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SENATE BILL 5455

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Zarelli, Tom, and King

Read first time 01/26/11. Referred to Committee on Early Learning & K-12 Education.

1 AN ACT Relating to teacher performance; amending RCW 28A.150.410,  
2 28A.400.200, 28A.405.140, 28A.405.210, 28A.405.220, and 41.35.010;  
3 reenacting and amending RCW 41.32.010 and 41.40.010; adding a new  
4 section to chapter 28A.625 RCW; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.625  
7 RCW to read as follows:

8 (1) The top teacher recognition grant program is established to  
9 encourage excellence in the classroom teaching ranks and to recognize  
10 the most outstanding classroom teachers in Washington state.

11 (2) Subject to available funds provided specifically in the omnibus  
12 appropriations act for this purpose, each educational service district  
13 shall provide a grant to each individual teacher, up to the top two  
14 percent of teachers who are teaching in a school district within the  
15 educational service district, based on merit as determined by the  
16 educational service district.

17 (3) Each grant recipient shall be chosen and certified by the  
18 educational service district board of directors from a list of nominees  
19 submitted by each school district's board of directors. The school

1 district board's nominees shall be selected from a list of candidates  
2 submitted by the school principal using selection criteria and a  
3 process developed by the board after receiving input from the  
4 community.

5 (4) Each two-year grant shall be calculated as the amount of added  
6 funds needed to provide each selected individual teacher a total  
7 salary, consisting of state plus local funding, of an amount equal to  
8 one hundred thousand dollars annually.

9 (5) The grants are not:

10 (a) Subject to the collective bargaining laws established in  
11 chapter 41.59 RCW;

12 (b) Considered salary, compensation, or a supplemental contract for  
13 the purposes of RCW 28A.150.410 and 28A.400.200, and chapter 41.59 RCW;

14 (c) Included for the purposes of computing a retirement allowance  
15 under any public retirement system in this state; or

16 (d) Basic education funding.

17 **Sec. 2.** RCW 28A.150.410 and 2010 c 236 s 10 are each amended to  
18 read as follows:

19 (1)(a) The legislature shall establish for each school year in the  
20 appropriations act a statewide salary allocation schedule, for  
21 allocation purposes only, to be used to distribute funds for basic  
22 education certificated instructional staff salaries under RCW  
23 28A.150.260.

24 (b) For the purposes of this section, the staff allocations for  
25 classroom teachers, teacher librarians, guidance counselors, and  
26 student health services staff under RCW 28A.150.260 are considered  
27 allocations for certificated instructional staff.

28 (c) For purposes of this section, teacher recognition grants  
29 authorized under section 1 of this act are not considered allocations  
30 for certificated instructional staff.

31 (2) Salary allocations for state-funded basic education  
32 certificated instructional staff shall be calculated by the  
33 superintendent of public instruction by determining the district's  
34 average salary for certificated instructional staff, using the  
35 statewide salary allocation schedule and related documents, conditions,  
36 and limitations established by the omnibus appropriations act.

1 (3) Beginning January 1, 1992, no more than ninety college quarter-  
2 hour credits received by any employee after the baccalaureate degree  
3 may be used to determine compensation allocations under the state  
4 salary allocation schedule and LEAP documents referenced in the omnibus  
5 appropriations act, or any replacement schedules and documents, unless:

6 (a) The employee has a master's degree; or

7 (b) The credits were used in generating state salary allocations  
8 before January 1, 1992.

9 (4) Beginning in the 2007-08 school year, the calculation of years  
10 of service for occupational therapists, physical therapists, speech-  
11 language pathologists, audiologists, nurses, social workers,  
12 counselors, and psychologists regulated under Title 18 RCW may include  
13 experience in schools and other nonschool positions as occupational  
14 therapists, physical therapists, speech-language pathologists,  
15 audiologists, nurses, social workers, counselors, or psychologists.  
16 The calculation shall be that one year of service in a nonschool  
17 position counts as one year of service for purposes of this chapter, up  
18 to a limit of two years of nonschool service. Nonschool years of  
19 service included in calculations under this subsection shall not be  
20 applied to service credit totals for purposes of any retirement benefit  
21 under chapter 41.32, 41.35, or 41.40 RCW, or any other state retirement  
22 system benefits.

23 **Sec. 3.** RCW 28A.400.200 and 2010 c 235 s 401 are each amended to  
24 read as follows:

25 (1) Every school district board of directors shall fix, alter,  
26 allow, and order paid salaries and compensation for all district  
27 employees in conformance with this section.

28 (2)(a) Salaries for certificated instructional staff shall not be  
29 less than the salary provided in the appropriations act in the  
30 statewide salary allocation schedule for an employee with a  
31 baccalaureate degree and zero years of service; and

32 (b) Salaries for certificated instructional staff with a master's  
33 degree shall not be less than the salary provided in the appropriations  
34 act in the statewide salary allocation schedule for an employee with a  
35 master's degree and zero years of service.

36 (3)(a) The actual average salary paid to certificated instructional  
37 staff shall not exceed the district's average certificated

1 instructional staff salary used for the state basic education  
2 allocations for that school year as determined pursuant to RCW  
3 28A.150.410.

4 (b) Fringe benefit contributions for certificated instructional  
5 staff shall be included as salary under (a) of this subsection only to  
6 the extent that the district's actual average benefit contribution  
7 exceeds the amount of the insurance benefits allocation provided per  
8 certificated instructional staff unit in the state operating  
9 appropriations act in effect at the time the compensation is payable.  
10 For purposes of this section, fringe benefits shall not include payment  
11 for unused leave for illness or injury under RCW 28A.400.210; employer  
12 contributions for old age survivors insurance, workers' compensation,  
13 unemployment compensation, and retirement benefits under the Washington  
14 state retirement system; or employer contributions for health benefits  
15 in excess of the insurance benefits allocation provided per  
16 certificated instructional staff unit in the state operating  
17 appropriations act in effect at the time the compensation is payable.  
18 A school district may not use state funds to provide employer  
19 contributions for such excess health benefits.

20 (c) Salary and benefits for certificated instructional staff in  
21 programs other than basic education shall be consistent with the salary  
22 and benefits paid to certificated instructional staff in the basic  
23 education program.

24 (4) Salaries and benefits for certificated instructional staff may  
25 exceed the limitations in subsection (3) of this section only by  
26 separate contract for additional time, for additional responsibilities,  
27 for incentives, or for implementing specific measurable innovative  
28 activities, including professional development, specified by the school  
29 district to: (a) Close one or more achievement gaps, (b) focus on  
30 development of science, technology, engineering, and mathematics (STEM)  
31 learning opportunities, or (c) provide arts education. Beginning  
32 September 1, 2011, school districts shall annually provide a brief  
33 description of the innovative activities included in any supplemental  
34 contract to the office of the superintendent of public instruction.  
35 The office of the superintendent of public instruction shall summarize  
36 the district information and submit an annual report to the education  
37 committees of the house of representatives and the senate.  
38 Supplemental contracts shall not cause the state to incur any present

1 or future funding obligation. Supplemental contracts shall be subject  
2 to the collective bargaining provisions of chapter 41.59 RCW and the  
3 provisions of RCW 28A.405.240, shall not exceed one year, and if not  
4 renewed shall not constitute adverse change in accordance with RCW  
5 28A.405.300 through 28A.405.380. No district may enter into a  
6 supplemental contract under this subsection for the provision of  
7 services which are a part of the basic education program required by  
8 Article IX, section 3 of the state Constitution.

9 (5) Employee benefit plans offered by any district shall comply  
10 with RCW 28A.400.350 (~~and~~), 28A.400.275, and 28A.400.280.

11 (6) Teacher recognition grants authorized in section 1 of this act  
12 are not included as salary under this section and may not be included  
13 in salary limitations.

14 **Sec. 4.** RCW 28A.405.140 and 1993 c 336 s 403 are each amended to  
15 read as follows:

16 (1) After an evaluation conducted pursuant to RCW 28A.405.100, the  
17 principal or the evaluator may require the teacher to take in-service  
18 training provided by the district in the area of teaching skills  
19 needing improvement, and may require the teacher to have a mentor for  
20 purposes of achieving such improvement.

21 (2) Notwithstanding the provisions of RCW 28A.405.210 and  
22 28A.405.220, if after three years of unsuccessful improvement based on  
23 the in-service training and mentoring provided pursuant to subsection  
24 (1) of this section and after a finding that the lack of a teacher's  
25 progress in improving his or her teaching skills is detrimental to the  
26 academic performance of the teacher's students, the principal may  
27 initiate an action to dismiss the teacher. In the event the principal  
28 makes this determination, the teacher shall be notified in writing.  
29 The notification must include a detailed explanation of the reasons for  
30 the principal making this determination.

31 (3) Within ten days of receiving notice pursuant to this section,  
32 every teacher receiving such notice, at his or her request, shall be  
33 provided an opportunity to meet informally with the principal for the  
34 purpose of requesting that the principal reconsider his or her  
35 decision. At the meeting, the teacher must be given the opportunity to  
36 refute any facts upon which the principal's determination was made.

1       (4) Within ten days following the meeting with the teacher, the  
2 principal shall either reinstate the teacher or shall submit to the  
3 school district board of directors for consideration at its next  
4 regular meeting a written report recommending that the employment  
5 contract of the teacher be terminated. A copy of the report must be  
6 delivered to the teacher at least ten days before the scheduled meeting  
7 of the board of directors. At the board of directors' meeting, the  
8 teacher must be given the opportunity to present information and  
9 provide documentation refuting any facts upon which the principal's  
10 determination was made.

11       (5) The board of directors shall notify the teacher in writing of  
12 its final decision within ten days following the meeting at which the  
13 principal's recommendation was considered. The decision of the board  
14 of directors to terminate the contract of a teacher pursuant to this  
15 section shall be final and not subject to appeal.

16       (6) All school district collective bargaining agreements signed,  
17 adopted, or renewed after September 1, 2011, shall include provisions  
18 consistent with this section.

19       **Sec. 5.** RCW 28A.405.210 and 2010 c 235 s 303 are each amended to  
20 read as follows:

21       No teacher, principal, supervisor, superintendent, or other  
22 certificated employee, holding a position as such with a school  
23 district, hereinafter referred to as "employee", shall be employed  
24 except by written order of a majority of the directors of the district  
25 at a regular or special meeting thereof, nor unless he or she is the  
26 holder of an effective teacher's certificate or other certificate  
27 required by law or the Washington professional educator standards board  
28 for the position for which the employee is employed.

29       Except as provided in RCW 28A.405.140, the board shall make with  
30 each employee employed by it a written contract, which shall be in  
31 conformity with the laws of this state, and except as otherwise  
32 provided by law, limited to a term of not more than one year. Every  
33 such contract shall be made in duplicate, one copy to be retained by  
34 the school district superintendent or secretary and one copy to be  
35 delivered to the employee. No contract shall be offered by any board  
36 for the employment of any employee who has previously signed an  
37 employment contract for that same term in another school district of

1 the state of Washington unless such employee shall have been released  
2 from his or her obligations under such previous contract by the board  
3 of directors of the school district to which he or she was obligated.  
4 Any contract signed in violation of this provision shall be void.

5 In the event it is determined that there is probable cause or  
6 causes that the employment contract of an employee should not be  
7 renewed by the district for the next ensuing term such employee shall  
8 be notified in writing on or before May 15th preceding the commencement  
9 of such term of that determination, or if the omnibus appropriations  
10 act has not passed the legislature by May 15th, then notification shall  
11 be no later than June 15th, which notification shall specify the cause  
12 or causes for nonrenewal of contract. Such determination of probable  
13 cause for certificated employees, other than the superintendent, shall  
14 be made by the superintendent. Such notice shall be served upon the  
15 employee personally, or by certified or registered mail, or by leaving  
16 a copy of the notice at the house of his or her usual abode with some  
17 person of suitable age and discretion then resident therein. Every  
18 such employee so notified, at his or her request made in writing and  
19 filed with the president, chair or secretary of the board of directors  
20 of the district within ten days after receiving such notice, shall be  
21 granted opportunity for hearing pursuant to RCW 28A.405.310 to  
22 determine whether there is sufficient cause or causes for nonrenewal of  
23 contract: PROVIDED, That any employee receiving notice of nonrenewal  
24 of contract due to an enrollment decline or loss of revenue may, in his  
25 or her request for a hearing, stipulate that initiation of the  
26 arrangements for a hearing officer as provided for by RCW  
27 28A.405.310(4) shall occur within ten days following July 15<sup>th</sup> rather  
28 than the day that the employee submits the request for a hearing. If  
29 any such notification or opportunity for hearing is not timely given,  
30 the employee entitled thereto shall be conclusively presumed to have  
31 been reemployed by the district for the next ensuing term upon  
32 contractual terms identical with those which would have prevailed if  
33 his or her employment had actually been renewed by the board of  
34 directors for such ensuing term.

35 This section shall not be applicable to "provisional employees" as  
36 so designated in RCW 28A.405.220; transfer to a subordinate  
37 certificated position as that procedure is set forth in RCW 28A.405.230

1 or 28A.405.245 shall not be construed as a nonrenewal of contract for  
2 the purposes of this section.

3 **Sec. 6.** RCW 28A.405.220 and 2010 c 235 s 203 are each amended to  
4 read as follows:

5 (1) Notwithstanding the provisions of RCW 28A.405.140 and  
6 28A.405.210, every person employed by a school district in a teaching  
7 or other nonsupervisory certificated position shall be subject to  
8 nonrenewal of employment contract as provided in this section during  
9 the first three years of employment by such district, unless: (a) The  
10 employee has previously completed at least two years of certificated  
11 employment in another school district in the state of Washington, in  
12 which case the employee shall be subject to nonrenewal of employment  
13 contract pursuant to this section during the first year of employment  
14 with the new district; or (b) the school district superintendent may  
15 make a determination to remove an employee from provisional status if  
16 the employee has received one of the top two evaluation ratings during  
17 the second year of employment by the district. Employees as defined in  
18 this section shall hereinafter be referred to as "provisional  
19 employees."

20 (2) In the event the superintendent of the school district  
21 determines that the employment contract of any provisional employee  
22 should not be renewed by the district for the next ensuing term such  
23 provisional employee shall be notified thereof in writing on or before  
24 May 15th preceding the commencement of such school term, or if the  
25 omnibus appropriations act has not passed the legislature by May 15th,  
26 then notification shall be no later than June 15th, which notification  
27 shall state the reason or reasons for such determination. Such notice  
28 shall be served upon the provisional employee personally, or by  
29 certified or registered mail, or by leaving a copy of the notice at the  
30 place of his or her usual abode with some person of suitable age and  
31 discretion then resident therein. The determination of the  
32 superintendent shall be subject to the evaluation requirements of RCW  
33 28A.405.100.

34 (3) Every such provisional employee so notified, at his or her  
35 request made in writing and filed with the superintendent of the  
36 district within ten days after receiving such notice, shall be given  
37 the opportunity to meet informally with the superintendent for the



1 purpose of requesting the superintendent to reconsider his or her  
2 decision. Such meeting shall be held no later than ten days following  
3 the receipt of such request, and the provisional employee shall be  
4 given written notice of the date, time and place of meeting at least  
5 three days prior thereto. At such meeting the provisional employee  
6 shall be given the opportunity to refute any facts upon which the  
7 superintendent's determination was based and to make any argument in  
8 support of his or her request for reconsideration.

9 (4) Within ten days following the meeting with the provisional  
10 employee, the superintendent shall either reinstate the provisional  
11 employee or shall submit to the school district board of directors for  
12 consideration at its next regular meeting a written report recommending  
13 that the employment contract of the provisional employee be nonrenewed  
14 and stating the reason or reasons therefor. A copy of such report  
15 shall be delivered to the provisional employee at least three days  
16 prior to the scheduled meeting of the board of directors. In taking  
17 action upon the recommendation of the superintendent, the board of  
18 directors shall consider any written communication which the  
19 provisional employee may file with the secretary of the board at any  
20 time prior to that meeting.

21 (5) The board of directors shall notify the provisional employee in  
22 writing of its final decision within ten days following the meeting at  
23 which the superintendent's recommendation was considered. The decision  
24 of the board of directors to nonrenew the contract of a provisional  
25 employee shall be final and not subject to appeal.

26 (6) This section applies to any person employed by a school  
27 district in a teaching or other nonsupervisory certificated position  
28 after June 25, 1976. This section provides the exclusive means for  
29 nonrenewing the employment contract of a provisional employee and no  
30 other provision of law shall be applicable thereto, including, without  
31 limitation, RCW 28A.405.210 and chapter 28A.645 RCW.

32 **Sec. 7.** RCW 41.32.010 and 2010 1st sp.s. c 32 s 7 are each  
33 reenacted and amended to read as follows:

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

36 (1)(a) "Accumulated contributions" for plan 1 members, means the

1 sum of all regular annuity contributions and, except for the purpose of  
2 withdrawal at the time of retirement, any amount paid under RCW  
3 41.50.165(2) with regular interest thereon.

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

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

11 (3) "Adjustment ratio" means the value of index A divided by index  
12 B.

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

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

18 (6) "Average final compensation" for plan 2 and plan 3 members,  
19 means the member's average earnable compensation of the highest  
20 consecutive sixty service credit months prior to such member's  
21 retirement, termination, or death. Periods constituting authorized  
22 leaves of absence may not be used in the calculation of average final  
23 compensation except under RCW 41.32.810(2).

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

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

31 (8) "Contract" means any agreement for service and compensation  
32 between a member and an employer.

33 (9) "Creditable service" means membership service plus prior  
34 service for which credit is allowable. This subsection shall apply  
35 only to plan 1 members.

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

1 (11) "Dependent" means receiving one-half or more of support from  
2 a member.

3 (12) "Director" means the director of the department.

4 (13) "Disability allowance" means monthly payments during  
5 disability. This subsection shall apply only to plan 1 members.

6 (14)(a) "Earnable compensation" for plan 1 members, means:

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

12 (ii) For an employee member of the retirement system teaching in an  
13 extended school year program, two consecutive extended school years, as  
14 defined by the employer school district, may be used as the annual  
15 period for determining earnable compensation in lieu of the two fiscal  
16 years.

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

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

27 (B) If a leave of absence, without pay, is taken by a member for  
28 the purpose of serving as a member of the state legislature, and such  
29 member has served in the legislature five or more years, the salary  
30 which would have been received for the position from which the leave of  
31 absence was taken shall be considered as compensation earnable if the  
32 employee's contribution thereon is paid by the employee. In addition,  
33 where a member has been a member of the state legislature for five or  
34 more years, earnable compensation for the member's two highest  
35 compensated consecutive years of service shall include a sum not to  
36 exceed thirty-six hundred dollars for each of such two consecutive  
37 years, regardless of whether or not legislative service was rendered  
38 during those two years.

1 (iv) For members employed less than full time under written  
2 contract with a school district, or community college district, in an  
3 instructional position, for which the member receives service credit of  
4 less than one year in all of the years used to determine the earnable  
5 compensation used for computing benefits due under RCW 41.32.497,  
6 41.32.498, and 41.32.520, the member may elect to have earnable  
7 compensation defined as provided in RCW 41.32.345. For the purposes of  
8 this subsection, the term "instructional position" means a position in  
9 which more than seventy-five percent of the member's time is spent as  
10 a classroom instructor (including office hours), a librarian, a  
11 psychologist, a social worker, a nurse, a physical therapist, an  
12 occupational therapist, a speech language pathologist or audiologist,  
13 or a counselor. Earnable compensation shall be so defined only for the  
14 purpose of the calculation of retirement benefits and only as necessary  
15 to insure that members who receive fractional service credit under RCW  
16 41.32.270 receive benefits proportional to those received by members  
17 who have received full-time service credit.

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

19 (A) Remuneration for unused sick leave authorized under RCW  
20 41.04.340, 28A.400.210, or 28A.310.490;

21 (B) Remuneration for unused annual leave in excess of thirty days  
22 as authorized by RCW 43.01.044 and 43.01.041; or

23 (C) Teacher recognition grants authorized under section 1 of this  
24 act.

25 (b) "Earnable compensation" for plan 2 and plan 3 members, means  
26 salaries or wages earned by a member during a payroll period for  
27 personal services, including overtime payments, and shall include wages  
28 and salaries deferred under provisions established pursuant to sections  
29 403(b), 414(h), and 457 of the United States Internal Revenue Code, but  
30 shall exclude lump sum payments for deferred annual sick leave, unused  
31 accumulated vacation, unused accumulated annual leave, or any form of  
32 severance pay.

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

36 (i) Retroactive payments to an individual by an employer on  
37 reinstatement of the employee in a position or payments by an employer  
38 to an individual in lieu of reinstatement in a position which are

1 awarded or granted as the equivalent of the salary or wages which the  
2 individual would have earned during a payroll period shall be  
3 considered earnable compensation, to the extent provided above, and the  
4 individual shall receive the equivalent service credit.

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

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

10 (B) Such member's actual earnable compensation received for  
11 teaching and legislative service combined. Any additional  
12 contributions to the retirement system required because compensation  
13 earnable under (b)(ii)(A) of this subsection is greater than  
14 compensation earnable under (b)(ii)(B) of this subsection shall be paid  
15 by the member for both member and employer contributions.

16 (c) In calculating earnable compensation under (a) or (b) of this  
17 subsection, the department of retirement systems shall include any  
18 compensation forgone by a member employed by a state agency or  
19 institution during the 2009-2011 fiscal biennium as a result of reduced  
20 work hours, mandatory or voluntary leave without pay, or temporary  
21 layoffs if the reduced compensation is an integral part of the  
22 employer's expenditure reduction efforts, as certified by the employer.

23 (15)(a) "Eligible position" for plan 2 members from June 7, 1990,  
24 through September 1, 1991, means a position which normally requires two  
25 or more uninterrupted months of creditable service during September  
26 through August of the following year.

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

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

35 (d) The elected position of the superintendent of public  
36 instruction is an eligible position.

37 (16) "Employed" or "employee" means a person who is providing  
38 services for compensation to an employer, unless the person is free

1 from the employer's direction and control over the performance of work.  
2 The department shall adopt rules and interpret this subsection  
3 consistent with common law.

4 (17) "Employer" means the state of Washington, the school district,  
5 or any agency of the state of Washington by which the member is paid.

6 (18) "Fiscal year" means a year which begins July 1st and ends June  
7 30th of the following year.

8 (19) "Former state fund" means the state retirement fund in  
9 operation for teachers under chapter 187, Laws of 1923, as amended.

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

14 (21) "Index A" means the index for the year prior to the  
15 determination of a postretirement adjustment.

16 (22) "Index B" means the index for the year prior to index A.

17 (23) "Index year" means the earliest calendar year in which the  
18 index is more than sixty percent of index A.

19 (24) "Local fund" means any of the local retirement funds for  
20 teachers operated in any school district in accordance with the  
21 provisions of chapter 163, Laws of 1917 as amended.

22 (25) "Member" means any teacher included in the membership of the  
23 retirement system who has not been removed from membership under RCW  
24 41.32.878 or 41.32.768. Also, any other employee of the public schools  
25 who, on July 1, 1947, had not elected to be exempt from membership and  
26 who, prior to that date, had by an authorized payroll deduction,  
27 contributed to the member reserve.

28 (26) "Member account" or "member's account" for purposes of plan 3  
29 means the sum of the contributions and earnings on behalf of the member  
30 in the defined contribution portion of plan 3.

31 (27) "Member reserve" means the fund in which all of the  
32 accumulated contributions of members are held.

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

1           (29) "Pension" means the moneys payable per year during life from  
2 the pension reserve.

3           (30) "Pension reserve" is a fund in which shall be accumulated an  
4 actuarial reserve adequate to meet present and future pension  
5 liabilities of the system and from which all pension obligations are to  
6 be paid.

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

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

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

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

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

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

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

33          (38) "Regular interest" means such rate as the director may  
34 determine.

35          (39) "Retiree" means any person who has begun accruing a retirement  
36 allowance or other benefit provided by this chapter resulting from  
37 service rendered to an employer while a member.

1 (40)(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 (41) "Retirement system" means the Washington state teachers'  
8 retirement system.

9 (42) "Separation from service or employment" occurs when a person  
10 has terminated all employment with an employer. Separation from  
11 service or employment does not occur, and if claimed by an employer or  
12 employee may be a violation of RCW 41.32.055, when an employee and  
13 employer have a written or oral agreement to resume employment with the  
14 same employer following termination. Mere expressions or inquiries  
15 about postretirement employment by an employer or employee that do not  
16 constitute a commitment to reemploy the employee after retirement are  
17 not an agreement under this section.

18 (43)(a) "Service" for plan 1 members means the time during which a  
19 member has been employed by an employer for compensation.

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

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

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

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

33 (i) A member employed in an eligible position or as a substitute  
34 shall receive one service credit month for each month of September  
35 through August of the following year if he or she earns earnable  
36 compensation for eight hundred ten or more hours during that period and  
37 is employed during nine of those months, except that a member may not



1 receive credit for any period prior to the member's employment in an  
2 eligible position except as provided in RCW 41.32.812 and 41.50.132.

3 (ii) Any other member employed in an eligible position or as a  
4 substitute who earns earnable compensation during the period from  
5 September through August shall receive service credit according to one  
6 of the following methods, whichever provides the most service credit to  
7 the member:

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

14 (B) If a member is employed in an eligible position or as a  
15 substitute teacher for at least five months of a six-month period  
16 between September through August of the following year and earns  
17 earnable compensation for six hundred thirty or more hours within the  
18 six-month period, he or she will receive a maximum of six service  
19 credit months for the school year, which shall be recorded as one  
20 service credit month for each month of the six-month period;

21 (C) All other members employed in an eligible position or as a  
22 substitute teacher shall receive service credit as follows:

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

25 (II) A half-service credit month is earned in those calendar months  
26 where earnable compensation is earned for at least seventy hours but  
27 less than ninety hours; and

28 (III) A quarter-service credit month is earned in those calendar  
29 months where earnable compensation is earned for less than seventy  
30 hours.

31 (iii) Any person who is a member of the teachers' retirement system  
32 and who is elected or appointed to a state elective position may  
33 continue to be a member of the retirement system and continue to  
34 receive a service credit month for each of the months in a state  
35 elective position by making the required member contributions.

36 (iv) When an individual is employed by two or more employers the  
37 individual shall only receive one month's service credit during any

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

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

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

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

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

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

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

17 (vi) 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 (vii) The department shall adopt rules implementing this  
22 subsection.

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

25 (45) "Service credit year" means an accumulation of months of  
26 service credit which is equal to one when divided by twelve.

27 (46) "State actuary" or "actuary" means the person appointed  
28 pursuant to RCW 44.44.010(2).

29 (47) "State elective position" means any position held by any  
30 person elected or appointed to statewide office or elected or appointed  
31 as a member of the legislature.

32 (48) "Substitute teacher" means:

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

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

1 (49) "Teacher" means any person qualified to teach who is engaged  
2 by a public school in an instructional, administrative, or supervisory  
3 capacity. The term includes state, educational service district, and  
4 school district superintendents and their assistants and all employees  
5 certificated by the superintendent of public instruction; and in  
6 addition thereto any full time school doctor who is employed by a  
7 public school and renders service of an instructional or educational  
8 nature.

9 **Sec. 8.** RCW 41.35.010 and 2003 c 157 s 1 are each amended to read  
10 as follows:

11 The definitions in this section apply throughout this chapter,  
12 unless the context clearly requires otherwise.

13 (1) "Retirement system" means the Washington school employees'  
14 retirement system provided for in this chapter.

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

17 (3) "State treasurer" means the treasurer of the state of  
18 Washington.

19 (4) "Employer," for plan 2 and plan 3 members, means a school  
20 district or an educational service district.

21 (5) "Member" means any employee included in the membership of the  
22 retirement system, as provided for in RCW 41.35.030.

23 (6)(a) "Compensation earnable" for plan 2 and plan 3 members, means  
24 salaries or wages earned by a member during a payroll period for  
25 personal services, including overtime payments, and shall include wages  
26 and salaries deferred under provisions established pursuant to sections  
27 403(b), 414(h), and 457 of the United States internal revenue code(~~(~~  
28 ~~but shall~~)). "Compensation earnable" for plan 2 and plan 3 members  
29 excludes nonmoney maintenance compensation and lump sum or other  
30 payments for deferred annual sick leave(~~(~~); unused accumulated  
31 vacation(~~(~~); unused accumulated annual leave(~~(~~~~or~~); any form of  
32 severance pay; or teacher recognition grants authorized under section  
33 1 of this act.

34 (b) "Compensation earnable" for plan 2 and plan 3 members also  
35 includes the following actual or imputed payments, which are not paid  
36 for personal services:

1 (i) Retroactive payments to an individual by an employer on  
2 reinstatement of the employee in a position, or payments by an employer  
3 to an individual in lieu of reinstatement, which are awarded or granted  
4 as the equivalent of the salary or wage which the individual would have  
5 earned during a payroll period shall be considered compensation  
6 earnable to the extent provided in this subsection, and the individual  
7 shall receive the equivalent service credit;

8 (ii) In any year in which a member serves in the legislature, the  
9 member shall have the option of having such member's compensation  
10 earnable be the greater of:

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

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

19 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,  
20 and 72.09.240;

21 (iv) Compensation that a member would have received but for a  
22 disability occurring in the line of duty only as authorized by RCW  
23 41.40.038;

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

27 (vi) Compensation that a member receives for being in standby  
28 status. For the purposes of this section, a member is in standby  
29 status when not being paid for time actually worked and the employer  
30 requires the member to be prepared to report immediately for work, if  
31 the need arises, although the need may not arise.

32 (7) "Service" for plan 2 and plan 3 members means periods of  
33 employment by a member in an eligible position or positions for one or  
34 more employers for which compensation earnable is paid. Compensation  
35 earnable earned for ninety or more hours in any calendar month shall  
36 constitute one service credit month except as provided in RCW  
37 41.35.180. Compensation earnable earned for at least seventy hours but  
38 less than ninety hours in any calendar month shall constitute one-half

1 service credit month of service. Compensation earnable earned for less  
2 than seventy hours in any calendar month shall constitute one-quarter  
3 service credit month of service. Time spent in standby status, whether  
4 compensated or not, is not service.

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

7 (a) Service in any state elective position shall be deemed to be  
8 full-time service.

9 (b) A member shall receive a total of not more than twelve service  
10 credit months of service for such calendar year. If an individual is  
11 employed in an eligible position by one or more employers the  
12 individual shall receive no more than one service credit month during  
13 any calendar month in which multiple service for ninety or more hours  
14 is rendered.

15 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW  
16 28A.400.300 is equal to two service credit months. Use of less than  
17 forty-five days of sick leave is creditable as allowed under this  
18 subsection as follows:

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

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

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

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

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

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

29 (9) "Service credit month" means a month or an accumulation of  
30 months of service credit which is equal to one.

31 (10) "Membership service" means all service rendered as a member.

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

36 (12) "Regular interest" means such rate as the director may  
37 determine.

1 (13) "Accumulated contributions" means the sum of all contributions  
2 standing to the credit of a member in the member's individual account,  
3 including any amount paid under RCW 41.50.165(2), together with the  
4 regular interest thereon.

5 (14) "Average final compensation" for plan 2 and plan 3 members  
6 means the member's average compensation earnable of the highest  
7 consecutive sixty months of service credit months prior to such  
8 member's retirement, termination, or death. Periods constituting  
9 authorized leaves of absence may not be used in the calculation of  
10 average final compensation except under RCW 41.40.710(2).

11 (15) "Final compensation" means the annual rate of compensation  
12 earnable by a member at the time of termination of employment.

13 (16) "Annuity" means payments for life derived from accumulated  
14 contributions of a member. All annuities shall be paid in monthly  
15 installments.

16 (17) "Pension" means payments for life derived from contributions  
17 made by the employer. All pensions shall be paid in monthly  
18 installments.

19 (18) "Retirement allowance" for plan 2 and plan 3 members means  
20 monthly payments to a retiree or beneficiary as provided in this  
21 chapter.

22 (19) "Employee" or "employed" means a person who is providing  
23 services for compensation to an employer, unless the person is free  
24 from the employer's direction and control over the performance of work.  
25 The department shall adopt rules and interpret this subsection  
26 consistent with common law.

27 (20) "Actuarial equivalent" means a benefit of equal value when  
28 computed upon the basis of such mortality and other tables as may be  
29 adopted by the director.

30 (21) "Retirement" means withdrawal from active service with a  
31 retirement allowance as provided by this chapter.

32 (22) "Eligible position" means any position that, as defined by the  
33 employer, normally requires five or more months of service a year for  
34 which regular compensation for at least seventy hours is earned by the  
35 occupant thereof. For purposes of this chapter an employer shall not  
36 define "position" in such a manner that an employee's monthly work for  
37 that employer is divided into more than one position.

1 (23) "Ineligible position" means any position which does not  
2 conform with the requirements set forth in subsection (22) of this  
3 section.

4 (24) "Leave of absence" means the period of time a member is  
5 authorized by the employer to be absent from service without being  
6 separated from membership.

7 (25) "Retiree" means any person who has begun accruing a retirement  
8 allowance or other benefit provided by this chapter resulting from  
9 service rendered to an employer while a member.

10 (26) "Director" means the director of the department.

11 (27) "State elective position" means any position held by any  
12 person elected or appointed to statewide office or elected or appointed  
13 as a member of the legislature.

14 (28) "State actuary" or "actuary" means the person appointed  
15 pursuant to RCW 44.44.010(2).

16 (29) "Plan 2" means the Washington school employees' retirement  
17 system plan 2 providing the benefits and funding provisions covering  
18 persons who first became members of the public employees' retirement  
19 system on and after October 1, 1977, and transferred to the Washington  
20 school employees' retirement system under RCW 41.40.750.

21 (30) "Plan 3" means the Washington school employees' retirement  
22 system plan 3 providing the benefits and funding provisions covering  
23 persons who first became members of the system on and after September  
24 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

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

29 (32) "Index A" means the index for the year prior to the  
30 determination of a postretirement adjustment.

31 (33) "Index B" means the index for the year prior to index A.

32 (34) "Adjustment ratio" means the value of index A divided by index  
33 B.

34 (35) "Separation from service" occurs when a person has terminated  
35 all employment with an employer.

36 (36) "Member account" or "member's account" for purposes of plan 3  
37 means the sum of the contributions and earnings on behalf of the member  
38 in the defined contribution portion of plan 3.

1 (37) "Classified employee" means an employee of a school district  
2 or an educational service district who is not eligible for membership  
3 in the teachers' retirement system established under chapter 41.32 RCW.

4 (38) "Substitute employee" means a classified employee who is  
5 employed by an employer exclusively as a substitute for an absent  
6 employee.

7 **Sec. 9.** RCW 41.40.010 and 2009 c 430 s 1 are each reenacted and  
8 amended to read as follows:

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

11 (1) "Accumulated contributions" means the sum of all contributions  
12 standing to the credit of a member in the member's individual account,  
13 including any amount paid under RCW 41.50.165(2), together with the  
14 regular interest thereon.

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

18 (3) "Adjustment ratio" means the value of index A divided by index  
19 B.

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

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

26 (6)(a) "Average final compensation" for plan 1 members, means the  
27 annual average of the greatest compensation earnable by a member during  
28 any consecutive two year period of service credit months for which  
29 service credit is allowed; or if the member has less than two years of  
30 service credit months then the annual average compensation earnable  
31 during the total years of service for which service credit is allowed.

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



1 average final compensation except under RCW 41.40.710(2) or (c) of this  
2 subsection.

3 (c) In calculating average final compensation under this subsection  
4 for a member of plan 1, 2, or 3, the department of retirement systems  
5 shall include any compensation forgone by the member during the 2009-  
6 2011 fiscal biennium as a result of reduced work hours, voluntary leave  
7 without pay, or temporary furloughs if the reduced compensation is an  
8 integral part of the employer's expenditure reduction efforts, as  
9 certified by the employer.

10 (7)(a) "Beneficiary" for plan 1 members, means any person in  
11 receipt of a retirement allowance, pension or other benefit provided by  
12 this chapter.

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

17 (8)(a) "Compensation earnable" for plan 1 members, means salaries  
18 or wages earned during a payroll period for personal services and where  
19 the compensation is not all paid in money, maintenance compensation  
20 shall be included upon the basis of the schedules established by the  
21 member's employer.

22 (i) "Compensation earnable" for plan 1 members also includes the  
23 following actual or imputed payments, which are not paid for personal  
24 services:

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

32 (B) If a leave of absence is taken by an individual for the purpose  
33 of serving in the state legislature, the salary which would have been  
34 received for the position from which the leave of absence was taken,  
35 shall be considered as compensation earnable if the employee's  
36 contribution is paid by the employee and the employer's contribution is  
37 paid by the employer or employee;

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

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

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

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

14 (ii) "Compensation earnable" does not include:

15 (A) Remuneration for unused sick leave authorized under RCW  
16 41.04.340, 28A.400.210, or 28A.310.490;

17 (B) Remuneration for unused annual leave in excess of thirty days  
18 as authorized by RCW 43.01.044 and 43.01.041; or

19 (C) Teacher recognition grants authorized under section 1 of this  
20 act.

21 (b) "Compensation earnable" for plan 2 and plan 3 members, means  
22 salaries or wages earned by a member during a payroll period for  
23 personal services, including overtime payments, and shall include wages  
24 and salaries deferred under provisions established pursuant to sections  
25 403(b), 414(h), and 457 of the United States Internal Revenue Code, but  
26 shall exclude nonmoney maintenance compensation and lump sum or other  
27 payments for deferred annual sick leave, unused accumulated vacation,  
28 unused accumulated annual leave, or any form of severance pay.

29 "Compensation earnable" for plan 2 and plan 3 members also includes  
30 the following actual or imputed payments, which are not paid for  
31 personal services:

32 (i) Retroactive payments to an individual by an employer on  
33 reinstatement of the employee in a position, or payments by an employer  
34 to an individual in lieu of reinstatement in a position which are  
35 awarded or granted as the equivalent of the salary or wage which the  
36 individual would have earned during a payroll period shall be  
37 considered compensation earnable to the extent provided above, and the  
38 individual shall receive the equivalent service credit;

1 (ii) In any year in which a member serves in the legislature, the  
2 member shall have the option of having such member's compensation  
3 earnable be the greater of:

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

6 (B) Such member's actual compensation earnable received for  
7 nonlegislative public employment and legislative service combined. Any  
8 additional contributions to the retirement system required because  
9 compensation earnable under (b)(ii)(A) of this subsection is greater  
10 than compensation earnable under (b)(ii)(B) of this subsection shall be  
11 paid by the member for both member and employer contributions;

12 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,  
13 and 72.09.240;

14 (iv) Compensation that a member would have received but for a  
15 disability occurring in the line of duty only as authorized by RCW  
16 41.40.038;

17 (v) Compensation that a member receives due to participation in the  
18 leave sharing program only as authorized by RCW 41.04.650 through  
19 41.04.670; and

20 (vi) Compensation that a member receives for being in standby  
21 status. For the purposes of this section, a member is in standby  
22 status when not being paid for time actually worked and the employer  
23 requires the member to be prepared to report immediately for work, if  
24 the need arises, although the need may not arise.

25 (9) "Department" means the department of retirement systems created  
26 in chapter 41.50 RCW.

27 (10) "Director" means the director of the department.

28 (11) "Eligible position" means:

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

35 (b) Any position occupied by an elected official or person  
36 appointed directly by the governor, or appointed by the chief justice  
37 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which  
38 compensation is paid.

1 (12) "Employee" or "employed" 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 (13)(a) "Employer" for plan 1 members, means every branch,  
7 department, agency, commission, board, and office of the state, any  
8 political subdivision or association of political subdivisions of the  
9 state admitted into the retirement system, and legal entities  
10 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the  
11 term shall also include any labor guild, association, or organization  
12 the membership of a local lodge or division of which is comprised of at  
13 least forty percent employees of an employer (other than such labor  
14 guild, association, or organization) within this chapter. The term may  
15 also include any city of the first class that has its own retirement  
16 system.

17 (b) "Employer" for plan 2 and plan 3 members, means every branch,  
18 department, agency, commission, board, and office of the state, and any  
19 political subdivision and municipal corporation of the state admitted  
20 into the retirement system, including public agencies created pursuant  
21 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August  
22 31, 2000, school districts and educational service districts will no  
23 longer be employers for the public employees' retirement system plan 2.

24 (14) "Final compensation" means the annual rate of compensation  
25 earnable by a member at the time of termination of employment.

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

30 (16) "Index A" means the index for the year prior to the  
31 determination of a postretirement adjustment.

32 (17) "Index B" means the index for the year prior to index A.

33 (18) "Index year" means the earliest calendar year in which the  
34 index is more than sixty percent of index A.

35 (19) "Ineligible position" means any position which does not  
36 conform with the requirements set forth in subsection (11) of this  
37 section.

1 (20) "Leave of absence" means the period of time a member is  
2 authorized by the employer to be absent from service without being  
3 separated from membership.

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

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

12 (23) "Membership service" means:

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

14 (b) All service after October 1, 1947, to any employer prior to the  
15 time of its admission into the retirement system for which member and  
16 employer contributions, plus interest as required by RCW 41.50.125,  
17 have been paid under RCW 41.40.056 or 41.40.057;

18 (c) Service not to exceed six consecutive months of probationary  
19 service rendered after April 1, 1949, and prior to becoming a member,  
20 in the case of any member, upon payment in full by such member of the  
21 total amount of the employer's contribution to the retirement fund  
22 which would have been required under the law in effect when such  
23 probationary service was rendered if the member had been a member  
24 during such period, except that the amount of the employer's  
25 contribution shall be calculated by the director based on the first  
26 month's compensation earnable as a member;

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

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

36 (25) "Original member" of this retirement system means:

37 (a) Any person who became a member of the system prior to April 1,  
38 1949;

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

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

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

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

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

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

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

35 (28) "Plan 2" means the public employees' retirement system, plan  
36 2 providing the benefits and funding provisions covering persons who  
37 first became members of the system on and after October 1, 1977, and  
38 are not included in plan 3.

1 (29) "Plan 3" means the public employees' retirement system, plan  
2 3 providing the benefits and funding provisions covering persons who:  
3 (a) First become a member on or after:  
4 (i) March 1, 2002, and are employed by a state agency or institute  
5 of higher education and who did not choose to enter plan 2; or  
6 (ii) September 1, 2002, and are employed by other than a state  
7 agency or institute of higher education and who did not choose to enter  
8 plan 2; or  
9 (b) Transferred to plan 3 under RCW 41.40.795.

10 (30) "Prior service" means all service of an original member  
11 rendered to any employer prior to October 1, 1947.

12 (31) "Regular interest" means such rate as the director may  
13 determine.

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

17 (33) "Retirement" means withdrawal from active service with a  
18 retirement allowance as provided by this chapter.

19 (34) "Retirement allowance" means the sum of the annuity and the  
20 pension.

21 (35) "Retirement system" means the public employees' retirement  
22 system provided for in this chapter.

23 (36) "Separation from service" occurs when a person has terminated  
24 all employment with an employer. Separation from service or employment  
25 does not occur, and if claimed by an employer or employee may be a  
26 violation of RCW 41.40.055, when an employee and employer have a  
27 written or oral agreement to resume employment with the same employer  
28 following termination. Mere expressions or inquiries about  
29 postretirement employment by an employer or employee that do not  
30 constitute a commitment to reemploy the employee after retirement are  
31 not an agreement under this subsection.

32 (37)(a) "Service" for plan 1 members, except as provided in RCW  
33 41.40.088, means periods of employment in an eligible position or  
34 positions for one or more employers rendered to any employer for which  
35 compensation is paid, and includes time spent in office as an elected  
36 or appointed official of an employer. Compensation earnable earned in  
37 full time work for seventy hours or more in any given calendar month  
38 shall constitute one service credit month except as provided in RCW

1 41.40.088. Compensation earnable earned for less than seventy hours in  
2 any calendar month shall constitute one-quarter service credit month of  
3 service except as provided in RCW 41.40.088. Only service credit  
4 months and one-quarter service credit months shall be counted in the  
5 computation of any retirement allowance or other benefit provided for  
6 in this chapter. Any fraction of a year of service shall be taken into  
7 account in the computation of such retirement allowance or benefits.  
8 Time spent in standby status, whether compensated or not, is not  
9 service.

10 (i) Service by a state employee officially assigned by the state on  
11 a temporary basis to assist another public agency, shall be considered  
12 as service as a state employee: PROVIDED, That service to any other  
13 public agency shall not be considered service as a state employee if  
14 such service has been used to establish benefits in any other public  
15 retirement system.

16 (ii) An individual shall receive no more than a total of twelve  
17 service credit months of service during any calendar year. If an  
18 individual is employed in an eligible position by one or more employers  
19 the individual shall receive no more than one service credit month  
20 during any calendar month in which multiple service for seventy or more  
21 hours is rendered.

22 (iii) A school district employee may count up to forty-five days of  
23 sick leave as creditable service solely for the purpose of determining  
24 eligibility to retire under RCW 41.40.180 as authorized by RCW  
25 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW  
26 28A.400.300 is equal to two service credit months. Use of less than  
27 forty-five days of sick leave is creditable as allowed under this  
28 subsection as follows:

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

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

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

34 (b) "Service" for plan 2 and plan 3 members, means periods of  
35 employment by a member in an eligible position or positions for one or  
36 more employers for which compensation earnable is paid. Compensation  
37 earnable earned for ninety or more hours in any calendar month shall  
38 constitute one service credit month except as provided in RCW



1 41.40.088. Compensation earnable earned for at least seventy hours but  
2 less than ninety hours in any calendar month shall constitute one-half  
3 service credit month of service. Compensation earnable earned for less  
4 than seventy hours in any calendar month shall constitute one-quarter  
5 service credit month of service. Time spent in standby status, whether  
6 compensated or not, is not service.

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

9 (i) Service in any state elective position shall be deemed to be  
10 full time service, except that persons serving in state elective  
11 positions who are members of the Washington school employees'  
12 retirement system, teachers' retirement system, public safety  
13 employees' retirement system, or law enforcement officers' and  
14 firefighters' retirement system at the time of election or appointment  
15 to such position may elect to continue membership in the Washington  
16 school employees' retirement system, teachers' retirement system,  
17 public safety employees' retirement system, or law enforcement  
18 officers' and firefighters' retirement system.

19 (ii) A member shall receive a total of not more than twelve service  
20 credit months of service for such calendar year. If an individual is  
21 employed in an eligible position by one or more employers the  
22 individual shall receive no more than one service credit month during  
23 any calendar month in which multiple service for ninety or more hours  
24 is rendered.

25 (iii) Up to forty-five days of sick leave may be creditable as  
26 service solely for the purpose of determining eligibility to retire  
27 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of  
28 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal  
29 to two service credit months. Use of less than forty-five days of sick  
30 leave is creditable as allowed under this subsection as follows:

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

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

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

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

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

1 (38) "Service credit month" means a month or an accumulation of  
2 months of service credit which is equal to one.

3 (39) "Service credit year" means an accumulation of months of  
4 service credit which is equal to one when divided by twelve.

5 (40) "State actuary" or "actuary" means the person appointed  
6 pursuant to RCW 44.44.010(2).

7 (41) "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 (42) "State treasurer" means the treasurer of the state of  
11 Washington.

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

15 NEW SECTION. **Sec. 10.** This act takes effect September 1, 2011.

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