of bargaining.

25 (13) The performance pay incentive plan shall be in effect for the
26 2000-01, 2001-02, and 2002-03 school years.

27 (14) This section expires December 31, 2003.

28 **Sec. 3.** RCW 28A.400.200 and 1997 c 141 s 2 are each amended to
29 read as follows:

30 (1) Every school district board of directors shall fix, alter,
31 allow, and order paid salaries and compensation for all district
32 employees in conformance with this section.

33 (2)(a) Salaries for certificated instructional staff shall not be
34 less than the salary provided in the appropriations act in the state-
35 wide salary allocation schedule for an employee with a baccalaureate
36 degree and zero years of service; and

37 (b) Salaries for certificated instructional staff with a masters
38 degree shall not be less than the salary provided in the appropriations

1 act in the state-wide salary allocation schedule for an employee with
2 a masters degree and zero years of service;

3 (3)(a) The actual average salary paid to basic education and
4 special education certificated instructional staff shall not exceed the
5 district's average basic education and special education program
6 certificated instructional staff salary used for the state basic
7 education allocations for that school year as determined pursuant to
8 RCW 28A.150.410.

9 (b) Fringe benefit contributions for basic education and special
10 education certificated instructional staff shall be included as salary
11 under (a) of this subsection only to the extent that the district's
12 actual average benefit contribution exceeds the amount of the insurance
13 benefits allocation provided per certificated instructional staff unit
14 in the state operating appropriations act in effect at the time the
15 compensation is payable. For purposes of this section, fringe benefits
16 shall not include payment for unused leave for illness or injury under
17 RCW 28A.400.210; employer contributions for old age survivors
18 insurance, workers' compensation, unemployment compensation, and
19 retirement benefits under the Washington state retirement system; or
20 employer contributions for health benefits in excess of the insurance
21 benefits allocation provided per certificated instructional staff unit
22 in the state operating appropriations act in effect at the time the
23 compensation is payable. A school district may not use state funds to
24 provide employer contributions for such excess health benefits.

25 (c) Salary and benefits for certificated instructional staff in
26 programs other than basic education and special education shall be
27 consistent with the salary and benefits paid to certificated
28 instructional staff in the basic education and special education
29 programs.

30 (4) Salaries and benefits for certificated instructional staff may
31 exceed the limitations in subsection (3) of this section only for the
32 performance pay incentive plan in section 2 of this act or by separate
33 contract for additional time, additional responsibilities, or
34 incentives. Supplemental contracts shall not cause the state to incur
35 any present or future funding obligation. Supplemental contracts shall
36 be subject to the collective bargaining provisions of chapter 41.59 RCW
37 and the provisions of RCW 28A.405.240, shall not exceed one year, and
38 if not renewed shall not constitute adverse change in accordance with
39 RCW 28A.405.300 through 28A.405.380. No district may enter into a

1 supplemental contract under this subsection for the provision of
2 services which are a part of the basic education program required by
3 Article IX, section 3 of the state Constitution.

4 (5) Employee benefit plans offered by any district shall comply
5 with RCW 28A.400.350 and 28A.400.275 and 28A.400.280.

6 **Sec. 4.** RCW 28A.405.100 and 1997 c 278 s 1 are each amended to
7 read as follows:

8 (1) The superintendent of public instruction shall establish and
9 may amend from time to time minimum criteria for the evaluation of the
10 professional performance capabilities and development of certificated
11 classroom teachers and certificated support personnel. For classroom
12 teachers the criteria shall be developed in the following categories:
13 Instructional skill; classroom management, professional preparation and
14 scholarship; effort toward improvement when needed; the handling of
15 student discipline and attendant problems; and interest in teaching
16 pupils and knowledge of subject matter.

17 Every board of directors shall, in accordance with procedure
18 provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920,
19 establish evaluative criteria and procedures for all certificated
20 classroom teachers and certificated support personnel. The evaluative
21 criteria must contain as a minimum the criteria established by the
22 superintendent of public instruction pursuant to this section and must
23 be prepared within six months following adoption of the superintendent
24 of public instruction's minimum criteria. The district must certify to
25 the superintendent of public instruction that evaluative criteria have
26 been so prepared by the district.

27 Except as provided in subsection (5) of this section, it shall be
28 the responsibility of a principal or his or her designee to evaluate
29 all certificated personnel in his or her school. During each school
30 year all classroom teachers and certificated support personnel,
31 hereinafter referred to as "employees" in this section, shall be
32 observed for the purposes of evaluation at least twice in the
33 performance of their assigned duties. Total observation time for each
34 employee for each school year shall be not less than sixty minutes.
35 Following each observation, or series of observations, the principal or
36 other evaluator shall promptly document the results of the observation
37 in writing, and shall provide the employee with a copy thereof within
38 three days after such report is prepared. New employees shall be

1 observed at least once for a total observation time of thirty minutes
2 during the first ninety calendar days of their employment period.

3 At any time after October 15th, an employee whose work is judged
4 unsatisfactory based on district evaluation criteria shall be notified
5 in writing of the specific areas of deficiencies along with a
6 reasonable program for improvement. During the period of probation,
7 the employee may not be transferred from the supervision of the
8 original evaluator. Improvement of performance or probable cause for
9 nonrenewal must occur and be documented by the original evaluator
10 before any consideration of a request for transfer or reassignment as
11 contemplated by either the individual or the school district. A
12 probationary period of sixty school days shall be established. The
13 establishment of a probationary period does not adversely affect the
14 contract status of an employee within the meaning of RCW 28A.405.300.
15 The purpose of the probationary period is to give the employee
16 opportunity to demonstrate improvements in his or her areas of
17 deficiency. The establishment of the probationary period and the
18 giving of the notice to the employee of deficiency shall be by the
19 school district superintendent and need not be submitted to the board
20 of directors for approval. During the probationary period the
21 evaluator shall meet with the employee at least twice monthly to
22 supervise and make a written evaluation of the progress, if any, made
23 by the employee. The evaluator may authorize one additional
24 certificated employee to evaluate the probationer and to aid the
25 employee in improving his or her areas of deficiency; such additional
26 certificated employee shall be immune from any civil liability that
27 might otherwise be incurred or imposed with regard to the good faith
28 performance of such evaluation. The probationer may be removed from
29 probation if he or she has demonstrated improvement to the satisfaction
30 of the principal in those areas specifically detailed in his or her
31 initial notice of deficiency and subsequently detailed in his or her
32 improvement program. Lack of necessary improvement during the
33 established probationary period, as specifically documented in writing
34 with notification to the probationer and shall constitute grounds for
35 a finding of probable cause under RCW 28A.405.300 or 28A.405.210.

36 Immediately following the completion of a probationary period that
37 does not produce performance changes detailed in the initial notice of
38 deficiencies and improvement program, the employee may be removed from
39 his or her assignment and placed into an alternative assignment for the

1 remainder of the school year. This reassignment may not displace
2 another employee nor may it adversely affect the probationary
3 employee's compensation or benefits for the remainder of the employee's
4 contract year. If such reassignment is not possible, the district may,
5 at its option, place the employee on paid leave for the balance of the
6 contract term.

7 (2) Every board of directors shall establish evaluative criteria
8 and procedures for all superintendents, principals, and other
9 administrators. It shall be the responsibility of the district
10 superintendent or his or her designee to evaluate all administrators.
11 Such evaluation shall be based on the administrative position job
12 description. Such criteria, when applicable, shall include at least
13 the following categories: Knowledge of, experience in, and training in
14 recognizing good professional performance, capabilities and
15 development; school administration and management; school finance;
16 professional preparation and scholarship; effort toward improvement
17 when needed; interest in pupils, employees, patrons and subjects taught
18 in school; leadership; and ability and performance of evaluation of
19 school personnel.

20 (3) Each certificated employee shall have the opportunity for
21 confidential conferences with his or her immediate supervisor on no
22 less than two occasions in each school year. Such confidential
23 conference shall have as its sole purpose the aiding of the
24 administrator in his or her assessment of the employee's professional
25 performance.

26 (4) The failure of any evaluator to evaluate or supervise or cause
27 the evaluation or supervision of certificated employees or
28 administrators in accordance with this section, as now or hereafter
29 amended, when it is his or her specific assigned or delegated
30 responsibility to do so, shall be sufficient cause for the nonrenewal
31 of any such evaluator's contract under RCW 28A.405.210, or the
32 discharge of such evaluator under RCW 28A.405.300.

33 (5) After an employee has four years of satisfactory evaluations
34 under subsection (1) of this section, a school district may use a short
35 form of evaluation, a locally bargained evaluation emphasizing
36 professional growth, an evaluation under subsection (1) of this
37 section, or any combination thereof. The short form of evaluation
38 shall include either a thirty minute observation during the school year
39 with a written summary or a final annual written evaluation based on

1 the criteria in subsection (1) of this section and based on at least
2 two observation periods during the school year totaling at least sixty
3 minutes without a written summary of such observations being prepared.
4 However, the evaluation process set forth in subsection (1) of this
5 section shall be followed at least once every three years unless this
6 time is extended by a local school district under the bargaining
7 process set forth in chapter 41.59 RCW. The employee or evaluator may
8 require that the evaluation process set forth in subsection (1) of this
9 section be conducted in any given school year. No evaluation other
10 than the evaluation authorized under subsection (1) of this section may
11 be used as a basis for determining that an employee's work is
12 unsatisfactory under subsection (1) of this section or as probable
13 cause for the nonrenewal of an employee's contract under RCW
14 28A.405.210 unless an evaluation process developed under chapter 41.59
15 RCW determines otherwise.

16 (6) For schools offering the performance pay incentive plan in
17 section 2 of this act, the evaluator shall indicate on the employee's
18 second annual evaluation summary whether the employee has achieved
19 exceptional status. Such status will be defined by the employee's
20 ability to have a positive impact on student learning. As used in this
21 section, "positive impact on student learning" means that a teacher,
22 through instruction and assessment, has been able to document students'
23 increased knowledge or demonstration of a skill or skills related to
24 the state goals and essential academic learning requirements. School
25 districts may define additional criteria that must be met to achieve
26 exceptional status.

27 **Sec. 5.** RCW 28A.415.010 and 1991 c 285 s 1 are each amended to
28 read as follows:

29 (1) It shall be the responsibility of each educational service
30 district board to establish a center for the improvement of teaching.
31 The center shall administer, coordinate, and act as fiscal agent for
32 such programs related to the recruitment and training of certificated
33 and classified K-12 education personnel as may be delegated to the
34 center by the superintendent of public instruction under RCW
35 28A.310.470, or the state board of education under RCW 28A.310.480. To
36 assist in these activities, each educational service district board
37 shall establish an improvement of teaching coordinating council to
38 include, at a minimum, representatives as specified in RCW 28A.415.040.

1 An existing in-service training task force, established pursuant to RCW
2 28A.415.040, may serve as the improvement of teaching coordinating
3 council. The educational service district board shall ensure
4 coordination of programs established pursuant to RCW 28A.415.030,
5 28A.410.060, and 28A.415.250.

6 (2)(a) The educational service district board may arrange each year
7 for the holding of one or more teachers' institutes and/or workshops
8 for professional staff preparation and in-service training in such
9 manner and at such time as the board believes will be of benefit to the
10 teachers and other professional staff of school districts within the
11 educational service district and shall comply with rules and
12 regulations of the state board of education pursuant to RCW 28A.410.060
13 or the superintendent of public instruction or state board of education
14 pursuant to RCW 28A.415.250. The board may provide such additional
15 means of teacher and other professional staff preparation and in-
16 service training as it may deem necessary or appropriate and there
17 shall be a proper charge against the educational service district
18 general expense fund when approved by the educational service district
19 board.

20 (b) Educational service district boards of contiguous educational
21 service districts, by mutual arrangements, may hold joint institutes
22 and/or workshops, the expenses to be shared in proportion to the
23 numbers of certificated personnel as shown by the last annual reports
24 of the educational service districts holding such joint institutes or
25 workshops.

26 (3) In local school districts employing more than one hundred
27 teachers and other professional staff, the school district
28 superintendent may hold a teachers' institute of one or more days in
29 such district, said institute when so held by the school district
30 superintendent to be in all respects governed by the provisions of this
31 title and state board of education rules and regulations relating to
32 teachers' institutes held by educational service district
33 superintendents.

34 (4) A school offering the performance pay incentive plan in section
35 2 of this act may work in conjunction with its educational service
36 district's center for the improvement of teaching. The center for the
37 improvement of teaching may help the school identify where student
38 learning could best be enhanced by teachers gaining or having knowledge
39 or skill in an area aligned with the mission and learning improvement

1 plan of the district as stated in the district's annual performance
2 report required by RCW 28A.655.110.

3 **Sec. 6.** RCW 28A.300.130 and 1999 c 388 s 401 are each amended to
4 read as follows:

5 (1) Expanding activity in educational research, educational
6 restructuring, and educational improvement initiatives has produced and
7 continues to produce much valuable information. The legislature finds
8 that such information should be shared with the citizens and
9 educational community of the state as widely as possible. To
10 facilitate access to information and materials on educational
11 improvement and research, the superintendent of public instruction, to
12 the extent funds are appropriated, shall establish the center for the
13 improvement of student learning. The primary purpose of the center is
14 to provide assistance and advice to parents, school board members,
15 educators, and the public regarding strategies for assisting students
16 in learning the essential academic learning requirements pursuant to
17 RCW ((~~28A.630.885~~)) 28A.655.060. The center shall work in conjunction
18 with the academic achievement and accountability commission,
19 educational service districts, institutions of higher education, and
20 education, parent, community, and business organizations.

21 (2) The center, in conjunction with other staff in the office of
22 the superintendent of public instruction, shall:

23 (a) Serve as a clearinghouse for the completed work and activities
24 of the academic achievement and accountability commission;

25 (b) Serve as a clearinghouse for information regarding successful
26 educational improvement and parental involvement programs in schools
27 and districts, and information about efforts within institutions of
28 higher education in the state to support educational improvement
29 initiatives in Washington schools and districts;

30 (c) Provide best practices research and advice that can be used to
31 help schools develop and implement: Programs and practices to improve
32 instruction of the essential academic learning requirements ((~~under~~
33 ~~section 701 of this act~~)); systems to analyze student assessment data,
34 with an emphasis on systems that will combine the use of state and
35 local data to monitor the academic progress of each and every student
36 in the school district; comprehensive, school-wide improvement plans;
37 school-based shared decision-making models; programs to promote
38 lifelong learning and community involvement in education; school-to-

1 work transition programs; programs to meet the needs of highly capable
2 students; programs and practices to meet the diverse needs of students
3 based on gender, racial, ethnic, economic, and special needs status;
4 research, information, and technology systems; and other programs and
5 practices that will assist educators in helping students learn the
6 essential academic learning requirements;

7 (d) Develop and distribute, in conjunction with the academic
8 achievement and accountability commission, parental involvement
9 materials, including instructional guides developed to inform parents
10 of the essential academic learning requirements. The instructional
11 guides also shall contain actions parents may take to assist their
12 children in meeting the requirements, and should focus on reaching
13 parents who have not previously been involved with their children's
14 education;

15 (e) Identify obstacles to greater parent and community involvement
16 in school shared decision-making processes and recommend strategies for
17 helping parents and community members to participate effectively in
18 school shared decision-making processes, including understanding and
19 respecting the roles of school building administrators and staff;

20 (f) Develop and maintain an internet web site to increase the
21 availability of information, research, and other materials;

22 (g) Take other actions to increase public awareness of the
23 importance of parental and community involvement in education;

24 (h) Work with appropriate organizations to inform teachers,
25 district and school administrators, and school directors about the
26 waivers available and the broadened school board powers under RCW
27 28A.320.015;

28 (i) Provide training and consultation services, including
29 conducting regional summer institutes;

30 (j) Address methods for improving the success rates of certain
31 ethnic and racial student groups; and

32 (k) Perform other functions consistent with the purpose of the
33 center as prescribed in subsection (1) of this section.

34 (3) The superintendent of public instruction, after consultation
35 with the academic achievement and accountability commission, shall
36 select and employ a director for the center.

37 (4) The superintendent may enter into contracts with individuals or
38 organizations including but not limited to: School districts;
39 educational service districts; educational organizations; teachers;

1 higher education faculty; institutions of higher education; state
2 agencies; business or community-based organizations; and other
3 individuals and organizations to accomplish the duties and
4 responsibilities of the center. In carrying out the duties and
5 responsibilities of the center, the superintendent, whenever possible,
6 shall use practitioners to assist agency staff as well as assist
7 educators and others in schools and districts.

8 (5) A school offering the performance pay incentive plan in section
9 2 of this act may work in conjunction with the center for the
10 improvement of student learning. The center for the improvement of
11 student learning may help the school identify where student learning
12 could best be enhanced by teachers gaining or having knowledge or skill
13 in an area aligned with the mission and learning improvement plan of
14 the district as stated in the district's annual performance report
15 required by RCW 28A.655.110. In addition, the center for the
16 improvement of student learning shall work with participating schools
17 as a clearinghouse for those schools that identify teachers
18 participating in the incentive plan who have found methods of improving
19 student learning that can be shared with other schools.

20 **Sec. 7.** RCW 41.32.010 and 1997 c 254 s 3 are each amended to read
21 as follows:

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

24 (1)(a) "Accumulated contributions" for plan 1 members, means the
25 sum of all regular annuity contributions and, except for the purpose of
26 withdrawal at the time of retirement, any amount paid under RCW
27 41.50.165(2) with regular interest thereon.

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

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

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

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

1 (5)(a) "Beneficiary" for plan 1 members, means any person in
2 receipt of a retirement allowance or other benefit provided by this
3 chapter.

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

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

10 (7) "Creditable service" means membership service plus prior
11 service for which credit is allowable. This subsection shall apply
12 only to plan 1 members.

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

15 (9) "Disability allowance" means monthly payments during
16 disability. This subsection shall apply only to plan 1 members.

17 (10)(a) "Earnable compensation" for plan 1 members, means:

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

23 (ii) "Earnable compensation" for plan 1 members also includes the
24 following actual or imputed payments, which are not paid for personal
25 services:

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

33 (B) If a leave of absence, without pay, is taken by a member for
34 the purpose of serving as a member of the state legislature, and such
35 member has served in the legislature five or more years, the salary
36 which would have been received for the position from which the leave of
37 absence was taken shall be considered as compensation earnable if the
38 employee's contribution thereon is paid by the employee. In addition,
39 where a member has been a member of the state legislature for five or

1 more years, earnable compensation for the member's two highest
2 compensated consecutive years of service shall include a sum not to
3 exceed thirty-six hundred dollars for each of such two consecutive
4 years, regardless of whether or not legislative service was rendered
5 during those two years.

6 (iii) For members employed less than full time under written
7 contract with a school district, or community college district, in an
8 instructional position, for which the member receives service credit of
9 less than one year in all of the years used to determine the earnable
10 compensation used for computing benefits due under RCW 41.32.497,
11 41.32.498, and 41.32.520, the member may elect to have earnable
12 compensation defined as provided in RCW 41.32.345. For the purposes of
13 this subsection, the term "instructional position" means a position in
14 which more than seventy-five percent of the member's time is spent as
15 a classroom instructor (including office hours), a librarian, or a
16 counselor. Earnable compensation shall be so defined only for the
17 purpose of the calculation of retirement benefits and only as necessary
18 to insure that members who receive fractional service credit under RCW
19 41.32.270 receive benefits proportional to those received by members
20 who have received full-time service credit.

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

22 (A) Remuneration for unused sick leave authorized under RCW
23 41.04.340, 28A.400.210, or 28A.310.490;

24 (B) Remuneration for unused annual leave in excess of thirty days
25 as authorized by RCW 43.01.044 and 43.01.041;

26 (C) Performance pay incentives awarded under section 2 of this act.

27 (b) "Earnable compensation" for plan 2 and plan 3 members, means
28 salaries or wages earned by a member during a payroll period for
29 personal services, including overtime payments, and shall include wages
30 and salaries deferred under provisions established pursuant to sections
31 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
32 shall exclude performance pay incentives under section 2 of this act,
33 lump sum payments for deferred annual sick leave, unused accumulated
34 vacation, unused accumulated annual leave, or any form of severance
35 pay.

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

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

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

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

13 (B) Such member's actual earnable compensation received for
14 teaching and legislative service combined. Any additional
15 contributions to the retirement system required because compensation
16 earnable under (b)(ii)(A) of this subsection is greater than
17 compensation earnable under (b)(ii)(B) of this subsection shall be paid
18 by the member for both member and employer contributions.

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

21 (12) "Fiscal year" means a year which begins July 1st and ends June
22 30th of the following year.

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

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

28 (15) "Member" means any teacher included in the membership of the
29 retirement system. Also, any other employee of the public schools who,
30 on July 1, 1947, had not elected to be exempt from membership and who,
31 prior to that date, had by an authorized payroll deduction, contributed
32 to the member reserve.

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

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

3 (18) "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 to
6 be paid.

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

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

14 (21) "Public school" means any institution or activity operated by
15 the state of Washington or any instrumentality or political subdivision
16 thereof employing teachers, except the University of Washington and
17 Washington State University.

18 (22) "Regular contributions" means the amounts required to be
19 deducted from the compensation of a member and credited to the member's
20 individual account in the member reserve. This subsection shall apply
21 only to plan 1 members.

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

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

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

30 (25) "Retirement system" means the Washington state teachers'
31 retirement system.

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

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

37 (ii) As authorized by RCW 28A.400.300, up to forty-five days of
38 sick leave may be creditable as service solely for the purpose of
39 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) If a member is employed either in an eligible position or as
16 a substitute teacher for nine months of the twelve month period between
17 September through August of the following year but earns earnable
18 compensation for less than eight hundred ten hours but for at least six
19 hundred thirty hours, he or she will receive one-half of a service
20 credit month for each month of the twelve month period;

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (viii) The department shall adopt rules implementing this
20 subsection.

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

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

25 (29) "Teacher" means any person qualified to teach who is engaged
26 by a public school in an instructional, administrative, or supervisory
27 capacity. The term includes state, educational service district, and
28 school district superintendents and their assistants and all employees
29 certificated by the superintendent of public instruction; and in
30 addition thereto any full time school doctor who is employed by a
31 public school and renders service of an instructional or educational
32 nature.

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

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

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

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

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

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

12 (36) "Substitute teacher" means:

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

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

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

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

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

31 (d) The elected position of the superintendent of public
32 instruction is an eligible position.

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

36 (39) "Plan 2" means the teachers' retirement system, plan 2
37 providing the benefits and funding provisions covering persons who
38 first became members of the system on and after October 1, 1977, and
39 prior to July 1, 1996.

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

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

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

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

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

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

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

19 (47) "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 (48) "Separation from service or employment" occurs when a person
23 has terminated all employment with an employer.

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

29 NEW SECTION. **Sec. 8.** (1) By December 1, 2002, the Washington
30 institute for public policy shall provide an interim report to
31 appropriate committees of the legislature on the impact of the
32 performance pay incentive plan in section 2 of this act.

33 (2) By December 1, 2003, the Washington institute for public policy
34 shall provide a final report to appropriate committees of the
35 legislature on the impact of the performance pay incentive plan in
36 section 2 of this act.

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