

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5118**

Chapter 244, Laws of 1995

54th Legislature  
1995 Regular Session

RETIREMENT--CALCULATION OF EXCESS COMPENSATION

EFFECTIVE DATE: 7/23/95

Passed by the Senate April 20, 1995  
YEAS 47 NAYS 0

JOEL PRITCHARD

\_\_\_\_\_  
**President of the Senate**

Passed by the House April 14, 1995  
YEAS 92 NAYS 0

CLYDE BALLARD

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

Approved May 5, 1995

MIKE LOWRY

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5118** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

\_\_\_\_\_  
**Secretary**

FILED

May 5, 1995 - 10:14 a.m.

**Secretary of State  
State of Washington**

---

**SUBSTITUTE SENATE BILL 5118**

---

AS AMENDED BY THE HOUSE

Passed Legislature - 1995 Regular Session

**State of Washington                      54th Legislature                      1995 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Winsley, Long, Bauer, Loveland and Fraser)

Read first time 02/16/95.

1            AN ACT Relating to the calculation of excess compensation for  
2 retirement purposes; amending RCW 41.50.150; reenacting and amending  
3 RCW 41.40.010; and adding a new section to chapter 41.50 RCW.

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

5            **Sec. 1.** RCW 41.50.150 and 1984 c 184 s 1 are each amended to read  
6 as follows:

7            (1) The employer of any employee whose retirement benefits are  
8 based in part on excess compensation, as defined in this section,  
9 shall, upon receipt of a billing from the department, pay into the  
10 appropriate retirement system the present value at the time of the  
11 employee's retirement of the total estimated cost of all present and  
12 future benefits from the retirement system attributable to the excess  
13 compensation. The state actuary shall determine the estimated cost  
14 using the same method and procedure as is used in preparing fiscal note  
15 costs for the legislature. However, the director may in the director's  
16 discretion decline to bill the employer if the amount due is less than  
17 fifty dollars. Accounts unsettled within thirty days of the receipt of  
18 the billing shall be assessed an interest penalty of one percent of the

1 amount due for each month or fraction thereof beyond the original  
2 thirty-day period.

3 (2) "Excess compensation," as used in this section, includes any  
4 payment that was used in the calculation of the employee's retirement  
5 allowance, except regular salary and overtime(~~(  )~~) compensated at up to  
6 twice the regular rate of pay. Excess compensation includes but is not  
7 limited to:

8 (a) A cash out of unused annual leave in excess of two hundred  
9 forty hours of such leave(~~(  )~~). "Cash out" for purposes of this  
10 subsection means any payment in lieu of an accrual of annual leave or  
11 any payment added to salary or wages, concurrent with a reduction of  
12 annual leave;

13 (b) A cash out of any other form of leave(~~(  )~~);

14 (c) A payment for, or in lieu of, any personal expense(~~(  and)~~) or  
15 transportation allowance;

16 (d) The portion of any payment, including overtime payments, that  
17 exceeds twice the regular rate of pay; and

18 (e) Any other termination or severance payment (~~(used in the~~  
19 calculation of the employee's retirement allowance. Any payment which  
20 is made pursuant to any labor agreement currently in force shall not be  
21 deemed excess compensation. Any payments in excess of regular salary  
22 and overtime, and two hundred forty hours of unused annual leave made  
23 after the expiration of a current contract shall be excess  
24 compensation)).

25 (3) This section applies to the retirement systems listed in RCW  
26 41.50.030 and to retirements occurring on or after March 15, 1984.  
27 Nothing in this section is intended to amend or determine the meaning  
28 of any definition in chapter 2.10, 2.12, 41.26, 41.32, 41.40, or 43.43  
29 RCW or to determine in any manner what payments are includable in the  
30 calculation of a retirement allowance under such chapters.

31 (4) An employer is not relieved of liability under this section  
32 because of the death of any person either before or after the billing  
33 from the department.

34 NEW SECTION. Sec. 2. A new section, which shall be uncodified, is  
35 added to chapter 41.50 RCW to read as follows:

36 The definition of "cash out" added to RCW 41.50.150(2)(a) by this  
37 act is a clarification of the legislature's original intent regarding

1 the meaning of the term. The definition of "cash out" applies  
2 retroactively to payments made before the effective date of this act.

3 **Sec. 3.** RCW 41.40.010 and 1994 c 298 s 2, 1994 c 247 s 5, 1994 c  
4 197 s 23, and 1994 c 177 s 8 are each reenacted and amended to read as  
5 follows:

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

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

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

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

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

25 (b) "Employer" for plan II members, means every branch, department,  
26 agency, commission, board, and office of the state, and any political  
27 subdivision and municipal corporation of the state admitted into the  
28 retirement system, including public agencies created pursuant to RCW  
29 35.63.070, 36.70.060, and 39.34.030.

30 (5) "Member" means any employee included in the membership of the  
31 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045  
32 does not prohibit a person otherwise eligible for membership in the  
33 retirement system from establishing such membership effective when he  
34 or she first entered an eligible position.

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

36 (a) Any person who became a member of the system prior to April 1,  
37 1949;

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

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

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

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

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

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

31 (8)(a) "Compensation earnable" for plan I members, means salaries  
32 or wages earned during a payroll period for personal services and where  
33 the compensation is not all paid in money, maintenance compensation  
34 shall be included upon the basis of the schedules established by the  
35 member's employer. ~~((Compensation that a member receives for being in  
36 standby status is also compensation earnable, subject to the conditions  
37 of this subsection. A member is in standby status when not being paid  
38 for time actually worked and only when both of the following conditions  
39 exist:—(i) The member is required to be present at, or in the~~

1 ~~immediate vicinity of, a specified location; and (ii) the employer~~  
2 ~~requires the member to be prepared to report immediately for work, if~~  
3 ~~the need arises, although the need may not arise. Standby compensation~~  
4 ~~is regular salary for the purposes of RCW 41.50.150(2).)~~

5 (A) "Compensation earnable" for plan I members also includes the  
6 following actual or imputed payments, which are not paid for personal  
7 services:

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

15 (II) If a leave of absence is taken by an individual for the  
16 purpose of serving in the state legislature, the salary which would  
17 have been received for the position from which the leave of absence was  
18 taken, shall be considered as compensation earnable if the employee's  
19 contribution is paid by the employee and the employer's contribution is  
20 paid by the employer or employee.

21 (III) Assault pay only as authorized by RCW 27.04.100, 72.01.045,  
22 and 72.09.240;

23 (IV) Compensation that a member would have received but for a  
24 disability occurring in the line of duty only as authorized by RCW  
25 41.40.038; ((and))

26 (V) Compensation that a member receives due to participation in the  
27 leave sharing program only as authorized by RCW 41.04.650 through  
28 41.04.670; and

29 (VI) Compensation that a member receives for being in standby  
30 status. For the purposes of this section, a member is in standby  
31 status when not being paid for time actually worked and the employer  
32 requires the member to be prepared to report immediately for work, if  
33 the need arises, although the need may not arise. Standby compensation  
34 is regular salary for the purposes of RCW 41.50.150(2).

35 (B) "Compensation earnable" does not include:

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

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

1 (b) "Compensation earnable" for plan II members, means salaries or  
2 wages earned by a member during a payroll period for personal services,  
3 including overtime payments, and shall include wages and salaries  
4 deferred under provisions established pursuant to sections 403(b),  
5 414(h), and 457 of the United States Internal Revenue Code, but shall  
6 exclude nonmoney maintenance compensation and lump sum or other  
7 payments for deferred annual sick leave, unused accumulated vacation,  
8 unused accumulated annual leave, or any form of severance pay.  
9 (~~Compensation that a member receives for being in standby status is~~  
10 ~~also compensation earnable, subject to the conditions of this~~  
11 ~~subsection. A member is in standby status when not being paid for time~~  
12 ~~actually worked and only when both of the following conditions exist:~~  
13 ~~(i) The member is required to be present at, or in the immediate~~  
14 ~~vicinity of, a specified location; and (ii) the employer requires the~~  
15 ~~member to be prepared to report immediately for work, if the need~~  
16 ~~arises, although the need may not arise. Standby compensation is~~  
17 ~~regular salary for the purposes of RCW 41.50.150(2).)~~)

18 "Compensation earnable" for plan II members also includes the  
19 following actual or imputed payments, which are not paid for personal  
20 services:

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

28 (B) In any year in which a member serves in the legislature, the  
29 member shall have the option of having such member's compensation  
30 earnable be the greater of:

31 (I) The compensation earnable the member would have received had  
32 such member not served in the legislature; or

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

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

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

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

9 (F) Compensation that a member receives for being in standby  
10 status. For the purposes of this section, a member is in standby  
11 status when not being paid for time actually worked and the employer  
12 requires the member to be prepared to report immediately for work, if  
13 the need arises, although the need may not arise. Standby compensation  
14 is regular salary for the purposes of RCW 41.50.150(2).

15 (9)(a) "Service" for plan I members, except as provided in RCW  
16 41.40.088, means periods of employment in an eligible position or  
17 positions for one or more employers rendered to any employer for which  
18 compensation is paid, and includes time spent in office as an elected  
19 or appointed official of an employer. Compensation earnable earned in  
20 full time work for seventy hours or more in any given calendar month  
21 shall constitute one service credit month except as provided in RCW  
22 41.40.088. Compensation earnable earned for less than seventy hours in  
23 any calendar month shall constitute one-quarter service credit month of  
24 service except as provided in RCW 41.40.088. Only service credit  
25 months and one-quarter service credit months shall be counted in the  
26 computation of any retirement allowance or other benefit provided for  
27 in this chapter. Any fraction of a year of service shall be taken into  
28 account in the computation of such retirement allowance or benefits.  
29 Time spent in standby status, whether compensated or not, is not  
30 service.

31 (i) Service by a state employee officially assigned by the state on  
32 a temporary basis to assist another public agency, shall be considered  
33 as service as a state employee: PROVIDED, That service to any other  
34 public agency shall not be considered service as a state employee if  
35 such service has been used to establish benefits in any other public  
36 retirement system.

37 (ii) An individual shall receive no more than a total of twelve  
38 service credit months of service during any calendar year. If an  
39 individual is employed in an eligible position by one or more employers



1 the individual shall receive no more than one service credit month  
2 during any calendar month in which multiple service for seventy or more  
3 hours is rendered.

4 (iii) A school district employee may count up to forty-five days of  
5 sick leave as creditable service solely for the purpose of determining  
6 eligibility to retire under RCW 41.40.180 as authorized by RCW  
7 28A.400.300. For purposes of plan I "forty-five days" as used in RCW  
8 28A.400.300 is equal to two service credit months. Use of less than  
9 forty-five days of sick leave is creditable as allowed under this  
10 subsection as follows:

11 (A) Less than twenty-two days equals one-quarter service credit  
12 month;

13 (B) Twenty-two days equals one service credit month;

14 (C) More than twenty-two days but less than forty-five days equals  
15 one and one-quarter service credit month.

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

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

29 (i) Service in any state elective position shall be deemed to be  
30 full time service, except that persons serving in state elective  
31 positions who are members of the teachers' retirement system or law  
32 enforcement officers' and fire fighters' retirement system at the time  
33 of election or appointment to such position may elect to continue  
34 membership in the teachers' retirement system or law enforcement  
35 officers' and fire fighters' retirement system.

36 (ii) A member shall receive a total of not more than twelve service  
37 credit months of service for such calendar year. If an individual is  
38 employed in an eligible position by one or more employers the  
39 individual shall receive no more than one service credit month during

1 any calendar month in which multiple service for ninety or more hours  
2 is rendered.

3 (iii) Up to forty-five days of sick leave may be creditable as  
4 service solely for the purpose of determining eligibility to retire  
5 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of  
6 plan II "forty-five days" as used in RCW 28A.400.300 is equal to two  
7 service credit months. Use of less than forty-five days of sick leave  
8 is creditable as allowed under this subsection as follows:

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

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

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

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

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

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

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

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

23 (13) "Membership service" means:

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

25 (b) All service after October 1, 1947, to any employer prior to the  
26 time of its admission into the retirement system: PROVIDED, That an  
27 amount equal to the employer and employee contributions which would  
28 have been paid to the retirement system on account of such service  
29 shall have been paid to the retirement system with interest (as  
30 computed by the department) on the employee's portion prior to  
31 retirement of such person, by the employee or his or her employer,  
32 except as qualified by RCW 41.40.023: PROVIDED FURTHER, That employer  
33 contributions plus employee contributions with interest submitted by  
34 the employee under this subsection shall be placed in the employee's  
35 individual account in the employees' savings fund and be treated as any  
36 other contribution made by the employee, with the exception that the  
37 contributions submitted by the employee in payment of the employer's  
38 obligation, together with the interest the director may apply to the  
39 employer's contribution, shall be excluded from the calculation of the

1 member's annuity in the event the member selects a benefit with an  
2 annuity option;

3 (c) Service not to exceed six consecutive months of probationary  
4 service rendered after April 1, 1949, and prior to becoming a member,  
5 in the case of any member, upon payment in full by such member of the  
6 total amount of the employer's contribution to the retirement fund  
7 which would have been required under the law in effect when such  
8 probationary service was rendered if the member had been a member  
9 during such period, except that the amount of the employer's  
10 contribution shall be calculated by the director based on the first  
11 month's compensation earnable as a member;

12 (d) Service not to exceed six consecutive months of probationary  
13 service, rendered after October 1, 1947, and before April 1, 1949, and  
14 prior to becoming a member, in the case of any member, upon payment in  
15 full by such member of five percent of such member's salary during said  
16 period of probationary service, except that the amount of the  
17 employer's contribution shall be calculated by the director based on  
18 the first month's compensation earnable as a member.

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

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

25 (15) "Regular interest" means such rate as the director may  
26 determine.

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

31 (17)(a) "Average final compensation" for plan I members, means the  
32 annual average of the greatest compensation earnable by a member during  
33 any consecutive two year period of service credit months for which  
34 service credit is allowed; or if the member has less than two years of  
35 service credit months then the annual average compensation earnable  
36 during the total years of service for which service credit is allowed.

37 (b) "Average final compensation" for plan II members, means the  
38 member's average compensation earnable of the highest consecutive sixty  
39 months of service credit months prior to such member's retirement,

1 termination, or death. Periods constituting authorized leaves of  
2 absence may not be used in the calculation of average final  
3 compensation except under RCW 41.40.710(2).

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

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

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

12 (21) "Retirement allowance" means the sum of the annuity and the  
13 pension.

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

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

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

21 (25) "Eligible position" means:

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

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

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

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

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

1 (29) "Retiree" means any person in receipt of a retirement  
2 allowance or other benefit provided by this chapter resulting from  
3 service rendered to an employer while a member. A person is in receipt  
4 of a retirement allowance as defined in subsection (21) of this section  
5 or other benefit as provided by this chapter when the department mails,  
6 causes to be mailed, or otherwise transmits the retirement allowance  
7 warrant.

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

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

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

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

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

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

24 (36) "Index A" means the index for the year prior to the  
25 determination of a postretirement adjustment.

26 (37) "Index B" means the index for the year prior to index A.

27 (38) "Index year" means the earliest calendar year in which the  
28 index is more than sixty percent of index A.

29 (39) "Adjustment ratio" means the value of index A divided by index  
30 B.

Passed the Senate April 20, 1995.

Passed the House April 14, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.