
SUBSTITUTE SENATE BILL 5497

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Delvin, Hewitt, Honeyford, Schoesler, McCaslin, Deccio, Mulliken, Morton, Roach, Swecker and Pflug)

READ FIRST TIME 03/03/05.

1 AN ACT Relating to allowing terminally ill members to remove
2 themselves from their retirement plan; amending RCW 41.40.023,
3 41.32.010, and 41.35.030; adding new sections to chapter 41.40 RCW;
4 adding new sections to chapter 41.32 RCW; adding new sections to
5 chapter 41.35 RCW; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.40 RCW
8 under the subchapter heading "plan 3" to read as follows:

9 (1) Upon application of the member, a member who is diagnosed with
10 a terminal illness shall be removed from membership in the system
11 subject to the following conditions:

12 (a) That the medical adviser, after a medical examination of the
13 member made by or under the direction of the medical adviser, has
14 certified in writing that the member has a terminal illness with a life
15 expectancy of five or fewer years; and

16 (b) That the director concurs in the recommendation of the medical
17 adviser.

18 (2) Members removed from the system shall not make contributions

1 toward a defined contribution account as defined in chapter 41.34 RCW
2 and shall not accumulate additional service credit.

3 (3) The legislature reserves the right to amend or repeal this
4 section in the future and no member or beneficiary has a contractual
5 right to this benefit not granted prior to that amendment or repeal.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.32 RCW
7 under the subchapter heading "plan 3" to read as follows:

8 (1) Upon application of the member, a member who is diagnosed with
9 a terminal illness shall be removed from membership in the system
10 subject to the following conditions:

11 (a) That the medical adviser, after a medical examination of the
12 member made by or under the direction of the medical adviser, has
13 certified in writing that the member has a terminal illness with a life
14 expectancy of five or fewer years; and

15 (b) That the director concurs in the recommendation of the medical
16 adviser.

17 (2) Members removed from the system shall not make contributions
18 toward a defined contribution account as defined in chapter 41.34 RCW
19 and shall not accumulate additional service credit.

20 (3) The legislature reserves the right to amend or repeal this
21 section in the future and no member or beneficiary has a contractual
22 right to this benefit not granted prior to that amendment or repeal.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.35 RCW
24 under the subchapter heading "plan 3" to read as follows:

25 (1) Upon application of the member, a member who is diagnosed with
26 a terminal illness shall be removed from membership in the system
27 subject to the following conditions:

28 (a) That the medical adviser, after a medical examination of the
29 member made by or under the direction of the medical adviser, has
30 certified in writing that the member has a terminal illness with a life
31 expectancy of five or fewer years; and

32 (b) That the director concurs in the recommendation of the medical
33 adviser.

34 (2) Members removed from the system shall not make contributions
35 toward a defined contribution account as defined in chapter 41.34 RCW
36 and shall not accumulate additional service credit.

1 (3) The legislature reserves the right to amend or repeal this
2 section in the future and no member or beneficiary has a contractual
3 right to this benefit not granted prior to that amendment or repeal.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.40 RCW
5 under the subchapter heading "plan 2" to read as follows:

6 (1) Upon application of the member, a member who is diagnosed with
7 a terminal illness shall be removed from the system subject to the
8 following conditions:

9 (a) That the medical adviser, after a medical examination of the
10 member made by or under the direction of the medical adviser, has
11 certified in writing that the member has a terminal illness with a life
12 expectancy of five or fewer years; and

13 (b) That the director concurs in the recommendation of the medical
14 adviser.

15 (2) Members removed from the system shall not make contributions
16 and shall not accumulate additional service credit.

17 (3) The legislature reserves the right to amend or repeal this
18 section in the future and no member or beneficiary has a contractual
19 right to this benefit not granted prior to that amendment or repeal.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 41.32 RCW
21 under the subchapter heading "plan 2" to read as follows:

22 (1) Upon application of the member, a member who is diagnosed with
23 a terminal illness shall be removed from the system subject to the
24 following conditions:

25 (a) That the medical adviser, after a medical examination of the
26 member made by or under the direction of the medical adviser, has
27 certified in writing that the member has a terminal illness with a life
28 expectancy of five or fewer years; and

29 (b) That the director concurs in the recommendation of the medical
30 adviser.

31 (2) Members removed from the system shall not make contributions
32 and shall not accumulate additional service credit.

33 (3) The legislature reserves the right to amend or repeal this
34 section in the future and no member or beneficiary has a contractual
35 right to this benefit not granted prior to that amendment or repeal.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.35 RCW
2 under the subchapter heading "plan 2" to read as follows:

3 (1) Upon application of the member, a member who is diagnosed with
4 a terminal illness shall be removed from the system subject to the
5 following conditions:

6 (a) That the medical adviser, after a medical examination of the
7 member made by or under the direction of the medical adviser, has
8 certified in writing that the member has a terminal illness with a life
9 expectancy of five or fewer years; and

10 (b) That the director concurs in the recommendation of the medical
11 adviser.

12 (2) Members removed from the system shall not make contributions
13 and shall not accumulate additional service credit.

14 (3) The legislature reserves the right to amend or repeal this
15 section in the future and no member or beneficiary has a contractual
16 right to this benefit not granted prior to that amendment or repeal.

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

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

22 (1) Persons in ineligible positions;

23 (2) Employees of the legislature except the officers thereof
24 elected by the members of the senate and the house and legislative
25 committees, unless membership of such employees be authorized by the
26 said committee;

27 (3)(a) Persons holding elective offices or persons appointed
28 directly by the governor: PROVIDED, That such persons shall have the
29 option of applying for membership during such periods of employment:
30 AND PROVIDED FURTHER, That any persons holding or who have held
31 elective offices or persons appointed by the governor who are members
32 in the retirement system and who have, prior to becoming such members,
33 previously held an elective office, and did not at the start of such
34 initial or successive terms of office exercise their option to become
35 members, may apply for membership to be effective during such term or
36 terms of office, and shall be allowed to establish the service credit
37 applicable to such term or terms of office upon payment of the employee

1 contributions therefor by the employee with interest as determined by
2 the director and employer contributions therefor by the employer or
3 employee with interest as determined by the director: AND PROVIDED
4 FURTHER, That all contributions with interest submitted by the employee
5 under this subsection shall be placed in the employee's individual
6 account in the employee's savings fund and be treated as any other
7 contribution made by the employee, with the exception that any
8 contributions submitted by the employee in payment of the employer's
9 obligation, together with the interest the director may apply to the
10 employer's contribution, shall not be considered part of the member's
11 annuity for any purpose except withdrawal of contributions;

12 (b) A member holding elective office who has elected to apply for
13 membership pursuant to (a) of this subsection and who later wishes to
14 be eligible for a retirement allowance shall have the option of ending
15 his or her membership in the retirement system. A member wishing to
16 end his or her membership under this subsection must file, on a form
17 supplied by the department, a statement indicating that the member
18 agrees to irrevocably abandon any claim for service for future periods
19 served as an elected official. A member who receives more than fifteen
20 thousand dollars per year in compensation for his or her elective
21 service, adjusted annually for inflation by the director, is not
22 eligible for the option provided by this subsection (3)(b);

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

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

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

36 (c) An employee shall not either before or after June 7, 1984, be
37 excluded from membership or denied service credit pursuant to this
38 subsection solely on account of: (i) Membership in the plan created

1 under chapter 2.14 RCW; or (ii) enrollment under the relief and
2 compensation provisions or the pension provisions of the volunteer fire
3 fighters' relief and pension fund under chapter 41.24 RCW;

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

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

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

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

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

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

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

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

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

34 (12) Retirement system retirees: PROVIDED, That following
35 reemployment in an eligible position, a retiree may elect to
36 prospectively become a member of the retirement system if otherwise
37 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 section 1 or
20 4 of this act.

21 **Sec. 8.** RCW 41.32.010 and 2003 c 31 s 1 are each amended to read
22 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (A) Retroactive payments to an individual by an employer on
34 reinstatement of the employee in a position, or payments by an employer
35 to an individual in lieu of reinstatement in a position which are
36 awarded or granted as the equivalent of the salary or wages which the
37 individual would have earned during a payroll period shall be

1 considered earnable compensation and the individual shall receive the
2 equivalent service credit.

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

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

30 (v) "Earnable compensation" does not include:

31 (A) Remuneration for unused sick leave authorized under RCW
32 41.04.340, 28A.400.210, or 28A.310.490;

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

35 (b) "Earnable compensation" for plan 2 and plan 3 members, means
36 salaries or wages earned by a member during a payroll period for
37 personal services, including overtime payments, and shall include wages
38 and salaries deferred under provisions established pursuant to sections

1 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
2 shall exclude lump sum payments for deferred annual sick leave, unused
3 accumulated vacation, unused accumulated annual leave, or any form of
4 severance pay.

5 "Earnable compensation" for plan 2 and plan 3 members also includes
6 the following actual or imputed payments which, except in the case of
7 (b)(ii)(B) of this subsection, are not paid for personal 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 wages which the
12 individual would have earned during a payroll period shall be
13 considered earnable compensation, to the extent provided above, and the
14 individual shall receive the equivalent service credit.

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

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

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

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

28 (12) "Fiscal year" means a year which begins July 1st and ends June
29 30th of the following year.

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

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

35 (15) "Member" means any teacher included in the membership of the
36 retirement system who has not been removed from membership under
37 section 2 or 5 of this act. Also, any other employee of the public

1 schools who, on July 1, 1947, had not elected to be exempt from
2 membership and who, prior to that date, had by an authorized payroll
3 deduction, contributed to the member reserve.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (iv) Any person who is a member of the teachers' retirement system
5 and who is elected or appointed to a state elective position may
6 continue to be a member of the retirement system and continue to
7 receive a service credit month for each of the months in a state
8 elective position by making the required member contributions.

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

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

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

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

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

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

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

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

31 (viii) The department shall adopt rules implementing this
32 subsection.

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

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

37 (29) "Teacher" means any person qualified to teach who is engaged
38 by a public school in an instructional, administrative, or supervisory

1 capacity. The term includes state, educational service district, and
2 school district superintendents and their assistants and all employees
3 certificated by the superintendent of public instruction; and in
4 addition thereto any full time school doctor who is employed by a
5 public school and renders service of an instructional or educational
6 nature.

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

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

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

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

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

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

24 (36) "Substitute teacher" means:

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

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

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

35 (b) "Eligible position" for plan 2 and plan 3 on and after
36 September 1, 1991, means a position that, as defined by the employer,
37 normally requires five or more months of at least seventy hours of

1 earnable compensation during September through August of the following
2 year.

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

6 (d) The elected position of the superintendent of public
7 instruction is an eligible position.

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

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

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

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

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

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

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

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

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

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

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

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

6 **Sec. 9.** RCW 41.35.030 and 2003 c 157 s 2 are each amended to read
7 as follows:

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

12 (1) Persons in ineligible positions;

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

35 (b) A member holding elective office who has elected to apply for
36 membership pursuant to (a) of this subsection and who later wishes to
37 be eligible for a retirement allowance shall have the option of ending

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

9 (3) Retirement system retirees: PROVIDED, That following
10 reemployment in an eligible position, a retiree may elect to
11 prospectively become a member of the retirement system if otherwise
12 eligible;

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

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

23 (6) Substitute employees, except for the purposes of the purchase
24 of service credit under rcw 41.35.033. Upon the return or termination
25 of the absent employee a substitute employee is replacing, that
26 substitute employee shall no longer be ineligible under this
27 subsection;

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

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

37 (9) Employees who are citizens of the United States and who reside
38 and perform duties for an employer outside of the United States:

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

9 (10) Employees who are removed from membership under section 3 or
10 6 of this act.

11 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately.

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