

SECOND DAY

MORNING SESSION

Senate Chamber, Olympia, Tuesday, March 16, 2010

The Senate was called to order at 10:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Becker, Benton, Holmquist, McCaslin, Morton, Roach and Stevens.

The Sergeant at Arms Color Guard consisting of Senate employees Polly Rosmond and Rachel Gay, presented the Colors. Reverend Jim Erlandson of Community of Christ Church offered the prayer.

MOTION

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

On motion of Senator Eide, the Senate advanced to the eighth order of business.

MOTION

Senator McAuliffe moved adoption of the following resolution:

SENATE RESOLUTION  
8720

By Senators McAuliffe, Holmquist, Gordon, Tom, Eide, Brown, Zarelli, Brandland, Oemig, Kauffman, Hobbs, King, McDermott, Fraser, Kohl-Welles, and Franklin

WHEREAS, Barbara Mertens is retiring on June 30, 2010, after a total of forty-one years of service, the last sixteen of which she spent serving as the Assistant Executive Director of the Washington Association of School Administrators; and

WHEREAS, Barbara Mertens is widely recognized for encouraging public school professional associations and unions to work collaboratively on education issues; and

WHEREAS, Barbara Mertens' leadership, hard work, and innovation have made her an invaluable contributor to our education system throughout her career, whether she was serving as the Supervisor of Private schools, a Teacher, Team Leader, or House Administrator for Seattle Public Schools; a Principal in Seattle and Edmonds; or Director of Student Services in the Office of the Superintendent of Public Instruction; and

WHEREAS, Barbara Mertens was the primary leader of a successful initiative to require a simple majority vote for K-12 school levy ballot issues; and

WHEREAS, Barbara Mertens continues to be applauded for speaking her mind and "telling it like it is" for the one million children in our public schools;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate hereby commend Barbara Mertens for forty-one years of service to children and education colleagues in Washington State and for her deep commitment to serving the citizens of Washington; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to Barbara Mertens.

Senators McAuliffe, Eide, McDermott and Jacobsen spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8720.

The motion by Senator McAuliffe carried and the resolution was adopted by voice vote.

INTRODUCTION OF SPECIAL GUESTS

The President introduced Barbara Mertens who was seated in the gallery.

MOTION

At 10:17 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 12:02 p.m. by President Owen.

MOTION

On motion of Senator Eide, the Senate reverted to the seventh order of business.

THIRD READING

SUBSTITUTE SENATE BILL NO. 6572, by Senate Committee on Ways & Means (originally sponsored by Senator Tom).

Eliminating certain accounts.

The bill was read on Third Reading.

Senator Tom spoke in favor of passage of the bill.

MOTION

On motion of Senator Brandland, Senators Becker, Benton, Holmquist, McCaslin, Morton, Roach and Stevens were excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6572.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6572 and the bill passed the Senate by the following vote: Yeas, 41; Nays, 0; Absent, 1; Excused, 7.

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Absent: Senator Kline

Excused: Senators Becker, Benton, Holmquist, McCaslin, Morton, Roach and Stevens

SUBSTITUTE SENATE BILL NO. 6572, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Marr, Senators Kline and Regala were excused.

#### THIRD READING

SUBSTITUTE SENATE BILL NO. 6712, by Senate Committee on Ways & Means (originally sponsored by Senators Hobbs, Shin and Kilmer).

Extending expiring tax incentives for certain clean alternative fuel vehicles, producers of certain biofuels, and federal aviation regulation part 145 certificated repair stations.

The bill was read on Third Reading.

Senator Hobbs spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6712.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6712 and the bill passed the Senate by the following vote: Yeas, 41; Nays, 0; Absent, 0; Excused, 8.

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Excused: Senators Becker, Benton, Holmquist, McCaslin, Morton, Regala, Roach and Stevens

SUBSTITUTE SENATE BILL NO. 6712, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### THIRD READING

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6409, by Senate Committee on Ways & Means (originally sponsored by Senators Kastama, Rockefeller, Shin and Kohl-Welles).

Creating the Washington investment in excellence account. Revised for 2nd Substitute: Creating the Washington opportunity pathways account.

The bill was read on Third Reading.

Senator Kastama spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 6409.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 6409 and the bill passed the Senate by the following vote: Yeas, 32; Nays, 10; Absent, 0; Excused, 7.

Voting yea: Senators Berkey, Brandland, Brown, Delvin, Eide, Franklin, Fraser, Gordon, Hatfield, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, Murray, Oemig, Pridemore, Ranker, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Carrell, Fairley, Hargrove, Haugen, Kauffman, McDermott, Parlette, Pflug, Prentice and Regala

Excused: Senators Becker, Benton, Holmquist, McCaslin, Morton, Roach and Stevens

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6409, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### THIRD READING

SUBSTITUTE SENATE BILL NO. 6721, by Senate Committee on Ways & Means (originally sponsored by Senators Schoesler, Hobbs and Honeyford).

Concerning tax statute clarifications and technical corrections.

The bill was read on Third Reading.

Senator Schoesler spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6721.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6721 and the bill passed the Senate by the following vote: Yeas, 42; Nays, 0; Absent, 0; Excused, 7.

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Excused: Senators Becker, Benton, Holmquist, McCaslin, Morton, Roach and Stevens

SUBSTITUTE SENATE BILL NO. 6721, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### THIRD READING

SUBSTITUTE SENATE BILL NO. 6727, by Senate Committee on Ways & Means (originally sponsored by Senators Marr and Brown).

Concerning health sciences and services authorities.

The bill was read on Third Reading.

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Senator Marr spoke in favor of passage of the bill.

There being no objection, the title of the bill was ordered to stand as the title of the act.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6727.

MOTION

ROLL CALL

On motion of Senator Brandland, Senators Carrell and Delvin were excused.

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6727 and the bill passed the Senate by the following vote: Yeas, 42; Nays, 0; Absent, 0; Excused, 7.

THIRD READING

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

SUBSTITUTE SENATE BILL NO. 6503, by Senate Committee on Ways & Means (originally sponsored by Senator Prentice).

Closing state agencies on specified dates.

Excused: Senators Becker, Benton, Holmquist, McCaslin, Morton, Roach and Stevens

The bill was read on Third Reading.

MOTION

SUBSTITUTE SENATE BILL NO. 6727, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

On motion of Senator Prentice, the rules were suspended and Substitute Senate Bill No. 6503 was returned to second reading for the purpose of amendment.

THIRD READING

SECOND READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 6737, by Senate Committee on Ways & Means (originally sponsored by Senators Marr, Brown and McCaslin).

SUBSTITUTE SENATE BILL NO. 6503, by Senate Committee on Ways & Means (originally sponsored by Senator Prentice)

Providing an exemption from property tax for aircraft used to provide air ambulance services for nonprofits. Revised for 1st Substitute: Providing an exemption from property tax for aircraft used to provide air ambulance services for nonprofits. (REVISED FOR ENGROSSED: Providing an exemption from property tax for aircraft used to provide air ambulance services. )

Closing state agencies on specified dates.

The bill was read on Third Reading.

The measure was read the second time.

Senators Marr and Ranker spoke in favor of passage of the bill.

MOTION

Senator Pflug spoke against passage of the bill.

Senator Prentice moved that the following striking amendment by Senator Prentice be adopted:

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6737.

Strike everything after the enacting clause and insert the following:

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6737 and the bill passed the Senate by the following vote: Yeas, 41; Nays, 1; Absent, 0; Excused, 7.

"NEW SECTION. Sec. 1. The legislature declares that unprecedented revenue shortfalls necessitate immediate action to reduce expenditures during the 2009-2011 fiscal biennium. From the effective date of this section, it is the intent of the legislature that state agencies of the legislative branch, judicial branch, and executive branch including institutions of higher education, shall achieve a reduction in government operating expenses as provided in this act. It is the legislature's intent that, to the extent that the reductions in expenditures reduce compensation costs, agencies and institutions shall strive to preserve family wage jobs by reducing the impact of temporary layoffs on lower-wage jobs.

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

NEW SECTION. Sec. 2. (1)(a) The office of financial management shall certify to each executive branch state agency and institution of higher education the compensation reduction amount to be achieved by that agency or institution. Each agency and institution shall achieve compensation expenditure reductions as provided in the omnibus appropriations act.

Voting nay: Senator Pflug  
Excused: Senators Becker, Benton, Holmquist, McCaslin, Morton, Roach and Stevens

(b) Each executive branch state agency other than institutions of higher education may submit to the office of financial management a compensation reduction plan to achieve the cost reductions as provided in the omnibus appropriations act. The compensation reduction plan of each executive branch agency may include, but is not limited to, employee leave without pay, including additional mandatory and voluntary temporary layoffs, reductions in the agency workforce, compensation reductions, and reduced work hours, as well as voluntary retirement, separation, and other

ENGROSSED SUBSTITUTE SENATE BILL NO. 6737, having received the constitutional majority, was declared passed.

incentive programs authorized by section 912, chapter 564, Laws of 2009. The amount of compensation cost reductions to be achieved by each agency shall be adjusted to reflect voluntary and mandatory temporary layoffs at the agency during the 2009-2011 fiscal biennium and implemented prior to January 1, 2010, but not adjusted by other compensation reduction plans adopted as a result of the enactment of chapter 564, Laws of 2009, or the enactment of other compensation cost reduction measures applicable to the 2009-2011 fiscal biennium.

(c) Each institution of higher education must submit to the office of financial management a compensation reduction plan to achieve at least the cost reductions as provided in the omnibus appropriations act. For purposes of the compensation reduction plan, the state board of community and technical colleges shall submit a single plan on behalf of all community and technical colleges. The compensation reduction plan of each institution may include, but is not limited to, employee leave without pay, including mandatory and voluntary temporary layoffs, reductions in the institution workforce, compensation reductions, and reduced work hours, as well as voluntary retirement, separation, and other incentive programs authorized by section 912, chapter 564, Laws of 2009. The amount of compensation cost reductions to be achieved by each institution shall be adjusted to reflect voluntary and mandatory temporary layoffs at the institution during the 2009-2011 fiscal biennium and implemented prior to January 1, 2010, but not adjusted by other compensation reduction plans adopted as a result of the enactment of chapter 564, Laws of 2009, or the enactment of other compensation cost reduction measures applicable to the 2009-2011 fiscal biennium.

(d) The director of financial management shall review, approve, and submit to the legislative fiscal committees those executive branch state agencies and higher education institution compensation reduction plans that achieve the cost reductions as provided in the omnibus appropriations act. For those executive branch state agencies and institutions of higher education that do not have an approved compensation reduction plan, the institution shall be closed on the dates specified in subsection (2) of this section.

(e) For each agency of the legislative branch, the chief clerk of the house of representatives and the secretary of the senate shall review and approve a plan of employee mandatory and voluntary leave for the 2009-2011 fiscal biennium that achieve the cost reductions as provided in the omnibus appropriations act. The amount of compensation cost reductions to be achieved shall be adjusted, if necessary, to reflect voluntary and mandatory temporary layoffs at the agencies during the 2009-2011 fiscal biennium and implemented prior to January 1, 2010.

(f) For each agency of the judicial branch, the supreme court shall review and approve a plan of employee mandatory and voluntary leave for the 2009-2011 fiscal biennium that achieve the cost reductions as provided in the omnibus appropriations act. The amount of compensation cost reductions to be achieved shall be adjusted, if necessary, to reflect voluntary and mandatory temporary layoffs at the agencies during the 2009-2011 fiscal biennium and implemented prior to January 1, 2010.

(2) Each state agency of the executive, legislative, and judicial branch, and any institution that does not have an approved plan in accordance with subsection (1) of this section shall be closed on the following dates in addition to the legal holidays specified in RCW 1.16.050:

- (a) Monday, July 12, 2010;
- (b) Friday, August 6, 2010;
- (c) Tuesday, September 7, 2010;
- (d) Monday, October 11, 2010;
- (e) Monday, December 27, 2010;
- (f) Friday, January 28, 2011;
- (g) Tuesday, February 22, 2011;

(h) Friday, March 11, 2011;

(i) Friday, April 22, 2011;

(j) Friday, June 10, 2011.

(3) If the closure of state agencies or institutions under subsection (2) of this section prevents the performance of any action, the action shall be considered timely if performed on the next business day.

(4) The following activities of state agencies and institutions of higher education are exempt from subsections (1) and (2) of this section:

(a) Direct custody, supervision, and patient care in: (i) Corrections; (ii) juvenile rehabilitation; (iii) institutional care of veterans, or individuals with mental illness, and individuals with developmental disabilities; (iv) state hospitals, the University of Washington medical center, and Harborview medical center; (v) the special commitment center; (vi) the school for the blind; (vii) the state center for childhood deafness and hearing loss; and (viii) the Washington youth academy;

(b) Direct protective services to children and other vulnerable populations, child support enforcement, disability determination services in the department of social and health services;

(c) Washington state patrol investigative services and field enforcement;

(d) Hazardous materials response or emergency response and cleanup;

(e) Emergency public health and patient safety response and the public health laboratory;

(f) Military operations and emergency management within the military department;

(g) Firefighting;

(h) Enforcement officers in the department of fish and wildlife, the liquor control board, the gambling commission, the department of financial institutions, and the department of natural resources;

(i) State parks operated by the parks and recreation commission;

(j) In institutions of higher education, classroom instruction, operations not funded from state funds or tuition, campus police and security, emergency management and response, and student health care;

(k) Operations of liquor control board business enterprises and games conducted by the state lottery;

(l) Agricultural commodity commissions and boards, and agricultural inspection programs operated by the department of agriculture;

(m) The unemployment insurance program and reemployment services of the employment security department;

(n) The workers' compensation program and workplace safety and health compliance activities of the department of labor and industries;

(o) The operation, maintenance, and construction of state ferries and state highways;

(p) The department of revenue;

(q) Licensing service offices in the department of licensing that are open no more than two days per week, and no licensing service office closures may occur on Saturdays as a result of this section;

(r) The labor relations office of the office of financial management through November 1, 2010;

(s) The governor, lieutenant governor, legislative agencies, and the office of financial management, during sessions of the legislature under Article II, section 12 of the state Constitution and the twenty-day veto period under Article IV, section 12 of the state Constitution; and

(t) The minimal use of state employees on the specified closure dates as necessary to protect public assets and information technology systems, and to maintain public safety.

(5)(a) The closure of an office of a state agency or institution of higher education under this section shall result in the temporary

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layoff of the employees of the agency or institution. The compensation of the employees shall be reduced proportionately to the duration of the temporary layoff. Temporary layoffs under this section shall not affect the employees' vacation leave accrual, seniority, health insurance, or sick leave credits. For the purposes of chapter 430, Laws of 2009, the compensation reductions under this section are deemed to be an integral part of an employer's expenditure reduction efforts and shall not result in the loss of retirement benefits in any state defined benefit retirement plan for an employee whose period of average final compensation includes a portion of the period from the effective date of this section through June 30, 2011.

(b)(i) During the closure of an office or institution under this section, any employee with a monthly full-time equivalent salary of two thousand five hundred dollars or less may, at the employee's option, use accrued vacation leave in lieu of temporary layoff during the closure. Solely for this purpose, and during the 2009-2011 fiscal biennium only, the department of personnel shall adopt rules to permit employees with less than six months of continuous state employment to use accrued vacation leave.

(ii) If an employee with a monthly full-time equivalent salary of two thousand five hundred dollars or less has no accrued vacation leave, that employee may use shared leave, if approved by the agency director, and if made available through donations under RCW 41.04.665 in lieu of temporary layoff during the closure.

(6) Except as provided in subsection (4) of this section, for employees not scheduled to work on a day specified in subsection (2) of this section, the employing agency must designate an alternative day during that month on which the employee is scheduled to work that the employee will take temporary leave without pay.

(7) To the extent that the implementation of this section is subject to collective bargaining under chapter 41.80 RCW, the bargaining shall be conducted pursuant to section 3 of this act. To the extent that the implementation of this section is subject to collective bargaining under chapters 28B.52, 41.56, 41.76, or 47.64 RCW, the bargaining shall be conducted pursuant to these chapters.

(8) For all or a portion of the employees of an agency of the executive branch, the office of financial management may approve the substitution of temporary layoffs on an alternative date during that month for any date specified in subsection (2) of this section as necessary for the critical work of any agency.

**NEW SECTION. Sec. 3.** A new section is added to chapter 41.80 RCW to read as follows:

(1) To the extent that the implementation of section 2 of this act is subject to collective bargaining:

(a) For institutions of higher education that have elected to have negotiations conducted by the governor or governor's designee in accordance with RCW 41.80.010(4), and that have an approved compensation reduction plan under section 2(1) of this act, negotiations regarding impacts of the compensation reduction plan shall be conducted between the governor or governor's designee and a coalition at each college, college district, or university of all of the exclusive bargaining representatives subject to chapter 41.80 RCW;

(b) For institutions of higher education that have elected to have negotiations conducted by the governor or governor's designee in accordance with RCW 41.80.010(4), and that do not have an approved compensation reduction plan under section 2(1) of this act, negotiations regarding impacts of the temporary layoffs under section 2(2) of this act shall be conducted between the governor or governor's designee and one coalition of all of the exclusive bargaining representatives subject to chapter 41.80 RCW;

(c) For institutions of higher education that have not elected to have negotiations conducted by the governor or governor's designee under RCW 41.80.010(4), negotiations regarding impacts of section

2 of this act shall be conducted between each institution of higher education and the exclusive bargaining representatives;

(d) For agencies that have an approved compensation reduction plan under section 2(1) of this act, negotiations regarding impacts of the compensation reduction plan shall be conducted between the governor or governor's designee and a coalition at each agency of all of the exclusive bargaining representatives subject to chapter 41.80 RCW; and

(e) For agencies that do not have an approved compensation reduction plan under section 2(1) of this act, negotiations regarding impacts of the temporary layoffs under section 2(2) of this act shall be conducted between the governor or governor's designee and one coalition of all of the exclusive bargaining representatives subject to chapter 41.80 RCW.

(2) This section expires June 30, 2011.

**Sec. 4.** RCW 42.04.060 and 2009 c 428 s 1 are each amended to read as follows:

Except as provided in section 2 of this act, all state elective and appointive officers shall keep their offices open for the transaction of business for a minimum of forty hours per week, except weeks that include state legal holidays. Customary business hours must be posted on the agency or office's web site and made known by other means designed to provide the public with notice.

~~((This section shall not apply to the courts of record of this state or to their officers nor to the office of the attorney general and the lieutenant governor.))~~

**Sec. 5.** RCW 41.26.030 and 2009 c 523 s 3 are each reenacted and amended to read as follows:

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

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

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

(3) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

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

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

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

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined.

Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

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

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

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

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

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

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

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

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

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

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

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

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

(14)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or firefighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the firefighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or firefighters as defined in this chapter.

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

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

(ii) The elected officials of any municipal corporation;

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

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

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

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

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

(16) "Firefighter" means:

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

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

(c) Supervisory firefighter personnel;

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

(e) The executive secretary of a labor guild, association or organization (which is an employer under ~~(RCW 41.26.030(14) as now or hereafter amended)~~ subsection (14) of this section), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (16)(e) shall not apply to plan 2 members;

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

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

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

(17) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons

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committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

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

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

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

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under ~~(RCW 41.26.030(14))~~ subsection (14) of this section) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not apply to plan 2 members; and

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

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

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

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

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

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

(i) The fees of the following:

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

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

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

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

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

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

(B) Diagnostic X-ray and laboratory examinations;

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

(D) Anesthesia and oxygen;

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

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

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

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

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

(J) Physical therapy by a registered physical therapist;

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

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

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

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

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

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

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

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

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

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

(28)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a

member from and after the member's initial commencement of employment as a firefighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

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

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

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

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

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

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

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

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

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

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

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

**Sec. 6.** RCW 41.32.010 and 2008 c 204 s 1 and 2008 c 175 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) "Earnable compensation" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132(6);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(36) "Substitute teacher" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 7.** RCW 41.37.010 and 2007 c 492 s 11 and 2007 c 294 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) "Service" means periods of employment by a member on or after July 1, 2006, for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

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

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

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an

individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) "Eligible position" means any permanent, full-time position included in subsection (5) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 8.** RCW 43.43.120 and 2009 c 549 s 5124 and 2009 c 522 s 1 are each reenacted and amended to read as follows:

As used in (~~RCW 43.43.120~~) this section and RCW 43.43.130 through 43.43.320, unless a different meaning is plainly required by the context:

(1) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality table as may be adopted and such interest rate as may be determined by the director.

(2) "Annual increase" means as of July 1, 1999, seventy-seven cents per month per year of service which amount shall be increased each subsequent July 1st by three percent, rounded to the nearest cent.

(3)(a) "Average final salary," for members commissioned prior to January 1, 2003, shall mean the average monthly salary received by a member during the member's last two years of service or any consecutive two-year period of service, whichever is the greater, as an employee of the Washington state patrol; or if the member has less than two years of service, then the average monthly salary received by the member during the member's total years of service.

(b) "Average final salary," for members commissioned on or after January 1, 2003, shall mean the average monthly salary received by a member for the highest consecutive sixty service credit months; or if the member has less than sixty months of service, then the average monthly salary received by the member during the member's total months of service.

(c) In calculating average final salary under (a) or (b) of this subsection, the department of retirement systems shall include any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief.

(4) "Beneficiary" means any person in receipt of retirement allowance or any other benefit allowed by this chapter.

(5)(a) "Cadet," for a person who became a member of the retirement system after June 12, 1980, is a person who has passed the Washington state patrol's entry-level oral, written, physical performance, and background examinations and is, thereby, appointed by the chief as a candidate to be a commissioned officer of the Washington state patrol.

(b) "Cadet," for a person who became a member of the retirement system before June 12, 1980, is a trooper cadet, patrol cadet, or employee of like classification, employed for the express purpose of receiving the on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper. "Like classification" includes: Radio operators or dispatchers; persons providing security for the governor or legislature; patrol officers; drivers' license examiners;

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weighmasters; vehicle safety inspectors; central wireless operators; and warehouse workers.

(6) "Contributions" means the deduction from the compensation of each member in accordance with the contribution rates established under chapter 41.45 RCW.

(7) "Current service" shall mean all service as a member rendered on or after August 1, 1947.

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

(9) "Director" means the director of the department of retirement systems.

(10) "Domestic partners" means two adults who have registered as domestic partners under RCW ~~((26.60.020))~~ 26.60.040.

(11) "Employee" means any commissioned employee of the Washington state patrol.

(12) "Insurance commissioner" means the insurance commissioner of the state of Washington.

(13) "Lieutenant governor" means the lieutenant governor of the state of Washington.

(14) "Member" means any person included in the membership of the retirement fund.

(15) "Plan 2" means the Washington state patrol retirement system plan 2, providing the benefits and funding provisions covering commissioned employees who first become members of the system on or after January 1, 2003.

(16) "Prior service" shall mean all services rendered by a member to the state of Washington, or any of its political subdivisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington.

(17) "Regular interest" means interest compounded annually at such rates as may be determined by the director.

(18) "Retirement board" means the board provided for in this chapter.

(19) "Retirement fund" means the Washington state patrol retirement fund.

(20) "Retirement system" means the Washington state patrol retirement system.

(21)(a) "Salary," for members commissioned prior to July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040, or any voluntary overtime, earned on or after July 1, 2001.

(b) "Salary," for members commissioned on or after July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040 or any voluntary overtime, lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, holiday pay, or any form of severance pay.

(22) "Service" shall mean services rendered to the state of Washington or any political subdivisions thereof for which compensation has been paid. Full time employment for seventy or more hours in any given calendar month shall constitute one month of service. An employee who is reinstated in accordance with RCW 43.43.110 shall suffer no loss of service for the period reinstated subject to the contribution requirements of this chapter. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for herein. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

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

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

~~((25))~~ Unless the context expressly indicates otherwise, words importing the masculine gender shall be extended to include the feminine gender and words importing the feminine gender shall be extended to include the masculine gender.

**Sec. 9.** RCW 41.04.665 and 2008 c 36 s 3 are each amended to read as follows:

(1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services;

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; ~~((e))~~

(iv) The employee is a victim of domestic violence, sexual assault, or stalking; or

(v) During the 2009-2011 fiscal biennium only, the employee is eligible to use leave in lieu of temporary layoff under section 2(5) of this act;

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, temporary layoff under section 2(5) of this act, or stalking has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii) ~~((e))~~, (iv), or (v) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) or (iv) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave, except that shared leave received under the uniformed service shared leave pool in RCW 41.04.685 is not included in this total.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee

receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Before the agency head makes a determination to return unused leave in connection with an illness or injury, or any other qualifying condition, he or she must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

**NEW SECTION. Sec. 10.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

**NEW SECTION. Sec. 11.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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

Senator Prentice spoke in favor of adoption of the striking amendment.

#### MOTION

Senator Kline moved that the following amendment by Senator Kline and others to the striking amendment be adopted.

On page 1, after line 13, insert the following:

" **NEW SECTION. Sec. 2.** State agencies and institutions shall achieve reductions in compensation expenditures for employees employed by general government state agencies in Washington management services, or exempt positions as managers, as defined in RCW 41.06.022, as provided in the omnibus appropriations act. These reductions shall be sufficient to attain a savings of \$10 million general fund--state for fiscal year 2011. Savings in other funds and accounts shall be achieved as provided in the omnibus appropriations act."

Renumber the sections consecutively and correct any internal references accordingly.

Senators Kline and Prentice spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Kline and others on page 1, after line 13 to the striking amendment to Substitute Senate Bill No. 6503.

The motion by Senator Kline carried and the amendment to the striking amendment was adopted by voice vote.

#### MOTION

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Senator Keiser moved that the following amendment by Senators Keiser and McDermott to the striking amendment be adopted:

On page 4, line 8 of the amendment, after "services" and before "in", insert ", complaint investigators, and residential care licensors and surveyors"

On page 4, line 8 of the amendment, after "health services" insert "and the department of health"

Senators Keiser and Prentice spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Keiser and McDermott on page 4, line 8 to the striking amendment to Substitute Senate Bill No. 6503.

The motion by Senator Keiser carried and the amendment to the striking amendment was adopted by voice vote.

#### MOTION

Senator Kohl-Welles moved that the following amendment by Senator Kohl-Welles and others to the striking amendment be adopted:

On page 4, line 23 of the amendment, after "response," insert "work performed by student employees if the duties were not previously assigned to nonstudents during the current or prior school year,"

Senators Kohl-Welles and Prentice spoke in favor of adoption of the amendment to the striking amendment.

Senator King spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Kohl-Welles and others on page 4, line 23 to the striking amendment to Substitute Senate Bill No. 6503.

The motion by Senator Kohl-Welles carried and the amendment to the striking amendment was adopted by voice vote.

#### MOTION

Senator McDermott moved that the following amendment by Senator McDermott and others to the striking amendment be adopted:

On page 5, strike lines 1 and 2 of the amendment and reletter the subsections consecutively.

On page 5, line 3 of the amendment, after "governor," insert "and"

On page 5, lines 3 and 4 of the amendment, strike "and the office of financial management,"

Senator McDermott spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator McDermott and others on page 5, line 1 to Substitute Senate Bill No. 6503.

The motion by Senator McDermott carried and the amendment to the striking amendment was adopted by voice vote.

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Senator McDermott moved that the following amendment by Senator McDermott and others to the striking amendment be adopted.

On page 6, after line 14 of the amendment, strike all material down through line 15 on page 7. Renumber the sections consecutively and correct internal references accordingly.

On page 38, line 4 of the title amendment, strike "adding a new section to chapter 41.80 RCW;"

Senator McDermott spoke in favor of adoption of the amendment to the striking amendment.

Senator Prentice spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator McDermott and others on page 6, after line 14 to the striking amendment to Substitute Senate Bill No. 6503.

The motion by Senator McDermott failed and the amendment was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Prentice as amended to Substitute Senate Bill No. 6503.

The motion by Senator Prentice carried and the striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "agencies;" strike the remainder of the title and insert "amending RCW 42.04.060 and 41.04.665; reenacting and amending RCW 41.26.030, 41.32.010, 41.37.010, and 43.43.120; adding a new section to chapter 41.80 RCW; creating new sections; and declaring an emergency."

#### MOTION

On motion of Senator Prentice, the rules were suspended, Engrossed Substitute Senate Bill No. 6503 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Prentice, McDermott and Keiser spoke in favor of passage of the bill.

Senators Zarelli and Sheldon spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6503.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6503 and the bill passed the Senate by the following vote: Yeas, 30; Nays, 11; Absent, 0; Excused, 8.

Voting yea: Senators Berkey, Brandland, Brown, Eide, Fairley, Franklin, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Fraser, Hewitt, Holmquist, Honeyford, King, Parlette, Pflug, Schoesler, Sheldon, Swecker and Zarelli

Excused: Senators Becker, Benton, Carrell, Delvin, McCaslin, Morton, Roach and Stevens

ENGROSSED SUBSTITUTE SENATE BILL NO. 6503, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced the Honorable Peter Rothen, Consul General of Germany in San Francisco and the Honorable Petra Walker, Honorary Consul of Germany in Washington State who were seated in the gallery.

#### MOTION

On motion of Senator Eide, the Senate reverted to the sixth order of business.

#### SECOND READING

SENATE BILL NO. 6789, by Senators Prentice, Zarelli, Murray, Hewitt, Holmquist and Parlette

Concerning sales and use tax exemptions for certain equipment and infrastructure contained in data centers.

#### MOTION

On motion of Senator Tom, Substitute Senate Bill No. 6789 was substituted for Senate Bill No. 6789 and the substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Tom moved that the following amendment by Senator Tom be adopted.

On page 3, line 16, beginning with "(4)" strike everything through page 3, line 18 "section."

On page 6, line 25, beginning with "(3)" strike everything through page 6, line 27, "section."

Renumber the sections consecutively and correct any internal references accordingly.

The President declared the question before the Senate to be the adoption of the amendment by Senator Tom on page 3, line 16 to Substitute Senate Bill No. 6789.

The motion by Senator Tom carried and the amendment was adopted by voice vote.

#### MOTION

Senator Kastama moved that the following amendment by Senator Kastama and others be adopted.

On page 4, beginning on line 33, strike all of subsection (7)(c)(i)(A) and insert the following:

"(A) Located in a county with an unemployment rate above the state average at the time of application for the exemption under this section."

On page 4, line 36, after "servers;" strike "and"

On page 5, line 9, after "center" insert "; and"

(D) For which the completion of construction occurs within eighteen months of commencement of construction"

Senator Kastama spoke in favor of adoption of the amendment.

Senators Hatfield and Zarelli spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Kastama and others on page 4, line 33 to Substitute Senate Bill No. 6789.

The motion by Senator Kastama failed and the amendment was not adopted by voice vote.

#### MOTION

Senator Rockefeller moved that the following striking amendment by Senator Rockefeller be adopted:

**"NEW SECTION. Sec. 1.** (1) It is the legislature's intent to encourage immediate investments in technology facilities that can provide an economic stimulus, sustain long-term jobs that provide living wages, and help build the digital infrastructure that can enable the state to be competitive for additional technology investment and jobs.

(2) There is currently an intense competition for data center construction and operation in many states including: Oregon, Arizona, North and South Carolina, North Dakota, Iowa, Virginia, Texas, Utah, and Illinois. Unprecedented incentives are available as a result of the desire of these states to attract investments that will serve as a catalyst for additional clusters of economic activity.

(3) Since the economic downturn, Washington has not succeeded in attracting any private investments in these centers after siting six major data centers between 2004 and 2007.

(4) Data center technology has advanced rapidly, with marked increases in energy efficiency. Large, commercial-grade data centers leverage the economies of scale to reduce energy consumption. Combining digitized processes with the economies of scale recognized at these data centers, today's enterprises can materially reduce the energy they consume and greatly improve their efficiency.

(5) The legislature finds that a twenty-seven month window that offers an opportunity to seek a tax deferral on server and related electrical equipment and installation will act as a stimulus to incent immediate investment. This investment will bring jobs, tax revenues, and economic growth to some of our states rural areas and counties that have unemployment above the statewide average.

**NEW SECTION. Sec. 2.** A new section is added to chapter 82.32 RCW to read as follows:

(1) A qualifying business may apply for deferral of taxes of eligible server equipment to be installed, without intervening use, in an eligible computer data center, and to charges made for labor and services rendered in respect to installing eligible server equipment. The deferral of taxes also applies to sales to qualifying businesses of eligible power infrastructure, including labor and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure. The application shall contain information regarding the location of the project, estimated or actual costs of the project, time schedules for completion and operation of the project, and other information required by the department. The department shall rule on the application within sixty days. All applications for deferral under this section must be received no later than July 1, 2012.

(2) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW.

(3) A qualifying business claiming the deferral under this section must present the seller with a deferral certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(4) A qualifying business shall begin paying the deferred taxes in the fifth year after the date certified by the department as the date on which the eligible project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on

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December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(5) Except as provided in subsection (6) of this section, interest shall not be charged on any taxes deferred under this section for the period of deferral. The debt for deferred taxes is not extinguished by insolvency or other failure of the qualifying business.

(6) If the project is not operationally complete within five calendar years from issuance of the tax deferral or if at any time the department finds that the project is not eligible for tax deferral under this section, the amount of deferred taxes outstanding for the project shall be immediately due and payable. If deferred taxes must be repaid under this subsection, the department shall assess interest, but not penalties, on amounts due under this subsection. Interest shall be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date of deferral, and shall accrue until the deferred taxes are repaid.

(7) A qualifying business claiming a deferral under this section must complete an annual report with the department as required under section 103, chapter . . . , Laws of 2010 (Substitute House Bill No. 3066).

(8)(a) The deferral provided in this section does not apply to:

(i) Any person who has received the benefit of the deferral program under chapter 82.60 RCW on: (A) The construction, renovation, or expansion of a structure or structures used as a computer data center; or (B) machinery or equipment used in a computer data center; and

(ii) Any person affiliated with a person within the scope of (a)(i) of this subsection (8). For purposes of this subsection, "affiliated" means that one person has a direct or indirect ownership interest of at least twenty percent in another person.

(b) If a person claims a deferral under this section and subsequently receives the benefit of the deferral program under chapter 82.60 RCW on either the construction, renovation, or expansion of a structure or structures used as a computer data center or machinery or equipment used in a computer data center, the person must repay the amount of taxes deferred under this section. Interest as provided in chapter 82.32 RCW applies to amounts due under this section until paid in full.

(9) For purposes of this section the following definitions apply unless the context clearly requires otherwise:

(a)(i) "Computer data center" means a facility comprised of one or more buildings, which may be comprised of multiple businesses, constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics: (A) Uninterruptible power supplies, generator backup power, or both; (B) sophisticated fire suppression and prevention systems; and (C) enhanced physical security, such as: Restricted access to the facility to selected personnel; permanent security guards; video camera surveillance; an electronic system requiring passcodes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer data center if it has all of the characteristics listed in (a)(i)(A) through (C) of this subsection (9).

(iii) A facility comprised of one building or more than one building must have a combined square footage of at least one hundred thousand square feet.

(b) "Electronic data storage and data management services" include, but are not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting web sites. The term also includes providing services such as e-mail, web browsing and

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searching, media applications, and other online services, regardless of whether a charge is made for such services.

(c)(i) "Eligible computer data center" means a computer data center:

(A) Located in a county in which the unemployment rate is above the statewide average unemployment rate during the calendar years of 2010 or 2011;

(B) Having at least twenty thousand square feet dedicated to housing working servers, where the server space has not previously been dedicated to housing working servers; and

(C) For which the commencement of construction occurs after March 31, 2010, and before July 1, 2012. For purposes of this section, "commencement of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the computer data center. The construction of a computer data center includes the expansion, renovation, or other improvements made to existing facilities, including leased or rented space. "Commencement of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of a computer data center.

(ii) With respect to facilities in existence on the effective date of this act that are expanded, renovated, or otherwise improved after March 31, 2010, an eligible computer data center includes only the portion of the computer data center meeting the requirements in (c)(i)(B) of this subsection.

(d) "Eligible power infrastructure" means all fixtures and equipment necessary for the transformation, distribution, or management of electricity that is required to operate eligible server equipment within an eligible computer data center. The term includes electrical substations, generators, wiring, and cogeneration equipment.

(e) "Eligible server equipment" means the original server equipment installed in an eligible computer data center on or after April 1, 2010.

(f) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner or lessee of an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

(g) "Server" means blade or rack-mount server computers used in a computer data center exclusively to provide electronic data storage and data management services for internal use by the owner or lessee of the computer data center, for clients of the owner or lessee of the computer data center, or both. "Server" does not include personal computers.

(h) "Server equipment" means the server chassis and all computer hardware contained within the server chassis. "Server equipment" also includes computer software necessary to operate the server. "Server equipment" does not include the racks upon which the server chassis is installed, and computer peripherals such as keyboards, monitors, printers, mice, and other devices that work outside of the computer.

(10) This section expires July 1, 2027.

**NEW SECTION. Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2010."

Remember the sections consecutively and correct any internal references accordingly.

On page 1, line 1 of the title, strike "exemptions" and insert "deferrals"

On page 1, line 2 of the title, after "centers;" insert "adding a new section to chapter 82.32 RCW; providing an effective date; providing expiration dates; and declaring an emergency."

Senator Rockefeller spoke in favor of adoption of the striking amendment.

Senator Tom spoke against adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Rockefeller to Substitute Senate Bill No. 6789.

The motion by Senator Rockefeller failed and the striking amendment was not adopted by voice vote.

#### MOTION

On motion of Senator Tom, the rules were suspended, Engrossed Substitute Senate Bill No. 6789 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Tom spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6789.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6789 and the bill passed the

Senate by the following vote: Yeas, 39; Nays, 4; Absent, 0; Excused, 6.

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Fairley, Fraser, Kastama and Rockefeller

Excused: Senators Becker, Benton, McCaslin, Morton, Roach and Stevens

ENGROSSED SUBSTITUTE SENATE BILL NO. 6789, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

At 1:12 p.m., on motion of Senator Eide, the Senate adjourned until 10:00 a.m. Wednesday, March 17, 2010.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

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	Third Reading Final Passage.....	2	Third Reading Final Passage.....	3
6503-S	Other Action.....	15	6737-S	Third Reading.....
	Other Action.....	3		Third Reading Final Passage.....
	Second Reading.....	3, 14, 15	6789	Second Reading.....
	Third Reading.....	3		6789-S
	Third Reading Final Passage.....	15		Other Action.....
6572-S	Third Reading.....	1		Second Reading.....
	Third Reading Final Passage.....	2		Third Reading Final Passage.....
6712-S	Third Reading.....	2	8720	Adopted.....
	Third Reading Final Passage.....	2		Introduced.....
6721-S	Third Reading.....	2	PRESIDENT OF THE SENATE	
	Third Reading Final Passage.....	2		Intro. Special Guest, Barbara Mertens.....
6727-S				Intro. Special Guests, Honorable of Germany, Peter Rothen and Petra Walker.....

