

2 **ESHB 2644** - S COMM AMD
3 By Committee on Ways & Means

4 ADOPTED 3/3/94

5 Strike everything after the enacting clause and insert the
6 following:

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

8 (1) Whenever employer or member contributions are not made at the
9 time service is rendered, the state retirement system trust funds lose
10 investment income which is a major source of pension funding. The
11 department of retirement systems has broad authority to charge interest
12 to compensate for the loss to the trust funds, subject only to explicit
13 statutory provisions to the contrary.

14 (2) The inherent authority of the department to recover all
15 overpayments and unauthorized payments from the retirement trust funds,
16 for the benefit of members and taxpayers, should be established clearly
17 in statute.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.50 RCW
19 to read as follows:

20 The department may charge interest, as determined by the director,
21 on member or employer contributions owing to any of the retirement
22 systems listed in RCW 41.50.030. The department's authority to charge
23 interest shall extend to all optional and mandatory billings for
24 contributions where member or employer contributions are paid other
25 than immediately after service is rendered. Except as explicitly
26 limited by statute, the director may delay the imposition of interest
27 charges on late contributions under this section if the delay is
28 necessary to implement required changes in the department's accounting
29 and information systems.

30 **Sec. 3.** RCW 41.50.130 and 1987 c 490 s 1 are each amended to read
31 as follows:

32 (1) The director may at any time correct errors appearing in the
33 records of the retirement systems listed in RCW 41.50.030. Should any
34 error in such records result in any member ((or)), beneficiary, or

1 other person or entity receiving more or less than he or she would have
2 been entitled to had the records been correct, the director, subject to
3 the conditions set forth in this section, shall adjust the payment in
4 such a manner that the benefit to which such member ~~((or))~~,
5 beneficiary, or other person or entity was correctly entitled shall be
6 paid in accordance with the following:

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

12 (b) In the case of overpayments to a member or beneficiary, the
13 retirement system shall adjust the payment in such a manner that the
14 benefit to which such member or beneficiary was correctly entitled
15 shall be reduced by an amount equal to the actuarial equivalent of the
16 amount of overpayment. Alternatively the member shall have the option
17 of repaying the overpayment in a lump sum within ninety days of
18 notification and receive the proper benefit in the future. In the case
19 of overpayments to a member ~~((or))~~, beneficiary, or other person or
20 entity resulting from actual fraud on the part of the member ~~((or))~~,
21 beneficiary, or other person or entity, the benefits shall be adjusted
22 to reflect the full amount of such overpayment, plus interest at the
23 ~~((maximum rate allowed under RCW 19.52.020(1) as it was in effect the~~
24 ~~first month the overpayment occurred))~~ rate of one percent per month on
25 the outstanding balance.

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

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

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

38 (b) In the case of overpayments which result from the failure of an
39 employer to report properly to the department the employment of a

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

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

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

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

32 NEW SECTION. Sec. 4. A new section is added to chapter 41.50 RCW
33 to read as follows:

34 (1) If a person receives a withdrawal of accumulated contributions
35 from any of the retirement systems listed in RCW 41.50.030 in
36 contravention of the restrictions on withdrawal for the particular
37 system, the member shall no longer be entitled to credit for the period
38 of service represented by the withdrawn contributions. The erroneous

1 withdrawal shall be treated as an authorized withdrawal, subject to all
2 conditions imposed by the member's system for restoration of withdrawn
3 contributions. Failure to restore the contributions within the time
4 permitted by the system shall constitute a waiver by the member of any
5 right to receive a retirement allowance based upon the period of
6 service represented by the withdrawn contributions.

7 (2) All erroneous withdrawals occurring prior to the effective date
8 of this section shall be subject to the provisions of this section.
9 The deadline for restoring the prior erroneous withdrawals shall be
10 five years from the effective date of this section for members who are
11 currently active members of a system.

12 **Sec. 5.** RCW 41.32.500 and 1991 c 35 s 57 are each amended to read
13 as follows:

14 (1) Membership in the retirement system is terminated when a member
15 retires for service or disability, dies, or withdraws ~~((the))~~ his or
16 her accumulated contributions ~~((or does not establish service credit~~
17 ~~with the retirement system for five consecutive years; however, a~~
18 ~~member may retain membership in the teachers' retirement system by~~
19 ~~leaving the accumulated contributions in the teachers' retirement fund~~
20 ~~under one of the following conditions:~~

21 ~~(a) If he or she is eligible for retirement;~~

22 ~~(b) If he or she is a member of another public retirement system in~~
23 ~~the state of Washington by reason of change in employment and has~~
24 ~~arranged to have membership extended during the period of such~~
25 ~~employment;~~

26 ~~(c) If he or she is not eligible for retirement but has established~~
27 ~~five or more years of Washington membership service credit.))~~

28 The prior service certificate becomes void when a member dies~~((7))~~
29 or withdraws the accumulated contributions ~~((or does not establish~~
30 ~~service credit with the retirement system for five consecutive years)),~~
31 and any prior administrative interpretation of the board of trustees,
32 consistent with this section, is hereby ratified, affirmed and
33 approved.

34 (2) ~~((Any member, except an elected official, who reentered service~~
35 ~~and who failed to restore withdrawn contributions, shall now have from~~
36 ~~April 4, 1986, through June 30, 1987, to restore the contributions,~~
37 ~~with interest as determined by the director.~~

1 (3)) Within the ninety days following the employee's resumption of
2 employment, the employer shall notify the department of the resumption
3 and the department shall then return to the employer a statement of the
4 potential service credit to be restored, the amount of funds required
5 for restoration, and the date when the restoration must be
6 accomplished. The employee shall be given a copy of the statement and
7 shall sign a copy of the statement which signed copy shall be placed in
8 the employee's personnel file.

9 **Sec. 6.** RCW 41.32.510 and 1982 1st ex.s. c 52 s 15 are each
10 amended to read as follows:

11 Should a member cease to be employed by an employer and request
12 upon a form provided by the department a refund of the member's
13 accumulated contributions with interest, this amount shall be paid to
14 the individual less any withdrawal fee which may be assessed by the
15 director which shall be deposited in the department of retirement
16 systems expense fund. The amount withdrawn, together with interest as
17 determined by the director must be paid if the member desires to
18 reestablish the former service credits. ~~((Termination of employment
19 with one employer for the specific purpose of accepting employment with
20 another employer or termination with one employer and reemployment with
21 the same employer, whether for the same school year or for the ensuing
22 school year, shall not qualify a member for a refund of the member's
23 accumulated contributions. A member who files an application for a
24 refund of the member's accumulated contributions and subsequently
25 enters into a contract for or resumes public school employment before
26 a refund payment has been made shall not be eligible for such
27 payment.))~~ A member who files a request for a refund and subsequently
28 enters into employment with an employer prior to the refund being made
29 shall not be eligible for a refund. For purposes of this section, a
30 written or oral employment agreement shall be considered entering into
31 employment.

32 **Sec. 7.** RCW 41.40.280 and 1991 c 35 s 86 are each amended to read
33 as follows:

34 The department may, in its discretion, withhold payment of all or
35 part of a member's contributions for not more than six months after a
36 member has ceased to be an employee. ~~((Termination of employment with
37 one employer for the purpose of accepting employment with another~~

1 ~~employer or termination with one employer and reemployment with the~~
2 ~~same employer within a period of thirty days shall not qualify a member~~
3 ~~for a refund of his or her accumulated contributions. In addition, a~~
4 ~~member who files an application for a refund of his or her accumulated~~
5 ~~contributions and subsequently becomes employed in an eligible position~~
6 ~~before the expiration of thirty days or before a refund payment has~~
7 ~~been made, shall not be eligible for the refund payment.)) A member
8 who files a request for a refund and subsequently enters into
9 employment with an employer prior to the refund being made shall not be
10 eligible for a refund. For purposes of this section, a written or oral
11 employment agreement shall be considered entering into employment.~~

12 **Sec. 8.** RCW 41.40.010 and 1993 c 95 s 8 are each amended to read
13 as follows:

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

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

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

20 (3) "State treasurer" means the treasurer of the state of
21 Washington.

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

33 (b) "Employer" for plan II members, means every branch, department,
34 agency, commission, board, and office of the state, and any political
35 subdivision and municipal corporation of the state admitted into the
36 retirement system, including public agencies created pursuant to RCW
37 35.63.070, 36.70.060, and 39.34.030.

1 (5) "Member" means any employee included in the membership of the
2 retirement system, as provided for in RCW 41.40.023.

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

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

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

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

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

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

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

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

36 (8)(a) "Compensation earnable" for plan I members, means salaries
37 or wages earned during a payroll period for personal services and where
38 the compensation is not all paid in money, maintenance compensation
39 shall be included upon the basis of the schedules established by the

1 member's employer(~~(:—PROVIDED, That)~~). Compensation that a member
2 receives for being in standby status is also compensation earnable,
3 subject to the conditions of this subsection. A member is in standby
4 status when not being paid for time actually worked and only when both
5 of the following conditions exist: (i) The member is required to be
6 present at, or in the immediate vicinity of, a specified location; and
7 (ii) the employer requires the member to be prepared to report
8 immediately for work, if the need arises, although the need may not
9 arise. Standby compensation is regular salary for the purposes of RCW
10 41.50.150(2). Retroactive payments to an individual by an employer on
11 reinstatement of the employee in a position, or payments by an employer
12 to an individual in lieu of reinstatement in a position which are
13 awarded or granted as the equivalent of the salary or wage which the
14 individual would have earned during a payroll period shall be
15 considered compensation earnable and the individual shall receive the
16 equivalent service credit(~~(:—PROVIDED FURTHER, That)~~). If a leave of
17 absence is taken by an individual for the purpose of serving in the
18 state legislature, the salary which would have been received for the
19 position from which the leave of absence was taken, shall be considered
20 as compensation earnable if the employee's contribution is paid by the
21 employee and the employer's contribution is paid by the employer or
22 employee.

23 (b) "Compensation earnable" for plan II members, means salaries or
24 wages earned by a member during a payroll period for personal services,
25 including overtime payments, and shall include wages and salaries
26 deferred under provisions established pursuant to sections 403(b),
27 414(h), and 457 of the United States Internal Revenue Code, but shall
28 exclude nonmoney maintenance compensation and lump sum payments for
29 deferred annual sick leave, unused accumulated vacation, unused
30 accumulated annual leave, or any form of severance pay(~~(:—PROVIDED,~~
31 ~~That)~~). Compensation that a member receives for being in standby
32 status is also compensation earnable, subject to the conditions of this
33 subsection. A member is in standby status when not being paid for time
34 actually worked and only when both of the following conditions exist:
35 (i) The member is required to be present at, or in the immediate
36 vicinity of, a specified location; and (ii) the employer requires the
37 member to be prepared to report immediately for work, if the need
38 arises, although the need may not arise. Standby compensation is
39 regular salary for the purposes of RCW 41.50.150(2). Retroactive

1 payments to an individual by an employer on reinstatement of the
2 employee in a position, or payments by an employer to an individual in
3 lieu of reinstatement in a position which are awarded or granted as the
4 equivalent of the salary or wage which the individual would have earned
5 during a payroll period shall be considered compensation earnable to
6 the extent provided above, and the individual shall receive the
7 equivalent service credit(~~(: PROVIDED FURTHER, That)~~). In any year in
8 which a member serves in the legislature, the member shall have the
9 option of having such member's compensation earnable be the greater of:

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

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

19 (9)(a) "Service" for plan I members, except as provided in RCW
20 41.40.088, means periods of employment in an eligible position or
21 positions for one or more employers rendered to any employer for which
22 compensation is paid, and includes time spent in office as an elected
23 or appointed official of an employer. Compensation earnable earned in
24 full time work for seventy hours or more in any given calendar month
25 shall constitute one service credit month except as provided in RCW
26 41.40.088. Compensation earnable earned for less than seventy hours in
27 any calendar month shall constitute one-quarter service credit month of
28 service except as provided in RCW 41.40.088. Only service credit
29 months and one-quarter service credit months shall be counted in the
30 computation of any retirement allowance or other benefit provided for
31 in this chapter. Any fraction of a year of service shall be taken into
32 account in the computation of such retirement allowance or benefits.
33 Time spent in standby status, whether compensated or not, is not
34 service.

35 Service by a state employee officially assigned by the state on a
36 temporary basis to assist another public agency, shall be considered as
37 service as a state employee: PROVIDED, That service to any other
38 public agency shall not be considered service as a state employee if
39 such service has been used to establish benefits in any other public

1 retirement system: PROVIDED FURTHER, That an individual shall receive
2 no more than a total of twelve service credit months of service during
3 any calendar year: PROVIDED FURTHER, That where an individual is
4 employed in an eligible position by one or more employers the
5 individual shall receive no more than one service credit month during
6 any calendar month in which multiple service for seventy or more hours
7 is rendered.

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

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

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

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

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

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

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

1 (13) "Membership service" means:

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

3 (b) All service after October 1, 1947, to any employer prior to the

4 time of its admission into the retirement system: PROVIDED, That an

5 amount equal to the employer and employee contributions which would

6 have been paid to the retirement system on account of such service

7 shall have been paid to the retirement system with interest (as

8 computed by the department) on the employee's portion prior to

9 retirement of such person, by the employee or his employer, except as

10 qualified by RCW 41.40.023: PROVIDED FURTHER, That employer

11 contributions plus employee contributions with interest submitted by

12 the employee under this subsection shall be placed in the employee's

13 individual account in the employees' savings fund and be treated as any

14 other contribution made by the employee, with the exception that the

15 contributions submitted by the employee in payment of the employer's

16 obligation, together with the interest the director may apply to the

17 employer's contribution, shall be excluded from the calculation of the

18 member's annuity in the event the member selects a benefit with an

19 annuity option;

20 (c) Service not to exceed six consecutive months of probationary

21 service rendered after April 1, 1949, and prior to becoming a member,

22 in the case of any member, upon payment in full by such member of the

23 total amount of the employer's contribution to the retirement fund

24 which would have been required under the law in effect when such

25 probationary service was rendered if the member had been a member

26 during such period, except that the amount of the employer's

27 contribution shall be calculated by the director based on the first

28 month's compensation earnable as a member;

29 (d) Service not to exceed six consecutive months of probationary

30 service, rendered after October 1, 1947, and before April 1, 1949, and

31 prior to becoming a member, in the case of any member, upon payment in

32 full by such member of five percent of such member's salary during said

33 period of probationary service, except that the amount of the

34 employer's contribution shall be calculated by the director based on

35 the first month's compensation earnable as a member.

36 (14)(a) "Beneficiary" for plan I members, means any person in

37 receipt of a retirement allowance, pension or other benefit provided by

38 this chapter.

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

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

6 (16) "Accumulated contributions" means the sum of all contributions
7 standing to the credit of a member in the member's individual account
8 together with the regular interest thereon.

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

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

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

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

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

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

31 (22) "Employee" means any person who may become eligible for
32 membership under this chapter, as set forth in RCW 41.40.023.

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

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

38 (25) "Eligible position" means:

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

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

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

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

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

18 (29) "Retiree" means any member in receipt of a retirement
19 allowance or other benefit provided by this chapter resulting from
20 service rendered to an employer by such member.

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

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

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

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

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

33 NEW SECTION. **Sec. 9.** (1) Notwithstanding RCW 41.50.130, the
34 department is not required to correct, nor to cause any employer to
35 correct the reporting error described in subsection (2) of this
36 section.

37 (2) Standby pay and other similar forms of compensation that are
38 not pay for time worked were not salary or wages for personal services

1 within the meaning of RCW 41.40.010(8). Contrary to RCW 41.40.010(8),
2 some employers have been reporting standby pay to the department as
3 compensation earnable. To avoid unduly impacting the retirement
4 allowances of persons who have retired on or before the effective date
5 of this act, the department is not required to correct, nor cause to be
6 corrected, any misreporting of amounts identified as standby pay
7 through the effective date of this act. Any erroneous reporting of
8 amounts identified as standby pay to the department on or after the
9 effective date of this act shall be corrected as an error under RCW
10 41.50.130.

11 (3) The forgiveness of past misreporting under subsection (2) of
12 this section constitutes a benefit enhancement for those individuals
13 for whom amounts received as standby pay were misreported to the
14 department. Prior to the effective date of this act no retirement
15 system member had any right, contractual or otherwise, to have amounts
16 identified as standby pay included as compensation earnable.

17 **Sec. 10.** 1990 c 274 s 18 (uncodified) is amended to read as
18 follows:

19 (1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are
20 intended by the legislature to effect administrative, rather than
21 substantive, changes to the affected retirement plan. The legislature
22 therefore reserves the right to revoke or amend the 1990 amendments to
23 RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his
24 or her service credit calculated under the 1990 amendments to RCW
25 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

26 (2) The department's retroactive application of the changes made in
27 RCW 41.32.010(27)(b) to all service rendered between October 1, 1977,
28 and August 31, 1990, is consistent with the legislative intent of the
29 1990 changes to RCW 41.32.010(27)(b)."

30 **ESHB 2644** - S COMM AMD
31 By Committee on Ways & Means

32 ADOPTED 3/3/94

33 On page 1, line 2 of the title, after "overpayments;" strike the
34 remainder of the title and insert "amending RCW 41.50.130, 41.32.500,
35 41.32.510, 41.40.280, and 41.40.010; amending 1990 c 274 s 18

1 (uncodified); adding new sections to chapter 41.50 RCW; and creating
2 new sections."

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