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SENATE BILL 6383

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State of Washington 57th Legislature

2002 Regular Session

By Senators Spanel, Carlson, Regala, Fraser, Winsley, Jacobsen, Rasmussen and McAuliffe; by request of Joint Committee on Pension Policy

Read first time 01/16/2002. Referred to Committee on Ways & Means.

1 AN ACT Relating to allowing a member who is at least age seventy  
2 and one-half or a member holding state elective office or directly  
3 appointed by the governor who wishes to be eligible for a retirement  
4 allowance the option of ending his or her membership in the teachers'  
5 retirement system, the school employees' retirement system, and the  
6 public employees' retirement system; amending RCW 41.32.263, 41.32.010,  
7 41.35.030, and 41.40.023; adding a new section to chapter 41.32 RCW;  
8 adding a new section to chapter 41.35 RCW; and adding a new section to  
9 chapter 41.40 RCW.

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

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.32 RCW  
12 under subchapter heading "provisions applicable to plan 1, plan 2, and  
13 plan 3" to read as follows:

14 Upon attainment of age seventy and one-half, an employed member  
15 may, subject to this section, apply for the retirement benefit the  
16 member is otherwise eligible to receive. The retirement benefit begins  
17 to accrue on the first day of the calendar month following the month  
18 that a member applies for a retirement benefit and has attained age  
19 seventy and one-half. The benefit is calculated in accordance with the

1 rules of the member's plan, except that the member may continue to be  
2 employed. Upon retirement the retiree may no longer make  
3 contributions, nor receive service credit, for future periods of  
4 employment while receiving his or her retirement allowance.

5 **Sec. 2.** RCW 41.32.263 and 1991 c 35 s 41 are each amended to read  
6 as follows:

7 A member of the retirement system who is a member of the state  
8 legislature or a state official eligible for the combined pension and  
9 annuity provided by RCW 41.32.497(~~(7)~~) or 41.32.498(~~(7, as now or~~  
10 ~~hereafter amended shall have)~~) has the option at the beginning of each  
11 term of office to either end membership and apply to the department to  
12 begin receipt of their allowance, or to resume membership and  
13 contribution to the plan.

14 A member of the state legislature or a state official who resumes  
15 membership shall have deductions taken from his or her salary in the  
16 amount of seven and one-half percent of earnable compensation and that  
17 service credit shall be established with the retirement system while  
18 such deductions are reported to the retirement system, unless he or she  
19 has by reason of his or her employment become a contributing member of  
20 another public retirement system in the state of Washington. Such  
21 elected official who has retired or otherwise terminated his or her  
22 public school service may then elect to terminate his or her membership  
23 in the retirement system and receive retirement benefits while  
24 continuing to serve as an elected official. A member of the retirement  
25 system who had previous service as an elected or appointed official,  
26 for which he or she did not contribute to the retirement system, may  
27 receive credit for such legislative service unless he or she has  
28 received credit for that service in another state retirement system,  
29 upon making contributions in such amounts as shall be determined by the  
30 (~~board of trustees~~) director.

31 **Sec. 3.** RCW 41.32.010 and 1997 c 254 s 3 are each amended to read  
32 as follows:

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

35 (1)(a) "Accumulated contributions" for plan 1 members, means the  
36 sum of all regular annuity contributions and, except for the purpose of

1 withdrawal at the time of retirement, any amount paid under RCW  
2 41.50.165(2) with regular interest thereon.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (A) 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 and the individual shall receive the  
7 equivalent service credit.

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

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

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

36 (A) Remuneration for unused sick leave authorized under RCW  
37 41.04.340, 28A.400.210, or 28A.310.490;

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

1 (b) "Earnable compensation" for plan 2 and plan 3 members, means  
2 salaries or wages earned by a member during a payroll period for  
3 personal services, including overtime payments, and shall include wages  
4 and salaries deferred under provisions established pursuant to sections  
5 403(b), 414(h), and 457 of the United States Internal Revenue Code, but  
6 shall exclude lump sum payments for deferred annual sick leave, unused  
7 accumulated vacation, unused accumulated annual leave, or any form of  
8 severance pay.

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

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

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

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

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

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

32 (12) "Fiscal year" means a year which begins July 1st and ends June  
33 30th of the following year.

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

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

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

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

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

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

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

22 (20) "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 (21) "Public school" means any institution or activity operated by  
26 the state of Washington or any instrumentality or political subdivision  
27 thereof employing teachers, except the University of Washington and  
28 Washington State University.

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

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

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

1 (b) "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 (25) "Retirement system" means the Washington state teachers'  
5 retirement system.

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

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

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

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

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

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

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

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

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

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

7 (iv) Any person who is a member of the teachers' retirement system  
8 and who is elected or appointed to a state elective position may  
9 continue to be a member of the retirement system and continue to  
10 receive a service credit month for each of the months in a state  
11 elective position by making the required member contributions. At the  
12 beginning of each term of office a person who is a member of the  
13 teachers' retirement system plan 2 or plan 3 and who is elected or  
14 appointed to a state elective position has the option either to resume  
15 membership or to end membership in the retirement system and if  
16 otherwise eligible begin their retirement allowance.

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

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

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

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

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

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

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

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

1 (viii) The department shall adopt rules implementing this  
2 subsection.

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

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

7 (29) "Teacher" means any person qualified to teach who is engaged  
8 by a public school in an instructional, administrative, or supervisory  
9 capacity. The term includes state, educational service district, and  
10 school district superintendents and their assistants and all employees  
11 certificated by the superintendent of public instruction; and in  
12 addition thereto any full time school doctor who is employed by a  
13 public school and renders service of an instructional or educational  
14 nature.

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

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

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

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

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

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

32 (36) "Substitute teacher" means:

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

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

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

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

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

13 (d) The elected position of the superintendent of public  
14 instruction is an eligible position.

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

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

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

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

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

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.35 RCW  
12 under subchapter heading "provisions applicable to plan 2 and plan 3"  
13 to read as follows:

14 Upon attainment of age seventy and one-half, an employed member  
15 may, subject to this section, apply for the retirement benefit the  
16 member is otherwise eligible to receive. The retirement benefit begins  
17 to accrue on the first day of the calendar month following the month  
18 that a member applies for a retirement benefit and has attained age  
19 seventy and one-half. The benefit is calculated in accordance with the  
20 rules of the member's plan, except that the member may continue to be  
21 employed. Upon retirement the retiree may no longer make  
22 contributions, nor receive service credit, for future periods of  
23 employment while receiving his or her retirement allowance.

24 **Sec. 5.** RCW 41.35.030 and 1998 c 341 s 4 are each amended to read  
25 as follows:

26 Membership in the retirement system shall consist of all regularly  
27 compensated classified employees and appointive and elective officials  
28 of employers, as defined in this chapter, with the following  
29 exceptions:

30 (1) Persons in ineligible positions;

31 (2)(a) Persons holding elective offices or persons appointed  
32 directly by the governor: PROVIDED, That such persons shall have the  
33 option of applying for membership during such periods of employment:  
34 AND PROVIDED FURTHER, That any persons holding or who have held  
35 elective offices or persons appointed by the governor who are members  
36 in the retirement system and who have, prior to becoming such members,  
37 previously held an elective office, and did not at the start of ((such

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

17 (b) A member holding elective office who has elected to apply for  
18 membership pursuant to (a) of this subsection and who later wishes to  
19 be eligible for a retirement allowance shall have the option of ending  
20 his or her membership in the retirement system. A member wishing to  
21 end his or her membership under this subsection must file on a form  
22 supplied by the department a statement indicating that the member  
23 agrees to irrevocably abandon any claim for service for future periods  
24 served as an elected official. A member who receives more than fifteen  
25 thousand dollars per year in compensation for his or her elective  
26 service, adjusted annually for inflation by the director, is not  
27 eligible for the option provided by this subsection (2)(b);

28 (c) A member holding state elective office or directly appointed by  
29 the governor who wishes to be eligible for a retirement allowance has  
30 the option of ending his or her membership in the system. A member  
31 wishing to end his or her membership under this subsection must file on  
32 a form supplied by the department a statement indicating that the  
33 member agrees to irrevocably abandon any claim for service for the  
34 duration of their current term of elected or appointed office;

35 (3) Retirement system retirees: PROVIDED, That following  
36 reemployment in an eligible position, a retiree may elect to  
37 prospectively become a member of the retirement system if otherwise  
38 eligible;

1 (4) Persons enrolled in state-approved apprenticeship programs,  
2 authorized under chapter 49.04 RCW, and who are employed by employers  
3 to earn hours to complete such apprenticeship programs, if the employee  
4 is a member of a union-sponsored retirement plan and is making  
5 contributions to such a retirement plan or if the employee is a member  
6 of a Taft-Hartley retirement plan;

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

11 (6) Employees who (a) are not citizens of the United States, (b) do  
12 not reside in the United States, and (c) perform duties outside of the  
13 United States;

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

20 (8) Employees who are citizens of the United States and who reside  
21 and perform duties for an employer outside of the United States:  
22 PROVIDED, That unless otherwise excluded under this chapter or chapter  
23 41.04 RCW, the employee may apply for membership (a) within thirty days  
24 after employment in an eligible position and membership service credit  
25 shall be granted from the first day of membership service, and (b)  
26 after this thirty-day period, but membership service credit shall be  
27 granted only if payment is made for the noncredited membership service  
28 under RCW 41.50.165(2), otherwise service shall be from the date of  
29 application.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.40 RCW  
31 under subchapter heading "provisions applicable to plan 1, plan 2, and  
32 plan 3" to read as follows:

33 Upon attainment of age seventy and one-half, an employed member  
34 may, subject to this section, apply for the retirement benefit the  
35 member is otherwise eligible to receive. The retirement benefit begins  
36 to accrue on the first day of the calendar month following the month  
37 that a member applies for a retirement benefit and has attained age  
38 seventy and one-half. The benefit is calculated in accordance with the

1 rules of the member's plan, except that the member may continue to be  
2 employed. Upon retirement the retiree may no longer make  
3 contributions, nor receive service credit, for future periods of  
4 employment while receiving his or her retirement allowance.

5 **Sec. 7.** RCW 41.40.023 and 2001 c 37 s 1 are each amended to read  
6 as follows:

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

10 (1) Persons in ineligible positions;

11 (2) Employees of the legislature except the officers thereof  
12 elected by the members of the senate and the house and legislative  
13 committees, unless membership of such employees be authorized by the  
14 said committee;

15 (3)(a) Persons holding elective offices or persons appointed  
16 directly by the governor: PROVIDED, That such persons shall have the  
17 option of applying for membership during such periods of employment:  
18 AND PROVIDED FURTHER, That any persons holding or who have held  
19 elective offices or persons appointed by the governor who are members  
20 in the retirement system and who have, prior to becoming such members,  
21 previously held an elective office, and did not at the start of (~~such~~  
22 ~~initial or successive terms~~) their prior term of office exercise their  
23 option to become members, may apply for membership to be effective  
24 during (~~such~~) each term or terms of office, and shall be allowed to  
25 establish the service credit applicable to (~~such~~) each term or terms  
26 of office upon payment of the employee contributions therefor by the  
27 employee with interest as determined by the director and employer  
28 contributions therefor by the employer or employee with interest as  
29 determined by the director: AND PROVIDED FURTHER, That all  
30 contributions with interest submitted by the employee under this  
31 subsection shall be placed in the employee's individual account in the  
32 employee's savings fund and be treated as any other contribution made  
33 by the employee, with the exception that any contributions submitted by  
34 the employee in payment of the employer's obligation, together with the  
35 interest the director may apply to the employer's contribution, shall  
36 not be considered part of the member's annuity for any purpose except  
37 withdrawal of contributions;

1 (b) A member holding elective office who has elected to apply for  
2 membership pursuant to (a) of this subsection and who later wishes to  
3 be eligible for a retirement allowance shall have the option of ending  
4 his or her membership in the retirement system. A member wishing to  
5 end his or her membership under this subsection must file, on a form  
6 supplied by the department, a statement indicating that the member  
7 agrees to irrevocably abandon any claim for service for future periods  
8 served as an elected official. A member who receives more than fifteen  
9 thousand dollars per year in compensation for his or her elective  
10 service, adjusted annually for inflation by the director, is not  
11 eligible for the option provided by this subsection (3)(b);

12 (c) A member holding state elective office or directly appointed by  
13 the governor who wishes to be eligible for a retirement allowance has  
14 the option of ending his or her membership in the system. A member  
15 wishing to end his or her membership under this subsection must file on  
16 a form supplied by the department a statement indicating that the  
17 member agrees to irrevocably abandon any claim for service for the  
18 duration of their current term of elected or appointed office;

19 (4) Employees holding membership in, or receiving pension benefits  
20 under, any retirement plan operated wholly or in part by an agency of  
21 the state or political subdivision thereof, or who are by reason of  
22 their current employment contributing to or otherwise establishing the  
23 right to receive benefits from any such retirement plan except as  
24 follows:

25 (a) In any case where the retirement system has in existence an  
26 agreement with another retirement system in connection with exchange of  
27 service credit or an agreement whereby members can retain service  
28 credit in more than one system, such an employee shall be allowed  
29 membership rights should the agreement so provide;

30 (b) An employee shall be allowed membership if otherwise eligible  
31 while receiving survivor's benefits;

32 (c) An employee shall not either before or after June 7, 1984, be  
33 excluded from membership or denied service credit pursuant to this  
34 subsection solely on account of: (i) Membership in the plan created  
35 under chapter 2.14 RCW; or (ii) enrollment under the relief and  
36 compensation provisions or the pension provisions of the volunteer fire  
37 fighters' relief and pension fund under chapter 41.24 RCW;

38 (d) Except as provided in RCW 41.40.109, on or after July 25, 1999,  
39 an employee shall not be excluded from membership or denied service

1 credit pursuant to this subsection solely on account of participation  
2 in a defined contribution pension plan qualified under section 401 of  
3 the internal revenue code;

4 (e) Employees who have been reported in the retirement system prior  
5 to July 25, 1999, and who participated during the same period of time  
6 in a defined contribution pension plan qualified under section 401 of  
7 the internal revenue code and operated wholly or in part by the  
8 employer, shall not be excluded from previous retirement system  
9 membership and service credit on account of such participation;

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

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

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

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

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

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

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

29 (12) Retirement system retirees: PROVIDED, That following  
30 reemployment in an eligible position, a retiree may elect to  
31 prospectively become a member of the retirement system if otherwise  
32 eligible;

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

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

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

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

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

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

1 under RCW 41.50.165(2), otherwise service shall be from the date of  
2 application;

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

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

17 (18) Persons serving as: (a) The chief administrative officer of  
18 a public utility district as defined in RCW 54.16.100; (b) the chief  
19 administrative officer of a port district formed under chapter 53.04  
20 RCW; or (c) the chief administrative officer of a county who serves at  
21 the pleasure of an appointing authority: PROVIDED, That such persons  
22 shall have the option of applying for membership within thirty days  
23 from the date of their appointment to such positions. Persons serving  
24 in such positions as of July 25, 1999, shall continue to be members in  
25 the retirement system unless they notify the director in writing prior  
26 to December 31, 1999, of their desire to withdraw from membership in  
27 the retirement system. A member who withdraws from membership in the  
28 system under this section shall receive a refund of the member's  
29 accumulated contributions upon termination of employment or as  
30 otherwise consistent with the plan's tax qualification status as  
31 defined in internal revenue code section 401.

32 Persons serving in such positions who have not opted for membership  
33 within the specified thirty days, may do so at a later date by paying  
34 the amount required under RCW 41.50.165(2) for the period from the date  
35 of their appointment to the date of acceptance into membership;

36 (19) Persons enrolled in state-approved apprenticeship programs,  
37 authorized under chapter 49.04 RCW, and who are employed by local  
38 governments to earn hours to complete such apprenticeship programs, if  
39 the employee is a member of a union-sponsored retirement plan and is

1 making contributions to such a retirement plan or if the employee is a  
2 member of a Taft-Hartley retirement plan;

3 (20) Beginning on July 22, 2001, persons employed exclusively as  
4 trainers or trainees in resident apprentice training programs operated  
5 by housing authorities authorized under chapter 35.82 RCW, (a) if the  
6 trainer or trainee is a member of a union-sponsored retirement plan and  
7 is making contributions to such a retirement plan or (b) if the  
8 employee is a member of a Taft-Hartley retirement plan.

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