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SENATE BILL 5497

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State of Washington

59th Legislature

2005 Regular Session

By Senators Delvin, Hewitt, Honeyford, Schoesler, McCaslin, Deccio, Mulliken, Morton, Roach, Swecker and Pflug

Read first time 01/26/2005. Referred to Committee on Ways & Means.

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 and a refund of the  
24 member's accumulated contributions made subject to the following  
25 conditions:

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

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

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

34 (3) The legislature reserves the right to amend or repeal this  
35 section in the future and no member or beneficiary has a contractual  
36 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 and a refund of the  
5 member's accumulated contributions made subject to the following  
6 conditions:

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

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

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

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

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

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

23        (1) Persons in ineligible positions;

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

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

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

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

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 agency vendors;

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 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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