
HOUSE BILL 2692

State of Washington

59th Legislature

2006 Regular Session

By Representatives Fromhold, Crouse, Conway, Lovick, Quall and Simpson; by request of Select Committee on Pension Policy

Read first time 01/12/2006. Referred to Committee on Appropriations.

1 AN ACT Relating to optional membership and distributions of
2 retirement allowances for certain members of the teachers', school
3 employees', and public employees' retirement systems; amending RCW
4 41.32.263 and 41.35.030; reenacting and amending RCW 41.32.010 and
5 41.40.023; adding a new section to chapter 41.32 RCW; adding a new
6 section to chapter 41.35 RCW; and adding a new section to chapter 41.40
7 RCW.

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

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.32 RCW
10 to read as follows:

11 A member who retires on or after attainment of age seventy and one-
12 half and enters employment with an employer at least one month after
13 his or her accrual date may continue to receive pension payments while
14 engaged in such service without restriction. The retiree is no longer
15 an active member and may not make contributions, or receive service
16 credit, for future periods of employment while receiving his or her
17 retirement allowance. This section does not apply to any member who is
18 a state elected official unless that member leaves elected office or is
19 reappointed or reelected after the effective date of this act.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.35 RCW
2 to read as follows:

3 A member who retires on or after attainment of age seventy and one-
4 half and enters employment with an employer at least one month after
5 his or her accrual date may continue to receive pension payments while
6 engaged in such service without restriction. The retiree is no longer
7 an active member and may not make contributions, or receive service
8 credit, for future periods of employment while receiving his or her
9 retirement allowance. This section does not apply to any member who is
10 a state elected official unless that member leaves elected office or is
11 reappointed or reelected after the effective date of this act.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.40 RCW
13 to read as follows:

14 A member who retires on or after attainment of age seventy and one-
15 half and enters employment with an employer at least one month after
16 his or her accrual date may continue to receive pension payments while
17 engaged in such service without restriction. The retiree is no longer
18 an active member and may not make contributions, or receive service
19 credit, for future periods of employment while receiving his or her
20 retirement allowance. This section does not apply to any member who is
21 a state elected official unless that member leaves elected office or is
22 reappointed or reelected after the effective date of this act.

23 **Sec. 4.** RCW 41.32.010 and 2005 c 131 s 8 and 2005 c 23 s 1 are
24 each reenacted and amended to read as follows:

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

27 (1)(a) "Accumulated contributions" for plan 1 members, means the
28 sum of all regular annuity contributions and, except for the purpose of
29 withdrawal at the time of retirement, any amount paid under RCW
30 41.50.165(2) with regular interest thereon.

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

35 (2) "Actuarial equivalent" means a benefit of equal value when

1 computed upon the basis of such mortality tables and regulations as
2 shall be adopted by the director and regular interest.

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

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

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

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

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

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

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

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

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

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

29 (ii) For an employee member of the retirement system teaching in an
30 extended school year program, two consecutive extended school years, as
31 defined by the employer school district, may be used as the annual
32 period for determining earnable compensation in lieu of the two fiscal
33 years.

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

37 (A) Retroactive payments to an individual by an employer on
38 reinstatement of the employee in a position, or payments by an employer

1 to an individual in lieu of reinstatement in a position which are
2 awarded or granted as the equivalent of the salary or wages which the
3 individual would have earned during a payroll period shall be
4 considered earnable compensation and the individual shall receive the
5 equivalent service credit.

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

18 (iv) For members employed less than full time under written
19 contract with a school district, or community college district, in an
20 instructional position, for which the member receives service credit of
21 less than one year in all of the years used to determine the earnable
22 compensation used for computing benefits due under RCW 41.32.497,
23 41.32.498, and 41.32.520, the member may elect to have earnable
24 compensation defined as provided in RCW 41.32.345. For the purposes of
25 this subsection, the term "instructional position" means a position in
26 which more than seventy-five percent of the member's time is spent as
27 a classroom instructor (including office hours), a librarian, a
28 psychologist, a social worker, a nurse, a physical therapist, an
29 occupational therapist, a speech language pathologist or audiologist,
30 or a 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 (v) "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;

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

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

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

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

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

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

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

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

34 (12) "Fiscal year" means a year which begins July 1st and ends June
35 30th of the following year.

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

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

4 (15) "Member" means any teacher included in the membership of the
5 retirement system who has not been removed from membership under RCW
6 41.32.878 or 41.32.768. Also, any other employee of the public schools
7 who, on July 1, 1947, had not elected to be exempt from membership and
8 who, prior to that date, had by an authorized payroll deduction,
9 contributed to the member reserve.

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

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

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

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

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

29 (21) "Public school" means any institution or activity operated by
30 the state of Washington or any instrumentality or political subdivision
31 thereof employing teachers, except the University of Washington and
32 Washington State University.

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

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

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

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

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

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

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

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

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

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

24 (i) A member employed in an eligible position or as a substitute
25 shall receive one service credit month for each month of September
26 through August of the following year if he or she earns earnable
27 compensation for eight hundred ten or more hours during that period and
28 is employed during nine of those months, except that a member may not
29 receive credit for any period prior to the member's employment in an
30 eligible position except as provided in RCW 41.32.812 and
31 41.50.132((+))_.

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

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

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

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

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

11 (iv) Any person who is a member of the teachers' retirement system
12 and who is elected or appointed to a state elective position may
13 continue to be a member of the retirement system and continue to
14 receive a service credit month for each of the months in a state
15 elective position by making the required member contributions.

16 (v) Any member of the teachers' retirement system plan 2 or plan 3
17 who is elected to the state legislature has the option during a ninety-
18 day period at the beginning of each term of office either to resume
19 membership or to end membership in the retirement system and if
20 otherwise eligible begin their retirement allowance. A state
21 legislator who chooses to end membership at the beginning of a term of
22 office and begin their retirement allowance shall neither make
23 contributions nor earn service credit for the duration of that term.

24 (vi) Any member of the teachers' retirement system plan 2 or plan
25 3 who is elected to a state elective position other than the state
26 legislature has the option during a ninety-day period at the beginning
27 of each term of office either to resume membership or to end membership
28 in the retirement system and if otherwise eligible begin their
29 retirement allowance. A state elected official other than a state
30 legislator who chooses to end membership at the beginning of a term of
31 office and begin their retirement allowance shall neither make
32 contributions nor earn service credit for the duration of that term.

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

37 ((+vi)) (viii) As authorized by RCW 28A.400.300, up to forty-five
38 days of sick leave may be creditable as service solely for the purpose

1 of determining eligibility to retire under RCW 41.32.470. For purposes
2 of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is
3 equal to two service credit months. Use of less than forty-five days
4 of sick leave is creditable as allowed under this subsection as
5 follows:

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

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

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

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

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

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

18 (~~(viii)~~) (x) The department shall adopt rules implementing this
19 subsection.

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

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

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

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

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

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

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

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

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

12 (36) "Substitute teacher" means:

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

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

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

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

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

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

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

36 (39) "Plan 2" means the teachers' retirement system, plan 2
37 providing the benefits and funding provisions covering persons who

1 first became members of the system on and after October 1, 1977, and
2 prior to July 1, 1996.

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

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

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

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

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

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

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

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

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

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

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

33 A member of the retirement system who is a member of the state
34 legislature or a state official eligible for the combined pension and
35 annuity provided by RCW 41.32.497((~~7~~)) or 41.32.498(~~(7) as now or~~
36 ~~hereafter amended~~)) shall have deductions taken from his or her salary
37 in the amount of seven and one-half percent of earnable compensation

1 and that service credit shall be established with the retirement system
2 while such deductions are reported to the retirement system, unless he
3 or she has by reason of his or her employment become a contributing
4 member of another public retirement system in the state of Washington.
5 Such elected official who has retired or otherwise terminated his or
6 her public school service may then elect to terminate his or her
7 membership in the retirement system and receive retirement benefits
8 while continuing to serve as an elected official. A member of the
9 retirement system who had previous service as an elected or appointed
10 official, for which he or she did not contribute to the retirement
11 system, may receive credit for such legislative service unless he or
12 she has received credit for that service in another state retirement
13 system, upon making contributions in such amounts as shall be
14 determined by the (~~board of trustees~~) director.

15 **Sec. 6.** RCW 41.35.030 and 2005 c 131 s 9 are each amended to read
16 as follows:

17 Membership in the retirement system shall consist of all regularly
18 compensated classified employees and appointive and elective officials
19 of employers, as defined in this chapter, with the following
20 exceptions:

21 (1) Persons in ineligible positions;

22 (2)(a) Persons holding elective offices or persons appointed
23 directly by the governor: PROVIDED, That such persons shall have the
24 option of applying for membership during such periods of employment:
25 AND PROVIDED FURTHER, That any persons holding or who have held
26 elective offices or persons appointed by the governor who are members
27 in the retirement system and who have, prior to becoming such members,
28 previously held an elective office, and did not at the start of such
29 initial or successive terms of office exercise their option to become
30 members, may apply for membership to be effective during such term or
31 terms of office, and shall be allowed to establish the service credit
32 applicable to such term or terms of office upon payment of the employee
33 contributions therefor by the employee with interest as determined by
34 the director and employer contributions therefor by the employer or
35 employee with interest as determined by the director: AND PROVIDED
36 FURTHER, That all contributions with interest submitted by the employee
37 under this subsection shall be placed in the employee's individual

1 account in the employee's savings fund and be treated as any other
2 contribution made by the employee, with the exception that any
3 contributions submitted by the employee in payment of the employer's
4 obligation, together with the interest the director may apply to the
5 employer's contribution, shall not be considered part of the member's
6 annuity for any purpose except withdrawal of contributions;

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

19 (c) Any member of the school employees' retirement system plan 2 or
20 plan 3 who is elected to the state legislature has the option during a
21 ninety-day period at the beginning of each term of office either to
22 resume membership or to end membership in the retirement system and if
23 otherwise eligible begin their retirement allowance. A state
24 legislator who chooses to end membership at the beginning of a term of
25 office and begin their retirement allowance shall neither make
26 contributions nor earn service credit for the duration of that term;

27 (d) Any member of the school employees' retirement system plan 2 or
28 plan 3 who is elected to a state elective position other than the state
29 legislature has the option during a ninety-day period at the beginning
30 of each term of office either to resume membership or to end membership
31 in the retirement system and if otherwise eligible begin their
32 retirement allowance. A state elected official other than a state
33 legislator who chooses to end membership at the beginning of a term of
34 office and begin their retirement allowance shall neither make
35 contributions nor earn service credit for the duration of that term;

36 (3) Retirement system retirees: PROVIDED, That following
37 reemployment in an eligible position, a retiree may elect to

1 prospectively become a member of the retirement system if otherwise
2 eligible;

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

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

13 (6) Substitute employees, except for the purposes of the purchase
14 of service credit under RCW 41.35.033. Upon the return or termination
15 of the absent employee a substitute employee is replacing, that
16 substitute employee shall no longer be ineligible under this
17 subsection;

18 (7) Employees who (a) are not citizens of the United States, (b) do
19 not reside in the United States, and (c) perform duties outside of the
20 United States;

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

27 (9) Employees who are citizens of the United States and who reside
28 and perform duties for an employer outside of the United States:
29 PROVIDED, That unless otherwise excluded under this chapter or chapter
30 41.04 RCW, the employee may apply for membership (a) within thirty days
31 after employment in an eligible position and membership service credit
32 shall be granted from the first day of membership service, and (b)
33 after this thirty-day period, but membership service credit shall be
34 granted only if payment is made for the noncredited membership service
35 under RCW 41.50.165(2), otherwise service shall be from the date of
36 application; and

37 (10) Employees who are removed from membership under RCW 41.35.683
38 or 41.35.423.

1 **Sec. 7.** RCW 41.40.023 and 2005 c 151 s 12 and 2005 c 131 s 7 are
2 each reenacted and amended to read as follows:

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

6 (1) Persons in ineligible positions;

7 (2) Employees of the legislature except the officers thereof
8 elected by the members of the senate and the house and legislative
9 committees, unless membership of such employees be authorized by the
10 said committee;

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

33 (b) A member holding elective office other than state elective
34 office who has elected to apply for membership pursuant to (a) of this
35 subsection and who later (~~wishes to be~~) is eligible for a retirement
36 allowance shall have the option of ending his or her membership in the
37 retirement system. A member (~~wishing to end~~) ending his or her
38 membership under this subsection must file, on a form supplied by the

1 department, a statement indicating that the member agrees to
2 irrevocably abandon any claim for service for future periods served as
3 an elected official. A member who receives more than fifteen thousand
4 dollars per year in compensation for his or her elective service,
5 adjusted annually for inflation by the director, is not eligible for
6 the option provided by this subsection (3)(b);

7 (c) Any member of the public employees' retirement system who is
8 elected to the state legislature has the option during a ninety-day
9 period at the beginning of each term of office either to resume
10 membership or to end membership in the retirement system and if
11 otherwise eligible begin their retirement allowance. A state
12 legislator who chooses to end membership at the beginning of a term of
13 office and begin their retirement allowance shall neither make
14 contributions nor earn service credit for the duration of that term;

15 (d) Any member of the public employees' retirement system who is
16 elected to a state elective position other than the state legislature
17 has the option during a ninety-day period at the beginning of each term
18 of office either to resume membership or to end membership in the
19 retirement system and if otherwise eligible begin their retirement
20 allowance. A state elected official other than a state legislator who
21 chooses to end membership at the beginning of a term of office and
22 begin their retirement allowance shall neither make contributions nor
23 earn service credit for the duration of that term;

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

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

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

37 (c) An employee shall not either before or after June 7, 1984, be
38 excluded from membership or denied service credit pursuant to this

1 subsection solely on account of: (i) Membership in the plan created
2 under chapter 2.14 RCW; or (ii) enrollment under the relief and
3 compensation provisions or the pension provisions of the volunteer fire
4 fighters' relief and pension fund under chapter 41.24 RCW;

5 (d) Except as provided in RCW 41.40.109, on or after July 25, 1999,
6 an employee shall not be excluded from membership or denied service
7 credit pursuant to this subsection solely on account of participation
8 in a defined contribution pension plan qualified under section 401 of
9 the internal revenue code;

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

16 (5) Patient and inmate help in state charitable, penal, and
17 correctional institutions;

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

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

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

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

29 (10) Persons appointed after April 1, 1963, by the liquor control
30 board as contract liquor store managers;

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

35 (12) 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 (13) Persons employed by or appointed or elected as an official of
2 a first class city that has its own retirement system: PROVIDED, That
3 any member elected or appointed to an elective office on or after April
4 1, 1971, shall have the option of continuing as a member of this system
5 in lieu of becoming a member of the city system. A member who elects
6 to continue as a member of this system shall pay the appropriate member
7 contributions and the city shall pay the employer contributions at the
8 rates prescribed by this chapter. The city shall also transfer to this
9 system all of such member's accumulated contributions together with
10 such further amounts as necessary to equal all employee and employer
11 contributions which would have been paid into this system on account of
12 such service with the city and thereupon the member shall be granted
13 credit for all such service. Any city that becomes an employer as
14 defined in RCW 41.40.010(4) as the result of an individual's election
15 under this subsection shall not be required to have all employees
16 covered for retirement under the provisions of this chapter. Nothing
17 in this subsection shall prohibit a city of the first class with its
18 own retirement system from: (a) Transferring all of its current
19 employees to the retirement system established under this chapter, or
20 (b) allowing newly hired employees the option of continuing coverage
21 under the retirement system established by this chapter.

22 Notwithstanding any other provision of this chapter, persons
23 transferring from employment with a first class city of over four
24 hundred thousand population that has its own retirement system to
25 employment with the state department of agriculture may elect to remain
26 within the retirement system of such city and the state shall pay the
27 employer contributions for such persons at like rates as prescribed for
28 employers of other members of such system;

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

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

1 (16) Employees who are citizens of the United States and who reside
2 and perform duties for an employer outside of the United States:
3 PROVIDED, That unless otherwise excluded under this chapter or chapter
4 41.04 RCW, the employee may apply for membership (a) within thirty days
5 after employment in an eligible position and membership service credit
6 shall be granted from the first day of membership service, and (b)
7 after this thirty-day period, but membership service credit shall be
8 granted only if payment is made for the noncredited membership service
9 under RCW 41.50.165(2), otherwise service shall be from the date of
10 application;

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

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

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

1 otherwise consistent with the plan's tax qualification status as
2 defined in internal revenue code section 401.

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

7 (19) Persons enrolled in state-approved apprenticeship programs,
8 authorized under chapter 49.04 RCW, and who are employed by local
9 governments to earn hours to complete such apprenticeship programs, if
10 the employee is a member of a union-sponsored retirement plan and is
11 making contributions to such a retirement plan or if the employee is a
12 member of a Taft-Hartley retirement plan;

13 (20) Beginning on July 22, 2001, persons employed exclusively as
14 trainers or trainees in resident apprentice training programs operated
15 by housing authorities authorized under chapter 35.82 RCW, (a) if the
16 trainer or trainee is a member of a union-sponsored retirement plan and
17 is making contributions to such a retirement plan or (b) if the
18 employee is a member of a Taft-Hartley retirement plan; and

19 (21) Employees who are removed from membership under RCW 41.40.823
20 or 41.40.633.

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