
SENATE BILL 5882

State of Washington 62nd Legislature 2011 Regular Session

By Senators Schoesler, Fraser, and Conway

Read first time 03/23/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to determining average salary for the pension
2 purposes of local government employees as certified by their employer;
3 amending RCW 41.26.030; reenacting and amending RCW 41.37.010 and
4 41.40.010; providing an effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 41.26.030 and 2010 2nd sp.s. c 1 s 903 are each
7 amended to read as follows:

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

10 (1) "Accumulated contributions" means the employee's contributions
11 made by a member, including any amount paid under RCW 41.50.165(2),
12 plus accrued interest credited thereon.

13 (2) "Actuarial reserve" means a method of financing a pension or
14 retirement plan wherein reserves are accumulated as the liabilities for
15 benefit payments are incurred in order that sufficient funds will be
16 available on the date of retirement of each member to pay the member's
17 future benefits during the period of retirement.

18 (3) "Actuarial valuation" means a mathematical determination of the
19 financial condition of a retirement plan. It includes the computation

1 of the present monetary value of benefits payable to present members,
2 and the present monetary value of future employer and employee
3 contributions, giving effect to mortality among active and retired
4 members and also to the rates of disability, retirement, withdrawal
5 from service, salary and interest earned on investments.

6 (4)(a) "Basic salary" for plan 1 members, means the basic monthly
7 rate of salary or wages, including longevity pay but not including
8 overtime earnings or special salary or wages, upon which pension or
9 retirement benefits will be computed and upon which employer
10 contributions and salary deductions will be based.

11 (b) "Basic salary" for plan 2 members, means salaries or wages
12 earned by a member during a payroll period for personal services,
13 including overtime payments, and shall include wages and salaries
14 deferred under provisions established pursuant to sections 403(b),
15 414(h), and 457 of the United States Internal Revenue Code, but shall
16 exclude lump sum payments for deferred annual sick leave, unused
17 accumulated vacation, unused accumulated annual leave, or any form of
18 severance pay. In any year in which a member serves in the legislature
19 the member shall have the option of having such member's basic salary
20 be the greater of:

21 (i) The basic salary the member would have received had such member
22 not served in the legislature; or

23 (ii) Such member's actual basic salary received for nonlegislative
24 public employment and legislative service combined. Any additional
25 contributions to the retirement system required because basic salary
26 under (b)(i) of this subsection is greater than basic salary under
27 (b)(ii) of this subsection shall be paid by the member for both member
28 and employer contributions.

29 (5)(a) "Beneficiary" for plan 1 members, means any person in
30 receipt of a retirement allowance, disability allowance, death benefit,
31 or any other benefit described herein.

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

35 (6)(a) "Child" or "children" means an unmarried person who is under
36 the age of eighteen or mentally or physically disabled as determined by
37 the department, except a person who is disabled and in the full time
38 care of a state institution, who is:

1 (i) A natural born child;
2 (ii) A stepchild where that relationship was in existence prior to
3 the date benefits are payable under this chapter;
4 (iii) A posthumous child;
5 (iv) A child legally adopted or made a legal ward of a member prior
6 to the date benefits are payable under this chapter; or
7 (v) An illegitimate child legitimized prior to the date any
8 benefits are payable under this chapter.

9 (b) A person shall also be deemed to be a child up to and including
10 the age of twenty years and eleven months while attending any high
11 school, college, or vocational or other educational institution
12 accredited, licensed, or approved by the state, in which it is located,
13 including the summer vacation months and all other normal and regular
14 vacation periods at the particular educational institution after which
15 the child returns to school.

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

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

19 (9) "Disability board" for plan 1 members means either the county
20 disability board or the city disability board established in RCW
21 41.26.110.

22 (10) "Disability leave" means the period of six months or any
23 portion thereof during which a member is on leave at an allowance equal
24 to the member's full salary prior to the commencement of disability
25 retirement. The definition contained in this subsection shall apply
26 only to plan 1 members.

27 (11) "Disability retirement" for plan 1 members, means the period
28 following termination of a member's disability leave, during which the
29 member is in receipt of a disability retirement allowance.

30 (12) "Domestic partners" means two adults who have registered as
31 domestic partners under RCW 26.60.020.

32 (13) "Employee" means any law enforcement officer or firefighter as
33 defined in subsections (16) and (18) of this section.

34 (14)(a) "Employer" for plan 1 members, means the legislative
35 authority of any city, town, county, or district or the elected
36 officials of any municipal corporation that employs any law enforcement
37 officer and/or firefighter, any authorized association of such
38 municipalities, and, except for the purposes of RCW 41.26.150, any

1 labor guild, association, or organization, which represents the
2 firefighters or law enforcement officers of at least seven cities of
3 over 20,000 population and the membership of each local lodge or
4 division of which is composed of at least sixty percent law enforcement
5 officers or firefighters as defined in this chapter.

6 (b) "Employer" for plan 2 members, means the following entities to
7 the extent that the entity employs any law enforcement officer and/or
8 firefighter:

9 (i) The legislative authority of any city, town, county, or
10 district;

11 (ii) The elected officials of any municipal corporation;

12 (iii) The governing body of any other general authority law
13 enforcement agency; or

14 (iv) A four-year institution of higher education having a fully
15 operational fire department as of January 1, 1996.

16 (15)(a) "Final average salary" for plan 1 members, means (i) for a
17 member holding the same position or rank for a minimum of twelve months
18 preceding the date of retirement, the basic salary attached to such
19 same position or rank at time of retirement; (ii) for any other member,
20 including a civil service member who has not served a minimum of twelve
21 months in the same position or rank preceding the date of retirement,
22 the average of the greatest basic salaries payable to such member
23 during any consecutive twenty-four month period within such member's
24 last ten years of service for which service credit is allowed, computed
25 by dividing the total basic salaries payable to such member during the
26 selected twenty-four month period by twenty-four; (iii) in the case of
27 disability of any member, the basic salary payable to such member at
28 the time of disability retirement; (iv) in the case of a member who
29 hereafter vests pursuant to RCW 41.26.090, the basic salary payable to
30 such member at the time of vesting.

31 (b) "Final average salary" for plan 2 members, means the monthly
32 average of the member's basic salary for the highest consecutive sixty
33 service credit months of service prior to such member's retirement,
34 termination, or death. Periods constituting authorized unpaid leaves
35 of absence may not be used in the calculation of final average salary.

36 (c) In calculating final average salary under (a) or (b) of this
37 subsection, the department of retirement systems shall include:

1 (i) Any compensation forgone by a member employed by a state agency
2 or institution during the 2009-2011 fiscal biennium as a result of
3 reduced work hours, mandatory or voluntary leave without pay, temporary
4 reduction in pay implemented prior to December 11, 2010, or temporary
5 layoffs if the reduced compensation is an integral part of the
6 employer's expenditure reduction efforts, as certified by the employer;
7 and

8 (ii) Any compensation forgone by a member employed by a local
9 government employer during the 2011-2013 fiscal biennium as a result of
10 reduced work hours, mandatory or voluntary leave without pay, temporary
11 layoffs, or reductions to current pay if the reduced compensation is an
12 integral part of the employer's expenditure reduction efforts, as
13 certified by the employer. Reductions to current pay shall not include
14 elimination of previously agreed upon future salary increases.

15 (16) "Firefighter" means:

16 (a) Any person who is serving on a full time, fully compensated
17 basis as a member of a fire department of an employer and who is
18 serving in a position which requires passing a civil service
19 examination for firefighter, and who is actively employed as such;

20 (b) Anyone who is actively employed as a full time firefighter
21 where the fire department does not have a civil service examination;

22 (c) Supervisory firefighter personnel;

23 (d) Any full time executive secretary of an association of fire
24 protection districts authorized under RCW 52.12.031. The provisions of
25 this subsection (16)(d) shall not apply to plan 2 members;

26 (e) The executive secretary of a labor guild, association or
27 organization (which is an employer under subsection (14) of this
28 section), if such individual has five years previous membership in a
29 retirement system established in chapter 41.16 or 41.18 RCW. The
30 provisions of this subsection (16)(e) shall not apply to plan 2
31 members;

32 (f) Any person who is serving on a full time, fully compensated
33 basis for an employer, as a fire dispatcher, in a department in which,
34 on March 1, 1970, a dispatcher was required to have passed a civil
35 service examination for firefighter;

36 (g) Any person who on March 1, 1970, was employed on a full time,
37 fully compensated basis by an employer, and who on May 21, 1971, was

1 making retirement contributions under the provisions of chapter 41.16
2 or 41.18 RCW; and

3 (h) Any person who is employed on a full-time, fully compensated
4 basis by an employer as an emergency medical technician.

5 (17) "General authority law enforcement agency" means any agency,
6 department, or division of a municipal corporation, political
7 subdivision, or other unit of local government of this state, and any
8 agency, department, or division of state government, having as its
9 primary function the detection and apprehension of persons committing
10 infractions or violating the traffic or criminal laws in general, but
11 not including the Washington state patrol. Such an agency, department,
12 or division is distinguished from a limited authority law enforcement
13 agency having as one of its functions the apprehension or detection of
14 persons committing infractions or violating the traffic or criminal
15 laws relating to limited subject areas, including but not limited to,
16 the state departments of natural resources and social and health
17 services, the state gambling commission, the state lottery commission,
18 the state parks and recreation commission, the state utilities and
19 transportation commission, the state liquor control board, and the
20 state department of corrections.

21 (18) "Law enforcement officer" beginning January 1, 1994, means any
22 person who is commissioned and employed by an employer on a full time,
23 fully compensated basis to enforce the criminal laws of the state of
24 Washington generally, with the following qualifications:

25 (a) No person who is serving in a position that is basically
26 clerical or secretarial in nature, and who is not commissioned shall be
27 considered a law enforcement officer;

28 (b) Only those deputy sheriffs, including those serving under a
29 different title pursuant to county charter, who have successfully
30 completed a civil service examination for deputy sheriff or the
31 equivalent position, where a different title is used, and those persons
32 serving in unclassified positions authorized by RCW 41.14.070 except a
33 private secretary will be considered law enforcement officers;

34 (c) Only such full time commissioned law enforcement personnel as
35 have been appointed to offices, positions, or ranks in the police
36 department which have been specifically created or otherwise expressly
37 provided for and designated by city charter provision or by ordinance

1 enacted by the legislative body of the city shall be considered city
2 police officers;

3 (d) The term "law enforcement officer" also includes the executive
4 secretary of a labor guild, association or organization (which is an
5 employer under subsection (14) of this section) if that individual has
6 five years previous membership in the retirement system established in
7 chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not
8 apply to plan 2 members; and

9 (e) The term "law enforcement officer" also includes a person
10 employed on or after January 1, 1993, as a public safety officer or
11 director of public safety, so long as the job duties substantially
12 involve only either police or fire duties, or both, and no other duties
13 in a city or town with a population of less than ten thousand. The
14 provisions of this subsection (18)(e) shall not apply to any public
15 safety officer or director of public safety who is receiving a
16 retirement allowance under this chapter as of May 12, 1993.

17 (19) "Medical services" for plan 1 members, shall include the
18 following as minimum services to be provided. Reasonable charges for
19 these services shall be paid in accordance with RCW 41.26.150.

20 (a) Hospital expenses: These are the charges made by a hospital,
21 in its own behalf, for

22 (i) Board and room not to exceed semiprivate room rate unless
23 private room is required by the attending physician due to the
24 condition of the patient.

25 (ii) Necessary hospital services, other than board and room,
26 furnished by the hospital.

27 (b) Other medical expenses: The following charges are considered
28 "other medical expenses", provided that they have not been considered
29 as "hospital expenses".

30 (i) The fees of the following:

31 (A) A physician or surgeon licensed under the provisions of chapter
32 18.71 RCW;

33 (B) An osteopathic physician and surgeon licensed under the
34 provisions of chapter 18.57 RCW;

35 (C) A chiropractor licensed under the provisions of chapter 18.25
36 RCW.

37 (ii) The charges of a registered graduate nurse other than a nurse

1 who ordinarily resides in the member's home, or is a member of the
2 family of either the member or the member's spouse.

3 (iii) The charges for the following medical services and supplies:

4 (A) Drugs and medicines upon a physician's prescription;

5 (B) Diagnostic X-ray and laboratory examinations;

6 (C) X-ray, radium, and radioactive isotopes therapy;

7 (D) Anesthesia and oxygen;

8 (E) Rental of iron lung and other durable medical and surgical
9 equipment;

10 (F) Artificial limbs and eyes, and casts, splints, and trusses;

11 (G) Professional ambulance service when used to transport the
12 member to or from a hospital when injured by an accident or stricken by
13 a disease;

14 (H) Dental charges incurred by a member who sustains an accidental
15 injury to his or her teeth and who commences treatment by a legally
16 licensed dentist within ninety days after the accident;

17 (I) Nursing home confinement or hospital extended care facility;

18 (J) Physical therapy by a registered physical therapist;

19 (K) Blood transfusions, including the cost of blood and blood
20 plasma not replaced by voluntary donors;

21 (L) An optometrist licensed under the provisions of chapter 18.53
22 RCW.

23 (20) "Member" means any firefighter, law enforcement officer, or
24 other person as would apply under subsections (16) or (18) of this
25 section whose membership is transferred to the Washington law
26 enforcement officers' and firefighters' retirement system on or after
27 March 1, 1970, and every law enforcement officer and firefighter who is
28 employed in that capacity on or after such date.

29 (21) "Plan 1" means the law enforcement officers' and firefighters'
30 retirement system, plan 1 providing the benefits and funding provisions
31 covering persons who first became members of the system prior to
32 October 1, 1977.

33 (22) "Plan 2" means the law enforcement officers' and firefighters'
34 retirement system, plan 2 providing the benefits and funding provisions
35 covering persons who first became members of the system on and after
36 October 1, 1977.

37 (23) "Position" means the employment held at any particular time,
38 which may or may not be the same as civil service rank.

1 (24) "Regular interest" means such rate as the director may
2 determine.

3 (25) "Retiree" for persons who establish membership in the
4 retirement system on or after October 1, 1977, means any member in
5 receipt of a retirement allowance or other benefit provided by this
6 chapter resulting from service rendered to an employer by such member.

7 (26) "Retirement fund" means the "Washington law enforcement
8 officers' and firefighters' retirement system fund" as provided for
9 herein.

10 (27) "Retirement system" means the "Washington law enforcement
11 officers' and firefighters' retirement system" provided herein.

12 (28)(a) "Service" for plan 1 members, means all periods of
13 employment for an employer as a firefighter or law enforcement officer,
14 for which compensation is paid, together with periods of suspension not
15 exceeding thirty days in duration. For the purposes of this chapter
16 service shall also include service in the armed forces of the United
17 States as provided in RCW 41.26.190. Credit shall be allowed for all
18 service credit months of service rendered by a member from and after
19 the member's initial commencement of employment as a firefighter or law
20 enforcement officer, during which the member worked for seventy or more
21 hours, or was on disability leave or disability retirement. Only
22 service credit months of service shall be counted in the computation of
23 any retirement allowance or other benefit provided for in this chapter.

24 (i) For members retiring after May 21, 1971 who were employed under
25 the coverage of a prior pension act before March 1, 1970, "service"
26 shall also include (A) such military service not exceeding five years
27 as was creditable to the member as of March 1, 1970, under the member's
28 particular prior pension act, and (B) such other periods of service as
29 were then creditable to a particular member under the provisions of RCW
30 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit
31 be allowed for any service rendered prior to March 1, 1970, where the
32 member at the time of rendition of such service was employed in a
33 position covered by a prior pension act, unless such service, at the
34 time credit is claimed therefor, is also creditable under the
35 provisions of such prior act.

36 (ii) A member who is employed by two employers at the same time
37 shall only be credited with service to one such employer for any month
38 during which the member rendered such dual service.

1 (b) "Service" for plan 2 members, means periods of employment by a
2 member for one or more employers for which basic salary is earned for
3 ninety or more hours per calendar month which shall constitute a
4 service credit month. Periods of employment by a member for one or
5 more employers for which basic salary is earned for at least seventy
6 hours but less than ninety hours per calendar month shall constitute
7 one-half service credit month. Periods of employment by a member for
8 one or more employers for which basic salary is earned for less than
9 seventy hours shall constitute a one-quarter service credit month.

10 Members of the retirement system who are elected or appointed to a
11 state elective position may elect to continue to be members of this
12 retirement system.

13 Service credit years of service shall be determined by dividing the
14 total number of service credit months of service by twelve. Any
15 fraction of a service credit year of service as so determined shall be
16 taken into account in the computation of such retirement allowance or
17 benefits.

18 If a member receives basic salary from two or more employers during
19 any calendar month, the individual shall receive one service credit
20 month's service credit during any calendar month in which multiple
21 service for ninety or more hours is rendered; or one-half service
22 credit month's service credit during any calendar month in which
23 multiple service for at least seventy hours but less than ninety hours
24 is rendered; or one-quarter service credit month during any calendar
25 month in which multiple service for less than seventy hours is
26 rendered.

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

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

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

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

36 (33) "Surviving spouse" means the surviving widow or widower of a
37 member. "Surviving spouse" shall not include the divorced spouse of a
38 member except as provided in RCW 41.26.162.

1 **Sec. 2.** RCW 41.37.010 and 2010 2nd sp.s. c 1 s 905 are each
2 reenacted and amended to read as follows:

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

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

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

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

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

17 (5)(a) "Average final compensation" means the member's average
18 compensation earnable of the highest consecutive sixty months of
19 service credit months prior to such member's retirement, termination,
20 or death. Periods constituting authorized leaves of absence may not be
21 used in the calculation of average final compensation except under RCW
22 41.37.290.

23 (b) In calculating average final compensation under (a) of this
24 subsection, the department of retirement systems shall include:

25 (i) Any compensation forgone by a member employed by a state agency
26 or institution during the 2009-2011 fiscal biennium as a result of
27 reduced work hours, mandatory or voluntary leave without pay, temporary
28 reduction in pay implemented prior to December 11, 2010, or temporary
29 layoffs if the reduced compensation is an integral part of the
30 employer's expenditure reduction efforts, as certified by the employer;
31 and

32 (ii) Any compensation forgone by a member employed by a local
33 government employer during the 2011-2013 fiscal biennium as a result of
34 reduced work hours, mandatory or voluntary leave without pay, temporary
35 layoffs, or reductions to current pay if the reduced compensation is an
36 integral part of the employer's expenditure reduction efforts, as
37 certified by the employer. Reductions to current pay shall not include
38 elimination of previously agreed upon future salary increases.

1 (6) "Beneficiary" means any person in receipt of a retirement
2 allowance or other benefit provided by this chapter resulting from
3 service rendered to an employer by another person.

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

12 (b) "Compensation earnable" for members also includes the following
13 actual or imputed payments, which are not paid for personal services:

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

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

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

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

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

34 (iv) Compensation that a member would have received but for a
35 disability occurring in the line of duty only as authorized by RCW
36 41.37.060;

37 (v) Compensation that a member receives due to participation in the

1 leave sharing program only as authorized by RCW 41.04.650 through
2 41.04.670; and

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

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

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

11 (10) "Eligible position" means any permanent, full-time position
12 included in subsection (19) of this section.

13 (11) "Employee" or "employed" means a person who is providing
14 services for compensation to an employer, unless the person is free
15 from the employer's direction and control over the performance of work.
16 The department shall adopt rules and interpret this subsection
17 consistent with common law.

18 (12) "Employer" means the Washington state department of
19 corrections, the Washington state parks and recreation commission, the
20 Washington state gambling commission, the Washington state patrol, the
21 Washington state department of natural resources, and the Washington
22 state liquor control board; any county corrections department; or any
23 city corrections department not covered under chapter 41.28 RCW.

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

26 (14) "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 (15) "Index A" means the index for the year prior to the
31 determination of a postretirement adjustment.

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

33 (17) "Ineligible position" means any position which does not
34 conform with the requirements set forth in subsection (10) of this
35 section.

36 (18) "Leave of absence" means the period of time a member is
37 authorized by the employer to be absent from service without being
38 separated from membership.

1 (19) "Member" means any employee employed by an employer on a full-
2 time basis:

3 (a) Who is in a position that requires completion of a certified
4 criminal justice training course and is authorized by their employer to
5 arrest, conduct criminal investigations, enforce the criminal laws of
6 the state of Washington, and carry a firearm as part of the job;

7 (b) Whose primary responsibility is to ensure the custody and
8 security of incarcerated or probationary individuals as a corrections
9 officer, probation officer, or jailer;

10 (c) Who is a limited authority Washington peace officer, as defined
11 in RCW 10.93.020, for an employer; or

12 (d) Whose primary responsibility is to supervise members eligible
13 under this subsection.

14 (20) "Membership service" means all service rendered as a member.

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

18 (22) "Plan" means the Washington public safety employees'
19 retirement system plan 2.

20 (23) "Regular interest" means such rate as the director may
21 determine.

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

25 (25) "Retirement" means withdrawal from active service with a
26 retirement allowance as provided by this chapter.

27 (26) "Retirement allowance" means monthly payments to a retiree or
28 beneficiary as provided in this chapter.

29 (27) "Retirement system" means the Washington public safety
30 employees' retirement system provided for in this chapter.

31 (28) "Separation from service" occurs when a person has terminated
32 all employment with an employer.

33 (29) "Service" means periods of employment by a member on or after
34 July 1, 2006, for one or more employers for which compensation earnable
35 is paid. Compensation earnable earned for ninety or more hours in any
36 calendar month shall constitute one service credit month. Compensation
37 earnable earned for at least seventy hours but less than ninety hours
38 in any calendar month shall constitute one-half service credit month of

1 service. Compensation earnable earned for less than seventy hours in
2 any calendar month shall constitute one-quarter service credit month of
3 service. Time spent in standby status, whether compensated or not, is
4 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 (30) "Service credit month" means a month or an accumulation of
16 months of service credit which is equal to one.

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

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

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

24 (34) "State treasurer" means the treasurer of the state of
25 Washington.

26 **Sec. 3.** RCW 41.40.010 and 2010 2nd sp.s. c 1 s 906 are each
27 reenacted and amended to read as follows:

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

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

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

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

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

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

9 (6)(a) "Average final compensation" for plan 1 members, means the
10 annual average of the greatest compensation earnable by a member during
11 any consecutive two year period of service credit months for which
12 service credit is allowed; or if the member has less than two years of
13 service credit months then the annual average compensation earnable
14 during the total years of service for which service credit is allowed.

15 (b) "Average final compensation" for plan 2 and plan 3 members,
16 means the member's average compensation earnable of the highest
17 consecutive sixty months of service credit months prior to such
18 member's retirement, termination, or death. Periods constituting
19 authorized leaves of absence may not be used in the calculation of
20 average final compensation except under RCW 41.40.710(2) or (c) of this
21 subsection.

22 (c) In calculating average final compensation under this subsection
23 for a member of plan 1, 2, or 3, the department of retirement systems
24 shall include:

25 (i) Any compensation forgone by the member during the 2009-2011
26 fiscal biennium as a result of reduced work hours, voluntary leave
27 without pay, temporary reduction in pay implemented prior to December
28 11, 2010, or temporary furloughs if the reduced compensation is an
29 integral part of the employer's expenditure reduction efforts, as
30 certified by the employer; and

31 (ii) Any compensation forgone by a member employed by a local
32 government during the 2011-2013 fiscal biennium as a result of reduced
33 work hours, mandatory or voluntary leave without pay, or temporary
34 layoffs if the reduced compensation is an integral part of the
35 employer's expenditure reduction efforts, as certified by the employer.

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

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

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

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

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

20 (B) If a leave of absence is taken by an individual for the purpose
21 of serving in the state legislature, the salary which would have been
22 received for the position from which the leave of absence was taken,
23 shall be considered as compensation earnable if the employee's
24 contribution is paid by the employee and the employer's contribution is
25 paid by the employer or employee;

26 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
27 72.09.240;

28 (D) Compensation that a member would have received but for a
29 disability occurring in the line of duty only as authorized by RCW
30 41.40.038;

31 (E) Compensation that a member receives due to participation in the
32 leave sharing program only as authorized by RCW 41.04.650 through
33 41.04.670; and

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

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

2 (A) Remuneration for unused sick leave authorized under RCW
3 41.04.340, 28A.400.210, or 28A.310.490;

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

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

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

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

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

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

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

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

37 (iv) Compensation that a member would have received but for a

1 disability occurring in the line of duty only as authorized by RCW
2 41.40.038;

3 (v) Compensation that a member receives due to participation in the
4 leave sharing program only as authorized by RCW 41.04.650 through
5 41.04.670; and

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

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

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

14 (11) "Eligible position" means:

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

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

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

30 (13)(a) "Employer" for plan 1 members, means every branch,
31 department, agency, commission, board, and office of the state, any
32 political subdivision or association of political subdivisions of the
33 state admitted into the retirement system, and legal entities
34 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the
35 term shall also include any labor guild, association, or organization
36 the membership of a local lodge or division of which is comprised of at
37 least forty percent employees of an employer (other than such labor

1 guild, association, or organization) within this chapter. The term may
2 also include any city of the first class that has its own retirement
3 system.

4 (b) "Employer" for plan 2 and plan 3 members, means every branch,
5 department, agency, commission, board, and office of the state, and any
6 political subdivision and municipal corporation of the state admitted
7 into the retirement system, including public agencies created pursuant
8 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
9 31, 2000, school districts and educational service districts will no
10 longer be employers for the public employees' retirement system plan 2.

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

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

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

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

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

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

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

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

33 (22) "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 (23) "Membership service" means:

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

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

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

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

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

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

24 (a) Any person who became a member of the system prior to April 1,
25 1949;

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

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

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

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

8 (f) Any member who has been a contributor under the system for two
9 or more years and who has restored all contributions that may have been
10 withdrawn as provided by RCW 41.40.150 and who on the effective date of
11 the individual's retirement has rendered five or more years of service
12 for the state or any political subdivision prior to the time of the
13 admission of the employer into the system; except that the provisions
14 relating to the minimum amount of retirement allowance for the member
15 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
16 apply to the member.

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

20 (27) "Plan 1" means the public employees' retirement system, plan
21 1 providing the benefits and funding provisions covering persons who
22 first became members of the system prior to October 1, 1977.

23 (28) "Plan 2" means the public employees' retirement system, plan
24 2 providing the benefits and funding provisions covering persons who
25 first became members of the system on and after October 1, 1977, and
26 are not included in plan 3.

27 (29) "Plan 3" means the public employees' retirement system, plan
28 3 providing the benefits and funding provisions covering persons who:

29 (a) First become a member on or after:

30 (i) March 1, 2002, and are employed by a state agency or institute
31 of higher education and who did not choose to enter plan 2; or

32 (ii) September 1, 2002, and are employed by other than a state
33 agency or institute of higher education and who did not choose to enter
34 plan 2; or

35 (b) Transferred to plan 3 under RCW 41.40.795.

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

1 (31) "Regular interest" means such rate as the director may
2 determine.

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

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

8 (34) "Retirement allowance" means the sum of the annuity and the
9 pension.

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

12 (36) "Separation from service" occurs when a person has terminated
13 all employment with an employer. Separation from service or employment
14 does not occur, and if claimed by an employer or employee may be a
15 violation of RCW 41.40.055, when an employee and employer have a
16 written or oral agreement to resume employment with the same employer
17 following termination. Mere expressions or inquiries about
18 postretirement employment by an employer or employee that do not
19 constitute a commitment to reemploy the employee after retirement are
20 not an agreement under this subsection.

21 (37)(a) "Service" for plan 1 members, except as provided in RCW
22 41.40.088, means periods of employment in an eligible position or
23 positions for one or more employers rendered to any employer for which
24 compensation is paid, and includes time spent in office as an elected
25 or appointed official of an employer. Compensation earnable earned in
26 full time work for seventy hours or more in any given calendar month
27 shall constitute one service credit month except as provided in RCW
28 41.40.088. Compensation earnable earned for less than seventy hours in
29 any calendar month shall constitute one-quarter service credit month of
30 service except as provided in RCW 41.40.088. Only service credit
31 months and one-quarter service credit months shall be counted in the
32 computation of any retirement allowance or other benefit provided for
33 in this chapter. Any fraction of a year of service shall be taken into
34 account in the computation of such retirement allowance or benefits.
35 Time spent in standby status, whether compensated or not, is not
36 service.

37 (i) Service by a state employee officially assigned by the state on
38 a temporary basis to assist another public agency, shall be considered

1 as service as a state employee: PROVIDED, That service to any other
2 public agency shall not be considered service as a state employee if
3 such service has been used to establish benefits in any other public
4 retirement system.

5 (ii) An individual shall receive no more than a total of twelve
6 service credit months of service during any calendar year. If an
7 individual is employed in an eligible position by one or more employers
8 the individual shall receive no more than one service credit month
9 during any calendar month in which multiple service for seventy or more
10 hours is rendered.

11 (iii) A school district employee may count up to forty-five days of
12 sick leave as creditable service solely for the purpose of determining
13 eligibility to retire under RCW 41.40.180 as authorized by RCW
14 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW
15 28A.400.300 is equal to two service credit months. Use of less than
16 forty-five days of sick leave is creditable as allowed under this
17 subsection as follows:

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

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

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

23 (b) "Service" for plan 2 and plan 3 members, means periods of
24 employment by a member in an eligible position or positions for one or
25 more employers for which compensation earnable is paid. Compensation
26 earnable earned for ninety or more hours in any calendar month shall
27 constitute one service credit month except as provided in RCW
28 41.40.088. Compensation earnable earned for at least seventy hours but
29 less than ninety hours in any calendar month shall constitute one-half
30 service credit month of service. Compensation earnable earned for less
31 than seventy hours in any calendar month shall constitute one-quarter
32 service credit month of service. Time spent in standby status, whether
33 compensated or not, is not service.

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

36 (i) Service in any state elective position shall be deemed to be
37 full time service, except that persons serving in state elective
38 positions who are members of the Washington school employees'

1 retirement system, teachers' retirement system, public safety
2 employees' retirement system, or law enforcement officers' and
3 firefighters' retirement system at the time of election or appointment
4 to such position may elect to continue membership in the Washington
5 school employees' retirement system, teachers' retirement system,
6 public safety employees' retirement system, or law enforcement
7 officers' and firefighters' retirement system.

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

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

- 20 (A) Less than eleven days equals one-quarter service credit month;
- 21 (B) Eleven or more days but less than twenty-two days equals one-
22 half service credit month;
- 23 (C) Twenty-two days equals one service credit month;
- 24 (D) More than twenty-two days but less than thirty-three days
25 equals one and one-quarter service credit month;
- 26 (E) Thirty-three or more days but less than forty-five days equals
27 one and one-half service credit month.

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

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

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

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

37 (42) "State treasurer" means the treasurer of the state of
38 Washington.

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

4 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and takes effect
7 July 1, 2011.

--- END ---